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Federal Register

1–10–01 Wednesday
Vol. 66 No. 7 Jan. 10, 2001
Pages 1807–2192

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(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF56

Cleaning and Reinspection of Farmers Stock Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation is adopting, as a final rule, with certain changes, the provisions of an August 5, 1998, interim rule that eased conditions for marketing Segregation 3 peanuts. The interim rule allowed peanut producers to recondition and regrade peanuts in certain limited instances. Peanuts are graded as ''Segregation 3'' peanuts when they are found by visual inspection to have Aspergillus flavus (A. flavus) mold. This rule changes the provisions of the interim rule to allow peanuts found to have the mold to be cleaned at a different buying point if the buying point to which a producer delivered the peanuts does not have cleaning facilities. In addition, this rule formally extends the time for having the peanuts visually reinspected to 72 hours and, under certain conditions, allows reinspection at an alternate site. This rule continues to limit reinspection to only once for any given lot. Comments solicited in the interim rule with respect to chemical inspection of farmers stock peanuts are discussed in this rule. However, no change has been made at this time with respect to that issue.

In addition, this rule makes certain other technical/administrative changes to the program regulations. One of those is a provision allowing for waivers of non statutory program requirements in cases where such waivers serve the purposes of the program. Secondly, the rule drops a provision which refers to a defunct crop insurance procedure.

DATES: Effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 720–7914.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Unfunded Federal Mandates

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

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule do not preempt State laws to the extent that such laws are consistent with the provisions of this rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1446, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

National Appeals Division Rules of Procedure

The procedures set out in 7 CFR parts 11 and 780 apply to appeals of adverse decisions made under the regulations adopted in this notice.

Paperwork Reduction Act

The information reporting requirements contained in this rule have been approved by OMB and assigned OMB control number 0560–0014. The provisions of this rule do not impose new reporting requirements or changes in existing information collection requirements.

Background

In the August 5, 1998, **Federal Register**, CCC issued changes in the peanut poundage quota regulations at 7 CFR Part 1446 with respect to determining Segregation 3 peanuts. The rule modified the definition of Segregation 3 peanuts found in § 1446.103 by providing that peanuts found to have visible A. flavus mold upon a visual inspection at a buying point may be reconditioned and regraded in certain limited instances. For many years peanuts found to have visible A. flavus mold were required to be marketed as additional loan peanuts or as quota peanuts returned to the farm for seed. Although no cleaning was allowed, the impact of the inspection on farmers was mitigated by the availability of ''disaster transfers'' which allowed a transfer of additional loan peanuts to a quota loan pool. Those transfers did not change the ultimate use of the peanuts but did allow the farmer to receive a return close to that for quota peanuts if the farmer otherwise had unused quota.

The Federal Agriculture Improvement and Reform act of 1996 (1996 Act) substantially limited the quantity and price on such transfers but did not mandate the particular procedures by which peanuts would be classified as Segregation 3 peanuts. To mitigate possible harm to individual farmers with Segregation 3 peanuts, farmers

whose peanuts are found to contain visible A. flavus mold were allowed by the interim rule to have the peanuts reconditioned by removing foreign material and loose shelled kernels (LSK's) in accordance with directions to be issued by the Director of the Tobacco and Peanuts Division of the Farm Service Agency. Comments were requested on the interim rule. Also, the preamble to that rule requested comments on whether there should be chemical testing undertaken with respect to the delivery of all farmers stock peanuts. It was noted, however, that chemical testing for wholesomeness was already being undertaken, under other authorities, at a later marketing stage. Specifically, comments were requested with respect to the efficiency of such testing, standards for such testing and the assignment of costs for such testing.

A total of 25 comments was received during the comment period, representing three area peanut grower associations, seven State peanut grower organizations, a State peanut organization, a State farmer organization, a national peanut sheller organization, six members of Congress, three Senators, an individual sheller/handler, a national peanut manufacturer organization, and a law firm representing certain peanut producers.

One area peanut grower association, one State peanut grower organization, the national peanut manufacturer organization, and the national peanut shellers association opposed the change to allow regrading. The remaining 21 respondents generally supported the change to allow cleaning and reinspection. The respondents raised three primary issues: (1) Since not all buying points have cleaning facilities, there is a need for removing peanuts from the buying point to a location having such facilities, (2) tracking loads of peanuts cleaned and presented for reinspection may present problems, and (3) producers may need more than 24 hours to have peanuts cleaned and reinspected.

First of all, with respect to the general issues raised (whether to allow recleaning at all) it remains the view of the agency that the rule should allow for regrading and recleaning. That allowance can help avoid hardship to farmers. So far, the allowance of recleaning has not appeared to present a problem as far as the administration of the price support system. The only material potential problem would be the potential diversion to quota loan pools of peanuts that have been recleaned but which might not be purchased out of the inventory at full price because a buyer knows that the peanuts have been recleaned. So far, there does not appear to be any loan problems of that kind. However, because pool losses can spread to all farmers under the statutory system that is now in place, the agency will continue to monitor this situation to insure fairness to all.

We now address the other issues raised and the two additional rule changes undertaken in this notice:

1. Removing Peanuts From the Buying Point To Facilitate Reconditioning of Segregation 3 Peanuts

Twelve respondents, both those in support of the rule and those opposed, expressed concern about tracking those loads of peanuts removed from the buying point for cleaning to assure the same peanuts were returned for regrading. One area peanut grower association in support of the interim rule stated that buying points without cleaning facilities should be allowed off-site cleaning in order to implement the interim rule on a fair and equitable basis for all buying points. One State grower association and one area peanut grower association opposed the interim rule based, in part, on the premise it would be necessary for peanuts to be removed for cleaning if the buying point did not have cleaning facilities. Also, in support of the rule, a State grower association and a State peanut commission commented that they believed loads of peanuts removed from the buying point could be tracked and monitored. An area peanut grower association and three State peanut grower associations supported the interim rule as issued and emphasized that peanuts should not leave the buying point.

In some cases it may well be that the buying point to which the farmer takes the farm's peanuts may not be a location where recleaning is possible. Accordingly, not allowing the peanuts to be recleaned elsewhere could have a serious effect on the marketing decisions made by producers and could interfere with normal operations of private buying points and producers. On the other hand, control of the peanuts is important because of the possible effect on the loan program if buyers refuse to buy peanuts that have been moved for fear that the presence of the mold has been obscured by re mixing of the peanuts. Such fears, should they occur, could affect the marketability of the peanuts. In turn, the lack of marketability could produce price support loan losses. Hence, this raises the same general concern as the question of whether to allow recleaning at all and we reach the same result as with the general question as there does not appear to be strong evidence to indicate that there will be serious interference with the price support program if this allowance is made. In the absence of such evidence, the agency is reluctant to interfere with established marketing relationships. Accordingly, the final rule does not require that recleaning take place at the same location where the peanuts are first presented for marketing if that buying point does not have its own cleaning facilities.

2. 24-Hour Period for Cleaning and Reinspection

In the interim rule, the agency generally allowed 24 hours for the recleaning to take place but did provide explicitly for authority to extend that period if the Director of the Tobacco and Peanuts Division (TPD) of the Farm Service Agency (FSA) saw fit to do so. A number of comments addressed this issue. One area peanut grower association and three State peanut grower associations supported the interim rule as written with a 24-hour reinspection turnaround. One area peanut grower association, three State peanut grower associations, one State peanut organization, six members of Congress, and three Senators supported the interim rule but also suggested either a 24-hour turnaround was not enough time or requested allowing 72 hours for peanuts to be cleaned and reinspected. One area peanut grower association and one State peanut grower association opposed the interim rule based, in part, on the assertion that 24 hours was not enough time to have the peanuts cleaned and regraded.

Following issuance of the interim rule, FSA issued procedures implementing the changes to allow reconditioning and reinspection of farmers stock peanuts. As the marketing of 1998 crop peanuts began, certain buying points that did not have cleaning facilities but had peanut producers who wanted their peanuts cleaned and regraded requested that TPD grant relief to allow the peanuts to be cleaned at a different buying point. In order to provide equity to all producers, under the provisions of the interim rule, the Director of TPD, FSA, issued instructions to allow 72 hours for cleaning and regrading and buying points without cleaning facilities to move the peanuts to an alternate buying point for cleaning and reinspection.

We have estimated that fewer than 350 loads of peanuts were cleaned and reinspected during the 1999 crop with most occurring in the Southeast marketing area. This represents a 30 percent decrease from year-earlier

amounts of peanuts cleaned and reinspected under this provision. We estimate that about 65 percent of the reinspected peanuts were able to qualify as Segregation 1 peanuts.

Here also, the same concerns are at play. Those concerns were identified in the comments of several respondents who expressed the concern that reinspected peanuts would be viewed as ''hot'' with respect to undetected A. flavus mold and thereby cause pool losses. However, the relative small amount of peanuts cleaned and reinspected did not have a significant impact on the peanut price support loan program. Having decided that off-premises recleaning should be allowed, it follows that the recleaning period should not be limited to 24 hours as it may not be possible for the recleaning to be done in that period of time. However, this concern is not limited only to those situations, as 24 hours may also be too short in some instances at buying points with cleaning facilities at times when many peanuts are being delivered at once or whether there is an equipment failure or, for that matter, a holiday. Accordingly, subject to continued oversight, the rule allows for a 72 hour period for the process of recleaning and regrading to be completed.

3. Chemical Testing of Farmers Stock Peanuts for Aflatoxin

With respect to chemical testing, the issue has been whether or not there would be a requirement of some kind of chemical testing before farmers stock peanuts can be marketed—currently, there is a visual inspection of the peanuts though, as indicated, such inspections are designed for the administration of the price support program and assigning a value to the peanuts. Wholesomeness concerns with respect to the human consumption of peanuts takes place as needed further along in the marketing process and is not under the jurisdiction of CCC. Nor is CCC, as such, a regulator of the marketing of peanuts except as needed to operate the price support program itself and to administer the production restriction provisions which are tied into the price support system. However, because of concerns that undetected problems could produce losses to buyers later on, there has been a debate within the industry about whether there should be chemical testing of all farmer stock peanut deliveries. In light of that debate and its connection with the recleaning issue, the interim rule asked for comment on whether chemical testing should be required for all marketings, as opposed to being left to individual determinations by individual buyers. A number of comments were received.

One area peanut grower association and four State peanut grower organizations opposed the use of chemical testing of farmers stock peanuts. Concerns about adverse impacts on peanut producers, increased expense, delays in peanut delivery and environmental impacts of chemicals used for testing were issues raised by the respondents.

A national peanut sheller organization and a national peanut product manufacturer organization, two State peanut grower organizations and a State peanut commission supported the use of chemical testing as a more accurate and consistent test for reflecting the aflatoxin content in farmers stock peanuts. These respondents pointed to studies that show occurrences of excess aflatoxin in peanuts graded as Segregation 1 and relatively low levels of aflatoxin in peanuts grading Segregation 3. The respondents emphasized that the studies show that the current visual inspection method of grading farmers stock peanuts for A. flavus mold is not a definitive indicator of aflatoxin content of the inspected peanuts.

A sheller/handler acknowledged the need to enhance the peanut grading system and, without addressing chemical testing directly, stressed the need to remove subjectivity from the testing process. Several respondents urged using available technology in the grading process while protecting the integrity of the peanut price support program and its function for peanut producers.

Discussion by respondents included incorporation of marketing and grading procedures based on the field application of beneficial mold that studies suggest decreases the likelihood of the occurrence of aflatoxin in peanuts produced on such fields. In addition, several respondents suggested that incoming grade requirements with respect to visual inspection for A. flavus mold or aflatoxin content be eliminated for commercial peanut sales. Since handlers are subject to outgoing quality standards based on chemical testing for aflatoxin, the respondents reasoned that there is no real justification for testing farmers stock peanuts.

Discussions on the issue of chemical testing of farmer stock peanuts continue in the industry and, so far, no consensus has been reached. Thus for example, no provisions have been added to the Peanut Marketing Agreement, an agreement which for the most part is the product of recommendations of a joint group of producers and buyers. Issues which come into play in the question concern the type of testing that would be required, whether it would be required in all cases, and who would pay for the testing. Given that lack of unanimity on this issue and the lack of unanimity of treatment in the marketplace, there does not appear to be an established market practice which the price support system needs to insure that peanuts are properly valued for price support purposes to avoid pool losses. For that reason and given the limited purposes of the price support program, there does not appear to be reason at this time for a change in the program regulations regarding this issue. However, private concerns remain free to engage in whatever additional testing they feel is needed to protect their interests in the marketplace.

4. Modification of § 1446.307

In § 1446.307 of the regulations, specifically in paragraph (g) of that section, it is provided that disaster transfers cannot be made from an additional peanut loan pool to a quota loan pool if the producer has executed a waiver of the right in connection with the acquisition of crop insurance benefits from the Federal Crop Insurance Corporation (FCIC), or other federal agency. Apparently, FCIC has, in the past, been the only federal agency to require such a waiver. Because, however, it is understood that such waivers are no longer required by FCIC, this provision is removed in this rule.

5. Modification of § 1446.102

In § 1446.102, provisions are set out which govern the general administration of the price support program. In that connection, in order to assure maximum flexibility for the agency in dealing with new problems as they may arise, a new provision is being added to the regulations which allows the Director of TPD, FSA, to approve variances from the regulations where the variance does not involve a statutory requirement and where such a variance would serve the purposes of the overall administration of the program. This authority would, however, only be used sparingly to deal with new and developing issues or to resolve disputes and supplements whatever flexibility is already granted by other terms of the regulations, or granted elsewhere.

List of Subjects in 7 CFR Part 1446

Loan programs—agriculture, reporting and recordkeeping requirements.

For the reasons set out in the preamble, the amendments to 7 CFR part 1446 contained in the interim rule

issued August 5, 1998, are adopted as a final rule with the following change:

PART 1446—PEANUTS

1. The authority citation for part 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

2. Paragraph (c) of § 1446.102 is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 1446.102 Administration.

* * * * *

(c) *Supervisory authority.* * * * Further, the Director of TPD, FSA, may authorize the wavier or modification of deadlines and other requirements, except statutory deadlines or requirements, in cases where lateness or the failure to meet such other requirements does not adversely affect operation of the program.

3. Paragraph (3) of the definition of ''Segregations'' in § 1446.103 is revised to read as follows:

§ 1446.103 Definitions.

* * * * *

(3) *Segregation 3.* Segregation 3 peanuts are farmers stock peanuts which, upon visible inspection, are found to contain Aspergillus flavus mold: *Provided further, however,* That, in accordance with such written instructions as the Director may issue, the Director shall permit producers at approved buying points as specified by the Director to have the Segregation 3 lot reconditioned, one time only, and then reinspected visually. If the buying point where the peanuts were initially delivered does not have adequate cleaning facilities, CCC may approve an alternative buying point for cleaning and reinspection. The visual reinspection may not occur more than 72 hours from the initial inspection except as permitted by the Director and the second grade shall be considered the final grade for the farmers stock peanuts.

§ 1444.307 [Amended]

4. Section 1444.307 is amended by removing paragraph (g) from that section.

Signed at Washington, D.C., on January 3, 2001.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–651 Filed 1–9–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 830

RIN 1901–AA34

Nuclear Safety Management

AGENCY: Department of Energy

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) adopts, with minor changes, the interim final rule published on October 10, 2000, to amend the DOE Nuclear Safety Management regulations.

EFFECTIVE DATE: This final rule is effective on February 9, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Black, Director, Office of Nuclear and Facility Safety Policy, 270CC, Department of Energy, 19901 Germantown Road, Germantown, MD 20874; telephone: 301–903–3465; e-mail: Richard.Black@eh.doe.gov

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

On October 10, 2000, the Department of Energy (DOE) published an interim final rule in the **Federal Register** (65 FR 60291) that amended DOE's nuclear safety regulations in 10 CFR Part 830 (Interim Final Rule). DOE provided a 30-day public comment period for the Interim Final Rule and subsequently received comments to the rule from over 30 parties. As a result of the comments that were received to that Interim Final Rule, DOE became aware of a number of minor errors in the published version of the rule and the preamble, as well as a number of minor changes to the rule that would clarify and simplify implementation of the amended rule. We are republishing the rule as a final rule with those changes. Finally, we are summarizing the issues raised in the comments to the Interim Final Rule and providing DOE's responses to the major issues. Many of the comments concerned rule implementation issues that will be addressed in the rule implementation guides.

II. Discussion of Changes to the Rule

The following changes to 10 CFR Part 830 are being made in response to comments to the Interim Final Rule.

A. Changes to § 830.2, Exclusions

We are amending paragraph 830.2(d) to exclude the mixed oxide fuel fabrication and irradiation facilities that the Nuclear Regulatory Commission (NRC) has the authority to license and regulate under § 3134 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261). Section 3134 amends the Energy Reorganization Act of 1974 to add § 202(5) (42 U.S.C. 5842). This exclusion will make clear that these facilities will be licensed by the NRC and must be designed and constructed to meet NRC regulations. Thus, these facilities are excluded from the requirement to meet 10 CFR Part 830 before and after a license is issued by the NRC.

B. Changes to § 830.3, Definitions.

We are revising the following definitions in § 830.3:

1. Safety Class Structures, Systems, and Components

We are revising the words ''identified by the documented safety analysis'' to ''determined from safety analyses'' to make the definition consistent with those for ''safety structures, systems, and components'' and ''safety significant structures, systems, and components.''

2. Technical Safety Requirements (TSRs)

We are revising the definition of TSRs to express it more clearly. As revised, the definition of TSRs means the limits, controls, and related actions that establish the specific parameters and requisite actions for the safe operation of a nuclear facility and include, as appropriate for the work and the hazards identified in the documented safety analysis for the facility: Safety limits, operating limits, surveillance requirements, administrative and management controls, use and application provisions, and design features, as well as a bases appendix. The documented safety analysis identifies the need for TSRs, but the actual limits are identified in the TSRs. The revisions make clear that the TSRs address the specific numerical limits and related actions necessary for safe operation of a nuclear facility. Because the TSRs identify the limits and actions necessary in specific situations, it is not appropriate to use the graded approach to justify the use of different limits and actions than those set forth in the TSRs. The change made to the graded approach section is consistent with this change.

C. Changes to § 830.7, Graded Approach

We received a number of comments requesting us to clarify where a contractor must use a graded approach and how the graded approach documentation should be submitted. We are revising the language in § 830.7 to clarify that a contractor may not use a graded approach in implementing the unreviewed safety question (USQ)

process or in implementing the technical safety requirements. We are addressing the documentation question in Section III. I of this preamble.

D. Changes to Subpart B, Safety Basis

1. Section 830.203 Unreviewed Safety Question Process

a. Unreviewed safety question (USQ) procedure. In § 830.203 of the Interim Final Rule we stated that the contractor must submit a USQ ''process.'' In fact, the document that specifies how the USQ process is to be performed is the USQ ''procedure.'' We are changing the rule language in § 830.203 to reflect that a contractor is to submit ''a procedure for its USQ process,'' rather than a ''USQ process.'' Conforming changes are being made in Appendix A to Subpart B as well. These changes should be considered when reading the USQ discussions in the preamble to the Interim Final Rule.

b. Existing USQ procedure. In § 830.203, we deleted the words ''DOE-approved'' from the requirement for contractors to continue to use their existing USQ procedure pending approval of the USQ procedure to be submitted under the rule by April 10. This will ensure that contractors who have not received DOE-approval for their current USQ procedures will continue to use their existing USQ procedures.

c. Editorial changes. We made some editorial changes to § 830.203 to make it easier to read.

2. Section 830.206 Preliminary Documented Safety Analysis

We received a number of comments on the application of the requirements for a preliminary documented safety analysis to new nuclear facilities and major modifications to nuclear facilities that were nearly ready to operate. We agree that the purpose of the requirement is to ensure that DOE and the contractor agree on design considerations during the design and early construction phases of the modification, and that the final documented safety analysis will document those considerations during the final construction efforts. Consequently, we are revising § 830.206 to apply to hazard category 1, 2, and 3 new nuclear facilities and major modifications for which construction begins after December 11, 2000.

3. Section 830.207 DOE Approval of Safety Basis

We are adding the words, ''or as approved by DOE on a later date,'' to paragraph 830.207(b) to clarify that the contractor must perform work to the approved safety basis in effect on October 10, 2000 unless there is a more recent DOE-approved safety basis. The applicable safety basis for the nuclear facility is the latest DOE-approved safety basis.

E. Appendix A to Subpart B to Part 830—General Statement of Safety Basis Policy

1. We are adding two ''safe harbor'' provisions for transportation activities in Table 2. This change is discussed in more detail in the response to comments.

2. We are making conforming changes in the appendix to be consistent with the change to the definition of TSRs.

3. Editorial Changes.

a. We are adding a reference to Table 1 in paragraph C in Appendix A to Subpart B, Scope.

b. We are revising language in paragraph C in Appendix A to Subpart B to read, ''all DOE nuclear facilities, including radiological facilities,* * *'' to clarify that radiological facilities are considered to be a subset of nuclear facilities.

c. We are adding a ''3'' to the last item of Table 1 in Appendix A to Subpart B where it was inadvertently omitted.

d. We are editing Table 2 in Appendix A to Subpart B to correct the alignment and to correct language in paragraph (6)(2) of the table.

e. We are changing the reference to ''DOE–STD–3009–94'' to read ''DOE–STD–3009, Change Notice 1, January 2000,'' throughout the rule.

III. Response to Comments on the Interim Final Rule

DOE received written comments from over 30 interested organizations (primarily DOE contractors) and individuals on the amendments in the Interim Final Rule for the DOE Nuclear Safety Management requirements of 10 CFR Part 830. You may examine written comments between 9 AM and 4 PM at the U.S. Department of Energy Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142.

This section of the Supplementary Information summarizes the issues raised in the comments and gives DOE's response. Many of the comments raised questions and positions related to the implementation of the requirements. These comments will be considered in the development of the implementation guides that were discussed in the preamble to the Interim Final Rule.

Preamble

A. *Comment:* In the Summary of Changes in the preamble to the Interim Final Rule, paragraph G, several commentors noted that the paragraph that reads ''The USQ process has two steps * * *'' is incorrect and should be entirely deleted.

Response: We agree.

B. *Comment:* Several commentors provided editorial corrections.

Response: We agree with the following editorial corrections to the preamble:

1. In the ''Summary of Changes'' in the preamble to the Interim Final Rule, paragraph II.D.f, ''Existing DOE nuclear facility and new DOE nuclear facility,'' the date for new nuclear facilities was erroneously listed as April 9, 2000. The correct date is April 9, 2001.

2. In the ''Summary of Changes'' in the preamble to the Interim Final Rule, paragraph II.D.2.d.vi, on page 60297, ''electronic microscopes'' should be ''electron microscopes.''

830.1, Scope

C. *Comment:* A number of commentors objected to expanding the scope of the rule to cover activities performed offsite. One commentor suggested limiting the offsite applicability by setting a dollar threshold for procurement actions, exempting procurement of commercial items, limiting the applicability to components having nuclear safety significance, or reducing fines for offsite work.

Response: We have considered the suggestions for limiting the applicability of the rule offsite and do not agree that such limitations should be adopted. In 1995, we gave notice that we were considering an option that would expand the scope of Part 830 to cover conduct that could affect the safe management of nuclear facilities without any limitation that such conduct must occur at nuclear facilities. See the Notice of Limited Reopening of the Comment Period, 60 FR 45381, 45384 (Aug. 31, 1995). In adopting this option to cover offsite activities, we noted that the scope of the rule would apply not only to prime contractors responsible for a nuclear facility, but also to subcontractors, suppliers, and other contractors, including those who provide items (such as pumps, valves, waste containers, piping, and electrical or mechanical devices) or services (such as design, engineering, maintenance, and welding) that affect, or may affect, nuclear safety of DOE nuclear facilities. Thus, the provision of items and services taking place offsite which affect

nuclear safety would be covered by the rule. DOE expects that contractors will establish specifications and standards in their procurement documents and flow them down to all tiers of subcontractors and suppliers, regardless of whether items will be provided or services will be performed onsite or offsite.

We also recognize that in some cases contractors may not flow down specifications but may choose to procure commercial grade items and materials and to perform the tests or other actions that are necessary to upgrade these materials or items to allow them to be used as items important to nuclear safety. Contractors may choose to perform the required actions to upgrade these materials or items either for economic reasons or because qualified vendors cannot be found. In these cases, the supplier is responsible for meeting the requirements for commercial grade materials or items as specified in the procurement documents and the contractor is responsible for ensuring the requirements are met for using these materials or items as items important to nuclear safety.

We believe that the alternatives suggested for limiting the offsite application of the rule are not necessary or advisable. Commercial products as well as small dollar purchases may affect nuclear safety of DOE nuclear facilities depending on their intended use. All the facts and circumstances involved in the failure of an item procured from an offsite vendor or supplier will be looked at in any subsequent enforcement action. Civil penalties can be appropriately mitigated or adjusted in accordance with the enforcement discretion in 10 CFR Part 820.

D. *Comment:* A number of commentors questioned how they should apply the requirements of this rule to transportation activities not regulated by the Department of Transportation (DOT).

Response: We are amending the rule to add two additional ''safe harbor'' methods in Table 2 of Appendix A to Subpart B for transportation activities covered by this rule. The new safe harbor methods will endorse the methods and processes described in DOE-O–460.1A, Packaging and Transportation Safety, and its associated guide and DOE-O–461.1, Packaging and Transportation of Materials of National Security Interest, and its associated manual, as acceptable ways to satisfy the rule requirements for transportation activities covered by the provisions of this rule.

830.2, Exclusions

E. *Comment:* A commentor stated that an exclusion to the requirements of this rule should be provided for the mixed plutonium-uranium oxide fuel fabrication and irradiation facilities for the period prior to licensing by the Nuclear Regulatory Commission (NRC).

Response: We already exclude any activity licensed by the NRC in paragraph 830.2(a). The NRC has licensing and related regulatory authority for any facility under contract with DOE that is used for the express purpose of fabricating mixed plutonium-uranium oxide nuclear reactor fuel for use in a commercial nuclear reactor licensed under the AEA, other than any such facility that is utilized for research, development, demonstration, testing or analysis purposes. See Section 3134(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) which amends the Energy Reorganization Act of 1974 to add Section 202(5) (42 U.S.C. 5842). The design and construction of these facilities will be required to meet NRC nuclear safety regulations and, therefore, we are revising § 830.2 to make clear that we are excluding these facilities from the provisions of 10 CFR Part 830. This exclusion is similar to the exclusion for activities under the Nuclear Waste Policy Act.

830.3, Definitions

F. *Comment:* A commentor stated that the terms ''safety analysis,'' ''documented safety analyses,'' and ''hazard analyses'' are used inconsistently in the definitions of ''safety class structures, systems, and components;'' ''safety significant structures, systems, and components;'' and ''safety structures, systems, and components.''

Response: We are revising the words ''Documented safety analysis'' to ''safety analyses'' to make the definition consistent with those for ''safety structures, systems, and components'' and ''safety significant structures, systems, and components.''

G. *Comment:* A number of commentors noted that some terms used in the rule, such as the terms ''limited operational life'' and ''short remaining operational period'' are not defined in the rule and guidance should be provided on what these terms mean.

Response: We agree with the comment and we will address these and other terms in the implementation guides for this rule.

830.7, Graded Approach

H. *Comment:* A number of commentors raised questions regarding the use of the graded approach and the appropriate place to document it.

Response: We received a number of comments requesting us to clarify where a contractor must use a graded approach and how the graded approach documentation should be submitted. As stated in the preamble to the Interim Final Rule, contractors are already required to implement the quality assurance requirements using a graded approach. In the appendix, we stated that DOE expects a contractor to use a graded approach to develop a documented safety analysis and describe how the graded approach was applied. The preamble provided that use of the graded approach is not appropriate in implementing the USQ process or in implementing technical safety requirements. We are revising the requirements in § 830.7 to add a sentence to clarify that the graded approach is not appropriate in implementing the USQ process or in implementing technical safety requirements. The graded approach remains applicable to the implementation of quality assurance and to the documented safety analysis.

We also received comments concerning the documentation requirements explaining how the graded approach was applied. Section 830.7 requires a contractor to document the basis of the graded approach used and to submit that documentation to DOE. While the rule does not prescribe when and where such documentation should be submitted, it is expected that the documentation and justification for grading would be submitted in the documents in which it is used. Grading methodology and its application would then be reviewed by the DOE officials who have the authority to approve the documents. Grading approaches for site-wide programs or facility-specific applications are explained further in guidance documents.

Subpart A, Quality Assurance

I. *Comment:* Several comments expressed concern that failure to perform work consistent with all ''contract'' requirements might be subject to enforcement actions under the provisions of the Price-Anderson Amendments Act of 1988 (PAAA).

Response: Paragraph 830.122(e)(1) of Subpart A of the rule requires contractors to: ''Perform work consistent with technical standards, administrative controls, and other hazard controls adopted to meet regulatory or contract

requirements, using approved instructions, procedures, or other appropriate means.'' However, both this rule and the DOE PAAA enforcement process in 10 CFR Part 820 are limited to contractor activities that affect, or may affect, the safety of DOE nuclear facilities. Thus, contract requirements that do not have an effect on nuclear safety are not subject to the work process provisions of Subpart A of this rule and will not be subject to PAAA enforcement. DOE has other contract remedies to address noncompliance with contract requirements and work processes that have no affect on nuclear safety.

J. *Comment:* A number of comments questioned how the work process requirements apply to subcontractors and suppliers.

Response: Section 830.121(a) is explicit that all contractors, including subcontractors and suppliers, must conduct work in accordance with the quality assurance criteria listed in § 830.122, including the work processes criteria in paragraph 830.122(e). Moreover, the general rule in paragraph 830.4(a) is clear that subcontractors and suppliers may not take any action inconsistent with the requirements in Part 830. In addition to these direct requirements, paragraph 830.121(c)(4) makes the prime contractor responsible for ensuring subcontractors and suppliers satisfy the quality assurance criteria of paragraph 830.122(e). DOE expects that in most cases, prime contractors would satisfy this requirement through the flowdown of requirements and standards in procurement documents. The prime contractor will be subject to regulatory enforcement if a subcontractor or supplier does not meet the quality assurance criteria when providing items and services that could affect nuclear safety of DOE nuclear facilities. This responsibility of the prime contractor, however, does not relieve the subcontractors and suppliers from the requirements imposed directly upon them.

K. *Comment:* A number of commentors asked why DOE is requiring contractors to identify consensus standards that are used in the Quality Assurance Program (QAP).

Response: DOE has a long history of requiring the use of appropriate national and international standards for implementing its quality assurance requirements. DOE is strongly committed to this philosophy to ensure that its contractors develop and implement effective and efficient QAPs. Each DOE quality assurance criterion is stated as a performance expectation and does not specify the methods to achieve the desired performance result. National and international standards (*e.g.,* ASME NQA–1, ASQ E–4, or ISO 9001) and their supplemental guidance include a number of proven methods for achieving DOE's performance expectations. DOE has found cases where failure to use these standards to develop implementing processes has led to noncompliance with the DOE quality assurance criteria. DOE is concerned that all of its contractors are not taking full advantage of the benefits standards offer. Use of national and international standards will help contractors to develop effective and efficient QAPs that are also aligned with their customer's and supplier's QAPs. The DOE implementation guide for the quality assurance requirements in the rule(DOE–G–414.1–2) includes a discussion of standards use and references to the most widely accepted national and international standards for quality assurance. Contractor use of this implementation guide and the clear identification and the documented use of standards will also help DOE meet its responsibilities to review contractor QAPs to ensure that they meet the rule requirements and to oversee contractors to ensure that they fully implement their DOE-approved QAPs.

Subpart B, Safety Basis

L. *Comment:* A commentor stated that § 803.201 does not add to the rule's substantive requirements, and because the word ''work'' is not defined, it could lead to unjustified applications or too narrow interpretations.

Response: Other sections of the safety basis requirements (Subpart B) define the requirements for derivation and documentation of the safety basis for a nuclear facility. Section 803.201 requires that the activities within them must be conducted in accordance with the safety basis. It is essential to have this element for the safety basis requirements be more than a paper exercise.

M. *Comment:* Several commentors asked how the authorization basis is different from the safety basis.

Response: The rule defines the safety basis as the documented safety analysis and the hazard controls that provide reasonable assurance that a DOE nuclear facility can be operated safely and in a manner that adequately protects workers, the public, and the environment. The authorization basis is defined in DOE–G–450.4–1A, Integrated Safety Management System Guide for Use with Safety Management System Policies (DOE–P–450.4, DOE–P–450.5, and DOE–P–450.6); the Functions, Responsibilities, And Authorities Manual (DOE–M–411.1–1B); and the Department of Energy Acquisition Regulation (DEAR) 48 CFR 970.5223–1, as safety documentation that supports the decision to allow a process or facility to operate. Included are corporate operational and environmental requirements as found in regulations and specific permits, and, for specific activities, work packages or job safety analyses. In general, the safety basis as defined in the rule is a subset of the authorization basis as the authorization basis includes documents relating to environmental issues, such as permits, as well as safety documentation.

N. *Comment:* Several commentors asked why DOE–STD–1027 is listed as a requirement for hazard categorization, instead of a safe harbor method.

Response: In general, each of the safe harbor standards listed in Table 2 of Appendix A to Subpart B of the rule can be effectively applied to specified types of facilities and activities. In allowing the contractor to choose the appropriate safe harbor standard for developing the safety basis, DOE expects the contractor to select the standard that best fits the application. However, DOE wants contractors to be consistent when determining the hazard classification for its nuclear facilities; hence we are requiring the consistent use of DOE–STD–1027 which has an established history for this purpose.

O. *Comment:* A commentor asked what is a ''below hazard category 3'' nuclear facility.

Response: In DOE–STD–1027, these facilities are categorized as having no potential for significant offsite, onsite, or localized consequences. A ''below hazard category 3'' nuclear facility is a DOE facility or activity that meets the definition of a nuclear facility but does not meet the threshold in DOE–STD–1027 for a hazard category 3 nuclear facility. These facilities are sometimes referred to as ''radiological facilities.'' See also Table 1 in Appendix A to Subpart B of the rule.

P. *Comment:* Two commentors questioned a statement in the preamble to the Interim Final Rule, in paragraph III.D on segmentation that said ''If a hazardous materials could be transported to other segments by common confinement systems or the lack of other physical barriers, the facility cannot be segmented for the purposes of this rule.''

Response: We agree that the statement could be misleading and the individual circumstances would need to be evaluated to determine the effect on operations in the other segment before

making the determination of whether segmentation would be permitted for purposes of categorizing the facility and establishing an appropriate safety basis. Additional discussion on segmenting nuclear facilities can be found in DOE–STD–1027.

We emphasize, however, that in considering segmentation a contractor must be mindful of its overriding obligation to ensure adequate protection of workers, the public, and the environment. A contractor will have the burden of proof to demonstrate that segmentation is appropriate.

Q. *Comment:* A commentor stated that USQ determinations related to potential inadequacies of the safety analysis (PISA) are not always done in a timely manner and a definite time period for the performance of a USQ determination should be provided in paragraph 830.203(e)(3).

Response: The implementation guide for the USQ requirements of the rule (DOE–G–424.X) will provide DOE's expectation that the contractor's USQ procedure should define the period for the performance of a USQ determination related to a PISA and that this time period should be on the order of days, not weeks or months.

R. *Comment:* Several commentors asserted that a PISA should not be classified as a USQ until a USQ determination confirms that the safety analysis is inadequate.

Response: The fact that the safety analysis could be inadequate, either because of a deficiency in the analysis or because of an as-found condition, indicates that there is a safety question that has not yet been reviewed (in other words, a USQ). When a contractor discovers a PISA, DOE requires the contractor to take action to place the facility in a safe condition and to notify DOE of the potential inadequacy. The performance of a subsequent USQ determination is to confirm a positive USQ determination or a negative USQ determination through the application of the risk-related criteria for a USQ. If the finding is negative, this would support a request to DOE to remove any operational restrictions imposed when the PISA was discovered.

S. *Comment:* Section 830.203 requires contractors for existing nuclear facilities to continue to use their existing DOE-approved USQ procedure. One commentor asked what it should do if DOE has not yet approved its USQ procedure.

Response: We have deleted the word ''DOE-approved'' from the requirement. Contractors are expected to continue to use their existing USQ procedures pending DOE approval of the USQ procedure to be submitted to DOE for approval by April 10, 2001 under the rule.

T. *Comment:* The definition of a USQ in § 830.3 of the rule states that a situation involves a USQ if a margin of safety could be reduced. A commentor proposed that the margins of safety described in the bases appendix to be considered should be limited to the margins of safety described in the bases section of the technical safety requirements.

Response: Not all nuclear facilities are required to have technical safety requirements. For example, certain environmental restoration activities are not required to develop technical safety requirements. The safety basis implementation guides will clarify how the margin of safety criterion should be implemented.

U. *Comment:* A commentor stated that paragraph 830.204(b)(2), should specify that the documented safety analysis must address both hazards for the facilities and the activities therein, instead of just the hazards associated with the facility.

Response: We agree. In fact, the definition for a nonreactor nuclear facility includes facilities, activities, and operations. No change to the rule is necessary.

V. *Comment:* Several commentors questioned why a contractor must submit a preliminary documented safety analysis for a major modification rather than using the USQ process to address the changes.

Response: Several commentors recommended that contractors use the USQ process and modify an existing documented safety analysis, rather than submitting a preliminary documented safety analysis for a major modification. This suggestion would defeat the purpose of the review and approval of the safety aspects of design of the modification prior to procurement and construction, which is to ensure that DOE agrees with the design before the modification is implemented. If the contractor proceeded to modify the existing documented safety analysis for the facility and submit it for approval, prior to design and construction, the documented safety analysis would be instantly out of compliance because it would no longer reflect the current configuration of the nuclear facility.

W. *Comment:* Several commentors indicated that by tying the definition for a major modification to the initial operation date, rather than the design date, contractors could be required to develop preliminary documented safety analyses for major modifications that were already designed by now and possibly under construction, and for which documented safety analysis would also be required. A commentor recommended that the requirement for a preliminary documented safety analyses for a major modification or new facility be linked to the initiation of conceptual design.

Response: The purpose of the preliminary documented safety analysis is to ensure that DOE and the contractor agree on design considerations during the design and early construction phases of the modification. We are, therefore, amending § 830.206 to apply to hazard category 1, 2, and 3 new DOE nuclear facilities and major modifications for which construction begins after December 11, 2000.

X. *Comment:* A commentor stated that the preliminary documented safety analysis should identify safety systems in addition to safety programs.

Response: Safety systems will, of necessity, be identified as part of the safety analysis that derives the aspects of design that are necessary to satisfy the nuclear safety design criteria. This is expressed in the definition of preliminary documented safety analysis.

Y. *Comment:* Several commentors asked if a preliminary documented safety analysis is needed for environmental restoration, and decontamination and decommissioning?

Response: As stated in paragraph F.6 of Appendix A to Subpart B of the rule, as a general matter, DOE does not expect preliminary documented safety analyses to be needed for activities that do not involve significant construction such as environmental restoration activities, decontamination and decommissioning activities, specific nuclear explosives operations, or transition surveillance and maintenance activities.

Z. *Comment:* One commentor stated that we should discuss how the integrated safety management principles would be used for design.

Response: The implementation guide for the documented safety analysis (DOE–G–421.X, Implementation Guide for Use in Developing Documented Safety Analyses to Meet Subpart B of 10 CFR Part 830) specifies that a preliminary documented safety analysis should show how the nuclear safety design criteria of DOE Order 420.1 (DOE–O–420.1), Facility Safety, will be satisfied. The implementation guide for DOE–O–420.1 says that an iterative process between safety analysis and design should begin as early as possible so safety is integrated into the design process as early as possible. This is consistent with the integrated safety management system process.

AA. *Comment:* A number of commentors asked how contractors should address normal and abnormal conditions in a documented safety analysis.

Response: Contractors should refer to DOE implementation guides for additional information on how to meet DOE's expectations regarding the requirements in this rule. In particular, contractors should refer to DOE–STD–3009, section 3.3, page 35 for additional information on how to address normal and abnormal conditions in the documented safety analysis. This section of the standard describes how all modes of normal operation are to be considered.

BB. *Comment:* Several commentors asked how a contractor should ensure that a safety basis contains all the required contents of the rule when using a ''safe harbor'' standard to prepare a documented safety analysis.

Response: In general, ''safe harbor'' standards listed in Table 2 of Appendix A to Subpart B of the rule are the standards currently used in the DOE complex to develop documented safety analyses and they reflect years of experience developing adequate documented safety bases. DOE is confident that these standards provide good methods for developing a documented safety analysis. If a contractor uses a ''safe harbor'' methodology, that methodology should result in a contractor satisfying the regulatory requirements for a documented safety analysis. However, the contractor is responsible for meeting the requirements of the rule, even if it uses a safe harbor standard to prepare its documented safety analysis.

CC. *Comment:* A commentor asked what a contractor should do if it developed a documented safety analysis using a safe harbor method, but did not meet every criterion of a safe harbor method.

Response: As discussed in the preamble to the Interim Final Rule, if a contractor uses a method other than a safe harbor method it must obtain DOE approval of the method before developing the documented safety analysis. If a contractor uses a safe harbor method to develop the documented safety analysis, but does not follow the method completely, the contractor should request DOE approval of the method with the specific deviations identified.

DD. *Comment:* Section 830.204 of the rule does not limit the documented safety analysis to only nuclear hazards. Several commentors asked if controls for non-nuclear hazards are enforceable.

Response: As stated in paragraph V.F of the preamble to the Interim Final Rule, we expect our contractors to address all radioactive and nonradioactive hazards, as well as the controls necessary to provide adequate protection to the public, the workers, and the environment from these hazards, in the documented safety analysis for category 1, 2, or 3 nuclear facilities. However, as stated in the General Statement of Enforcement Policy (Appendix A to 10 CFR Part 820), we will only pursue enforcement actions through the procedures in Part 820 for those noncompliances that have nuclear safety significance.

EE. *Comment:* A commentor asked why DOE listed criticality safety requirements separately in § 830.204.

Response: DOE chose to specifically call out certain content requirements for the documented safety analysis in the rule because of their importance to nuclear safety. Among these are the criticality safety requirements. The criticality safety requirements in § 830.204 are consistent with the current criticality safety requirements in DOE–O–420.1 which is listed as a safe harbor method for the design criteria for a new nuclear facility. In addition, DOE–G–421.X, Implementation Guide for Use in Developing Documented Safety Analyses to Meet Subpart B of 10 CFR Part 830, will address the role of criticality safety.

FF. *Comment:* A commentor stated that we should specifically incorporate the criticality standards identified in DOE–O–420.1 in the requirements for the documented safety analysis in § 830.204.

Response: The rule addresses this issue in several ways. First, DOE–O–420.1 is invoked in § 830.206 relative to the design criteria to be used for the preliminary documented safety analysis. DOE–O–420.1 addresses the design features important for criticality safety. Second, Appendix A to Subpart B invokes DOE–O–420.1 in two places: (1) paragraph F.6 of the appendix describes the design criteria for a preliminary documented safety analysis and (2) section G of the appendix states that ''Order 420.1 provides DOE's expectations with respect to fire protection and criticality safety.'' DOE–G–421.X will provide additional discussion of the importance of DOE–O–420.1 with respect to criticality safety standards. We believe these requirements and associated guidance provide sufficient direction to contractors regarding DOE's expectations for criticality safety.

GG. *Comment:* A commentor asked if the rule permits a documented safety analysis to reflect a final categorization that would permit segmentation or the application of unmitigated release parameters more appropriate to the actual situation.

Response: Yes. Several commentors misinterpreted the requirement in § 830.202 for classification according to DOE–STD–1027 as not allowing for documented safety analysis to contain a final categorization that would permit segmentation or the application of unmitigated release parameters more appropriate to the actual situation. The suggestion was made to allow for these modifications as part of the initial categorization. However, no change to the rule is needed because DOE–STD–1027 does permit these modifications as part of a safety analysis, and DOE–STD–3009 calls for final categorization as part of the documented safety analysis.

HH. *Comment:* Paragraph 830.205(c) should include reference to DOE–STD–1120.

Response: Section 830.205 does not reference DOE–STD–1120. However, DOE–STD–1120 is referenced in Table 2 of Appendix A to Subpart B to the rule as a safe harbor for environmental restoration activities. We believe that this is the appropriate reference to DOE–STD–1120 for the rule.

II. *Comment:* Several commentors stated that including design features as a section in the technical safety requirements, instead of allowing the design features to be included in the documented safety analysis, is expensive and provides no safety benefit.

Response: It is important that certain design features be included in the technical safety requirements. The design features to be included in a section of the technical safety requirements are those which are regarded as important in establishing the safety basis. These design features should not be changed without DOE approval. Since changes to the technical safety requirements must be approved by DOE, any changes to design features identified as technical safety requirements would require prior DOE approval. If these important design features are just included in the description of the facility in the documented safety analysis, alterations would be subject to the USQ process. If the contractor determines that the change does not involve a USQ, then the change may not be submitted for prior DOE approval.

JJ. *Comment:* Several commentors asked why a contractor is required to submit the annual update of the documented safety analysis to DOE for approval when DOE will have already

approved any changes to be incorporated in the documented safety analysis through the USQ process.

Response: DOE requires contractors to obtain DOE approval of the annual update of the documented safety analysis to assure that both the changes made pursuant to the USQ process and any changes not covered by the USQ process have been properly included in the update. If the USQ process has been followed properly, the annual approval of the documented safety analysis should require minimal effort. The annual update will not require DOE to review USQs already approved by DOE.

KK. *Comment:* A commentor asked if DOE has already approved a safety basis, does the contractor need to resubmit the safety basis for approval.

Response: Yes. However, if a contractor determines that its current safety basis meets the requirements of the rule, it may request DOE to approve that safety basis under the rule through the provisions in paragraph 830.207(c).

LL. *Comment:* A commentor asked what safety basis applies if a contractor has submitted a new safety basis to DOE for approval as of October 10, 2000, but DOE has not yet approved it.

Response: The effective safety basis is the DOE-approved safety basis. When DOE approves a new safety basis, that becomes the new effective safety basis as of the date of the approval. We are adding the words, ''or as approved by DOE at a later date,'' to paragraph 830.207(b) to clarify that a safety basis may be superseded by later revisions with DOE approval.

MM. *Comment:* Paragraph 830.207(c) states that if a contractor believes that its current safety basis meets the rule, it should notify DOE by April 9, 2001 and request DOE to approve the safety basis under the rule. Further, it states that if DOE does not issue a safety evaluation report (SER) by October 10, 2001, a contractor must submit a safety basis to DOE for approval. Several commentors suggested that existing safety bases which are asserted to be compliant with the rule should be assumed to be approved by DOE if DOE does not issue an SER by October 10, 2001, instead of being assumed to be deficient. A commentor also suggested that DOE might not approve the safety basis within 6 months because of lack of resources.

Response: It is desired that both the contractor and DOE take positive action in establishing safety bases under the rule. The contractor should maintain cognizance of the status of DOE reviews and work with DOE to resolve the status of the safety basis submitted in a timely fashion. If the safety basis was originally developed using one of the safe harbors of the rule, the safety evaluation report for the safety basis was issued approving the safety basis and the safety basis and the safety evaluation report are current, then the DOE effort to verify compliance with rule provisions should be small.

Appendix A to Subpart B

NN. *Comment:* A commentor stated that in Appendix A, paragraph G should refer to ''requirements'' in DOE–O–420.1, not ''expectations.''

Response: We agree that the provisions in DOE–O–420.1 are requirements if the order is included in a contract for the facility or if the order is adopted by the contractor in its work processes. If not, the order still provides DOE's expectations.

OO. *Comment:* A commentor noted that the sentence preceding Table 3 in Appendix A to Subpart B of the rule says that Table 3 defines the specific nuclear facilities referenced in Table 2 that are not defined in § 830.3; however, Table 3 defines both facilities and activities. Consequently, the commentor stated that the reference should state it defines ''facilities or activities.''

Response: The commentor is correct that the table refers to both facilities and activities. However, the term used is ''nuclear facilities.'' Nuclear facilities, as defined in the rule, includes both reactor and nonreactor nuclear facilities. The definition of ''nonreactor nuclear facilities'' includes facilities, operations, and activities. Therefore, no change is required.

PP. *Comment:* One commentor stated that DOE should make the safety bases documents available to the public and a second commentor expressed concern that DOE protect classified documents from being released.

Response: As stated in the last paragraph of Appendix A to Subpart B, DOE will maintain a public list on the internet that provides the status of the safety basis for each hazard category 1, 2, or 3 DOE nuclear facility and, to the extent practicable, provides information on how to obtain a copy of the safety basis and related documents for a facility. In accordance with applicable laws, regulations, and directives, DOE will not release classified documents to the public. However, many of the safety basis documents are not classified and, therefore, can be made available to the public.

General

QQ. *Comment:* A commentor asked, if there is no single contractor responsible for a facility, who is responsible to ensure the requirements of the rule are met?

Response: At some DOE sites, management and operating (M&O) contractors or management and integration (M&I) contractors are responsible for ensuring that the responsibilities of an activity are properly integrated. In such cases, the M&O contractor or the M&I contractor, respectively, would be responsible for ensuring the requirements at a facility, including the safety bases requirements of Subpart B of 10 CFR Part 830 are met. For other facilities, DOE may have assumed the role of the integrator and may be responsible to ensure that the requirements are met. During an enforcement action, DOE will weigh the facts and circumstances surrounding an action to determine the responsible party.

RR. *Comment:* A commentor asked if DOE expects contractors to modify contracts and Safety Management Systems to include the new requirements in the rule.

Response: Regulatory requirements are legal requirements and they apply whether or not they are incorporated in contracts or Safety Management Systems. In addition, Department of Energy Acquisition Regulation (DEAR) 48 CFR 970.5204–2 (Laws Clause) states that a contractor is obligated to comply with applicable Federal, state, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency and to flow down applicable regulations to subcontractors and suppliers. It further states that omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation.

SS. *Comment:* A commentor asked if contractors and subcontractors are required to report defects and operational events through the Occurrence and Processing Reporting System (ORPS).

Response: DOE expects its prime contractors to continue to report defects and operational events through ORPS, as required by contracts. Use of this system may be enforceable through the quality assurance requirements of Subpart A, but the particular circumstances of the situation would need to be assessed. Subcontractors will continue to report through the prime contractors. Both DEAR 48 CFR 970.5223–1 and the procurement requirements of Subpart A, require prime contractors to flowdown requirements to subcontractors.

TT. *Comment:* A commentor asked if exemptions granted to contractors under

DOE order requirements would be automatically continued under the rule.

Response: No. New exemptions will need to be requested under the provisions of Subpart E of 10 CFR Part 820.

IV. Regulatory and Procedural Requirements

A. Review Under the National Environmental Policy Act

We have reviewed this amendment to 10 CFR Part 830 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Part 1500). Prior to publishing the notice of proposed rulemaking to add Part 830 to Title 10 of the CFR, and under the NEPA procedures then in existence, we concluded that the potential environmental impacts of Part 830 would be clearly insignificant. We decided that neither an environmental impact statement nor an environmental assessment was required in connection with the promulgation of this rule. Since that time, we have issued regulations establishing implementing procedures for complying with NEPA's requirements [See 10 CFR Part 1021]. We have further considered Part 830 under these regulations. The regulations include a list of typical classes of actions, referred to as categorical exclusions, that normally do not require the preparation of either an environmental impact statement or an environmental assessment. Part 830 is covered by several categorical exclusions including, among others, information gathering, data analysis, and document preparation (A9); training exercises and simulations (B1.2); routine maintenance activities and custodial services (B1.3); and site characterization and environmental monitoring (B3.1) [See 10 CFR Part 1021, Appendices A and B to Subpart D].

We have concluded that the amendment to 10 CFR Part 830 does not represent a major federal action having significant impact on the environment under NEPA (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality's regulations (40 CFR Parts 1500–08), and DOE's implementing regulations (10 CFR Part 1021). Therefore, the amendment to this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

B. Review Under Executive Order 12866

This regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a Federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. The requirement to prepare an analysis does not apply, however, if the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The impact of the changes to Part 830 are primarily with respect to major contractors. Subcontractors and suppliers are expected to satisfy the provisions of Part 830 primarily through the programs and procedures established by prime contractors. Consequently, the impacts to small entities with respect to changes to Part 830 are expected to be minor. The economic impact on contractors of this filing requirement is negligible. On this basis, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities and, therefore, no analysis has been prepared.

D. Review Under the Paperwork Reduction Act of 1995

The information collection provisions of this rule are not substantially different from those contained in DOE contracts with DOE prime contractors covered by this rule and were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–0300. Accordingly, no additional Office of Management and Budget clearance is required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999), requires agencies 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 are 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. DOE has examined the changes to Part 830 and determined that they do 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 various levels of government. No further action is required by Executive Order 13132.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in an agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule amends 10 CFR Part 830, and applies only to activities conducted by or for DOE. Any costs resulting from implementation of DOE's management, operation, and enforcement of its nuclear safety program are ultimately borne by the Federal government. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met. DOE has completed the required review and determined that, to the extent permitted by law, Part 830 meets the relevant standards of Executive Order 12988.

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The

report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 830

DOE contracts, Environment, Federal buildings and facilities, Government contracts, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Nuclear safety, Penalties, Public health, Reporting and recordkeeping requirements, and Safety.

Issued in Washington, DC on January 4, 2001.

T. J. Glauthier,

Deputy Secretary, Department of Energy.

For the reasons set forth in the preamble, Part 830 of chapter III, title 10, of the Code of Federal Regulations is amended as set forth below.

Accordingly, the interim final rule for 10 CFR Part 830 which was published at 65 FR 60291 on October 10, 2000 is adopted as a final rule with minor changes as set forth below.

1. Part 830 is revised to read as follows:

PART 830—NUCLEAR SAFETY MANAGEMENT

Sec.
830.1 Scope.
830.2 Exclusions.
830.3 Definitions.
830.4 General requirements.
830.5 Enforcement.
830.6 Recordkeeping.
830.7 Graded approach.

Subpart A—Quality Assurance Requirements

830.120 Scope.
830.121 Quality Assurance Program (QAP).
830.122 Quality assurance criteria.

Subpart B—Safety Basis Requirements

830.200 Scope.
830.201 Performance of work.
830.202 Safety basis.
830.203 Unreviewed safety question process.
830.204 Documented safety analysis.
830.205 Technical safety requirements.
830.206 Preliminary documented safety analysis.
830.207 DOE approval of safety basis.

Appendix A to Subpart B to Part 830—General Statement of Safety Basis Policy

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; and 50 U.S.C. 2401 *et seq.*

§ 830.1 Scope.

This part governs the conduct of DOE contractors, DOE personnel, and other persons conducting activities (including providing items and services) that affect, or may affect, the safety of DOE nuclear facilities.

§ 830.2 Exclusions.

This part does not apply to:

(a) Activities that are regulated through a license by the Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, including activities certified by the NRC under section 1701 of the Atomic Energy Act (Act);

(b) Activities conducted under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 106–65;

(c) Transportation activities which are regulated by the Department of Transportation;

(d) Activities conducted under the Nuclear Waste Policy Act of 1982, as amended, and any facility identified under section 202(5) of the Energy Reorganization Act of 1974, as amended; and

(e) Activities related to the launch approval and actual launch of nuclear energy systems into space.

§ 830.3 Definitions.

(a) The following definitions apply to this part:

Administrative controls means the provisions relating to organization and management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility.

Bases appendix means an appendix that describes the basis of the limits and other requirements in technical safety requirements.

Critical assembly means special nuclear devices designed and used to sustain nuclear reactions, which may be subject to frequent core and lattice configuration change and which frequently may be used as mockups of reactor configurations.

Criticality means the condition in which a nuclear fission chain reaction becomes self-sustaining.

Design features means the design features of a nuclear facility specified in the technical safety requirements that, if altered or modified, would have a significant effect on safe operation.

Document means recorded information that describes, specifies, reports, certifies, requires, or provides data or results.

Documented safety analysis means a documented analysis of the extent to which a nuclear facility can be operated safely with respect to workers, the public, and the environment, including a description of the conditions, safe boundaries, and hazard controls that provide the basis for ensuring safety.

Environmental restoration activities means the process(es) by which contaminated sites and facilities are identified and characterized and by which contamination is contained, treated, or removed and disposed.

Existing DOE nuclear facility means a DOE nuclear facility in operation before April 9, 2001.

Fissionable materials means a nuclide capable of sustaining a neutron-induced chain reaction (*e.g.,* uranium-233, uranium-235, plutonium-238, plutonium-239, plutonium-241, neptunium-237, americium-241, and curium-244).

Graded approach means the process of ensuring that the level of analysis, documentation, and actions used to comply with a requirement in this part are commensurate with:

(1) The relative importance to safety, safeguards, and security;

(2) The magnitude of any hazard involved;

(3) The life cycle stage of a facility;

(4) The programmatic mission of a facility;

(5) The particular characteristics of a facility;

(6) The relative importance of radiological and nonradiological hazards; and

(7) Any other relevant factor.

Hazard means a source of danger (*i.e.*, material, energy source, or operation) with the potential to cause illness, injury, or death to a person or damage to a facility or to the environment (without regard to the likelihood or credibility of accident scenarios or consequence mitigation).

Hazard controls means measures to eliminate, limit, or mitigate hazards to workers, the public, or the environment, including

(1) Physical, design, structural, and engineering features;

(2) Safety structures, systems, and components;

(3) Safety management programs;

(4) Technical safety requirements; and

(5) Other controls necessary to provide adequate protection from hazards.

Item is an all-inclusive term used in place of any of the following: appurtenance, assembly, component, equipment, material, module, part, product, structure, subassembly, subsystem, system, unit, or support systems.

Limiting conditions for operation means the limits that represent the lowest functional capability or performance level of safety structures, systems, and components required for safe operations.

Limiting control settings means the settings on safety systems that control process variables to prevent exceeding a safety limit.

Low-level residual fixed radioactivity means the remaining radioactivity following reasonable efforts to remove radioactive systems, components, and stored materials. The remaining radioactivity is composed of surface contamination that is fixed following chemical cleaning or some similar process; a component of surface contamination that can be picked up by smears; or activated materials within structures. The radioactivity can be characterized as low-level if the smearable radioactivity is less than the values defined for removable contamination by 10 CFR Part 835, Appendix D, Surface Contamination Values, and the hazard analysis results show that no credible accident scenario or work practices would release the remaining fixed radioactivity or activation components at levels that would prudently require the use of active safety systems, structures, or components to prevent or mitigate a release of radioactive materials.

Major modification means a modification to a DOE nuclear facility that is completed on or after April 9, 2001 that substantially changes the existing safety basis for the facility.

New DOE nuclear facility means a DOE nuclear facility that begins operation on or after April 9, 2001.

Nonreactor nuclear facility means those facilities, activities or operations that involve, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear or a nuclear explosive hazard potentially exists to workers, the public, or the environment, but does not include accelerators and their operations and does not include activities involving only incidental use and generation of radioactive materials or radiation such as check and calibration sources, use of radioactive sources in research and experimental and analytical laboratory activities, electron microscopes, and X-ray machines.

Nuclear facility means a reactor or a nonreactor nuclear facility where an activity is conducted for or on behalf of DOE and includes any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established by this Part.

Operating limits means those limits required to ensure the safe operation of a nuclear facility, including limiting control settings and limiting conditions for operation.

Preliminary documented safety analysis means documentation prepared in connection with the design and construction of a new DOE nuclear facility or a major modification to a DOE nuclear facility that provides a reasonable basis for the preliminary conclusion that the nuclear facility can be operated safely through the consideration of factors such as

(1) The nuclear safety design criteria to be satisfied;

(2) A safety analysis that derives aspects of design that are necessary to satisfy the nuclear safety design criteria; and

(3) An initial listing of the safety management programs that must be developed to address operational safety considerations.

Process means a series of actions that achieves an end or result.

Quality means the condition achieved when an item, service, or process meets or exceeds the user's requirements and expectations.

Quality assurance means all those actions that provide confidence that quality is achieved.

Quality Assurance Program (QAP) means the overall program or management system established to assign responsibilities and authorities, define policies and requirements, and provide for the performance and assessment of work.

Reactor means any apparatus that is designed or used to sustain nuclear chain reactions in a controlled manner such as research, test, and power reactors, and critical and pulsed assemblies and any assembly that is designed to perform subcritical experiments that could potentially reach criticality; and, unless modified by words such as containment, vessel, or core, refers to the entire facility, including the housing, equipment and associated areas devoted to the operation and maintenance of one or more reactor cores.

Record means a completed document or other media that provides objective evidence of an item, service, or process.

Safety basis means the documented safety analysis and hazard controls that provide reasonable assurance that a DOE nuclear facility can be operated safely in a manner that adequately protects workers, the public, and the environment.

Safety class structures, systems, and components means the structures, systems, or components, including portions of process systems, whose preventive or mitigative function is necessary to limit radioactive hazardous material exposure to the public, as determined from safety analyses.

Safety evaluation report means the report prepared by DOE to document

(1) The sufficiency of the documented safety analysis for a hazard category 1, 2, or 3 DOE nuclear facility;

(2) The extent to which a contractor has satisfied the requirements of Subpart B of this part; and

(3) The basis for approval by DOE of the safety basis for the facility, including any conditions for approval.

Safety limits means the limits on process variables associated with those safety class physical barriers, generally passive, that are necessary for the intended facility function and that are required to guard against the uncontrolled release of radioactive materials.

Safety management program means a program designed to ensure a facility is operated in a manner that adequately protects workers, the public, and the environment by covering a topic such as: quality assurance; maintenance of safety systems; personnel training; conduct of operations; inadvertent criticality protection; emergency preparedness; fire protection; waste management; or radiological protection of workers, the public, and the environment.

Safety management system means an integrated safety management system established consistent with 48 CFR 970.5223–1.

Safety significant structures, systems, and components means the structures, systems, and components which are not designated as safety class structures, systems, and components, but whose preventive or mitigative function is a major contributor to defense in depth and/or worker safety as determined from safety analyses.

Safety structures, systems, and components means both safety class structures, systems, and components and safety significant structures, systems, and components.

Service means the performance of work, such as design, manufacturing, construction, fabrication, assembly, decontamination, environmental restoration, waste management, laboratory sample analyses, inspection, nondestructive examination/testing, environmental qualification, equipment qualification, repair, installation, or the like.

Surveillance requirements means requirements relating to test, calibration, or inspection to ensure that the necessary operability and quality of safety structures, systems, and components and their support systems required for safe operations are maintained, that facility operation is within safety limits, and that limiting control settings and limiting conditions for operation are met.

Technical safety requirements (TSRs) means the limits, controls, and related actions that establish the specific

parameters and requisite actions for the safe operation of a nuclear facility and include, as appropriate for the work and the hazards identified in the documented safety analysis for the facility: Safety limits, operating limits, surveillance requirements, administrative and management controls, use and application provisions, and design features, as well as a bases appendix.

Unreviewed Safety Question (USQ) means a situation where

(1) The probability of the occurrence or the consequences of an accident or the malfunction of equipment important to safety previously evaluated in the documented safety analysis could be increased;

(2) The possibility of an accident or malfunction of a different type than any evaluated previously in the documented safety analysis could be created;

(3) A margin of safety could be reduced; or

(4) The documented safety analysis may not be bounding or may be otherwise inadequate.

Unreviewed Safety Question process means the mechanism for keeping a safety basis current by reviewing potential unreviewed safety questions, reporting unreviewed safety questions to DOE, and obtaining approval from DOE prior to taking any action that involves an unreviewed safety question.

Use and application provisions means the basic instructions for applying technical safety requirements.

(b) Terms defined in the Act or in 10 CFR Part 820 and not defined in this section of the rule are to be used consistent with the meanings given in the Act or in 10 CFR Part 820.

§ 830.4 General requirements.

(a) No person may take or cause to be taken any action inconsistent with the requirements of this part.

(b) A contractor responsible for a nuclear facility must ensure implementation of, and compliance with, the requirements of this part.

(c) The requirements of this part must be implemented in a manner that provides reasonable assurance of adequate protection of workers, the public, and the environment from adverse consequences, taking into account the work to be performed and the associated hazards.

(d) If there is no contractor for a DOE nuclear facility, DOE must ensure implementation of, and compliance with, the requirements of this part.

§ 830.5 Enforcement.

The requirements in this part are DOE Nuclear Safety Requirements and are subject to enforcement by all appropriate means, including the imposition of civil and criminal penalties in accordance with the provisions of 10 CFR Part 820.

§ 830.6 Recordkeeping.

A contractor must maintain complete and accurate records as necessary to substantiate compliance with the requirements of this part.

§ 830.7 Graded approach.

Where appropriate, a contractor must use a graded approach to implement the requirements of this part, document the basis of the graded approach used, and submit that documentation to DOE. The graded approach may not be used in implementing the unreviewed safety question (USQ) process or in implementing technical safety requirements.

Subpart A—Quality Assurance Requirements

§ 830.120 Scope.

This subpart establishes quality assurance requirements for contractors conducting activities, including providing items or services, that affect, or may affect, nuclear safety of DOE nuclear facilities.

§ 830.121 Quality Assurance Program (QAP).

(a) Contractors conducting activities, including providing items or services, that affect, or may affect, the nuclear safety of DOE nuclear facilities must conduct work in accordance with the Quality Assurance criteria in § 830.122.

(b) The contractor responsible for a DOE nuclear facility must:

(1) Submit a QAP to DOE for approval and regard the QAP as approved 90 days after submittal, unless it is approved or rejected by DOE at an earlier date.

(2) Modify the QAP as directed by DOE.

(3) Annually submit any changes to the DOE-approved QAP to DOE for approval. Justify in the submittal why the changes continue to satisfy the quality assurance requirements.

(4) Conduct work in accordance with the QAP.

(c) The QAP must:

(1) Describe how the quality assurance criteria of § 830.122 are satisfied.

(2) Integrate the quality assurance criteria with the Safety Management System, or describe how the quality assurance criteria apply to the Safety Management System.

(3) Use voluntary consensus standards in its development and implementation, where practicable and consistent with contractual and regulatory requirements, and identify the standards used.

(4) Describe how the contractor responsible for the nuclear facility ensures that subcontractors and suppliers satisfy the criteria of § 830.122.

§ 830.122 Quality assurance criteria.

The QAP must address the following management, performance, and assessment criteria:

(a) Criterion 1—Management/Program.

(1) Establish an organizational structure, functional responsibilities, levels of authority, and interfaces for those managing, performing, and assessing the work.

(2) Establish management processes, including planning, scheduling, and providing resources for the work.

(b) Criterion 2—Management/Personnel Training and Qualification.

(1) Train and qualify personnel to be capable of performing their assigned work.

(2) Provide continuing training to personnel to maintain their job proficiency.

(c) Criterion 3—Management/Quality Improvement.

(1) Establish and implement processes to detect and prevent quality problems.

(2) Identify, control, and correct items, services, and processes that do not meet established requirements.

(3) Identify the causes of problems and work to prevent recurrence as a part of correcting the problem.

(4) Review item characteristics, process implementation, and other quality-related information to identify items, services, and processes needing improvement.

(d) Criterion 4—Management/Documents and Records.

(1) Prepare, review, approve, issue, use, and revise documents to prescribe processes, specify requirements, or establish design.

(2) Specify, prepare, review, approve, and maintain records.

(e) Criterion 5—Performance/Work Processes.

(1) Perform work consistent with technical standards, administrative controls, and other hazard controls adopted to meet regulatory or contract requirements, using approved instructions, procedures, or other appropriate means.

(2) Identify and control items to ensure their proper use.

(3) Maintain items to prevent their damage, loss, or deterioration.

(4) Calibrate and maintain equipment used for process monitoring or data collection.

(f) Criterion 6—Performance/Design.

(1) Design items and processes using sound engineering/scientific principles and appropriate standards.

(2) Incorporate applicable requirements and design bases in design work and design changes.

(3) Identify and control design interfaces.

(4) Verify or validate the adequacy of design products using individuals or groups other than those who performed the work.

(5) Verify or validate work before approval and implementation of the design.

(g) Criterion 7—Performance/Procurement.

(1) Procure items and services that meet established requirements and perform as specified.

(2) Evaluate and select prospective suppliers on the basis of specified criteria.

(3) Establish and implement processes to ensure that approved suppliers continue to provide acceptable items and services.

(h) Criterion 8—Performance/Inspection and Acceptance Testing.

(1) Inspect and test specified items, services, and processes using established acceptance and performance criteria.

(2) Calibrate and maintain equipment used for inspections and tests.

(i) Criterion 9—Assessment/Management Assessment. Ensure managers assess their management processes and identify and correct problems that hinder the organization from achieving its objectives.

(j) Criterion 10—Assessment/Independent Assessment.

(1) Plan and conduct independent assessments to measure item and service quality, to measure the adequacy of work performance, and to promote improvement.

(2) Establish sufficient authority, and freedom from line management, for the group performing independent assessments.

(3) Ensure persons who perform independent assessments are technically qualified and knowledgeable in the areas to be assessed.

Subpart B—Safety Basis Requirements

§ 830.200 Scope.

This Subpart establishes safety basis requirements for hazard category 1, 2, and 3 DOE nuclear facilities.

§ 830.201 Performance of work.

A contractor must perform work in accordance with the safety basis for a hazard category 1, 2, or 3 DOE nuclear facility and, in particular, with the hazard controls that ensure adequate protection of workers, the public, and the environment.

§ 830.202 Safety basis.

(a) The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must establish and maintain the safety basis for the facility.

(b) In establishing the safety basis for a hazard category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the facility must:

(1) Define the scope of the work to be performed;

(2) Identify and analyze the hazards associated with the work;

(3) Categorize the facility consistent with DOE–STD–1027–92 (''Hazard Categorization and Accident Analysis Techniques for compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports,'' Change Notice 1, September 1997);

(4) Prepare a documented safety analysis for the facility; and (5) Establish the hazard controls upon which the contractor will rely to ensure adequate protection of workers, the public, and the environment.

(c) In maintaining the safety basis for a hazard category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the facility must:

(1) Update the safety basis to keep it current and to reflect changes in the facility, the work and the hazards as they are analyzed in the documented safety analysis;

(2) Annually submit to DOE either the updated documented safety analysis for approval or a letter stating that there have been no changes in the documented safety analysis since the prior submission; and

(3) Incorporate in the safety basis any changes, conditions, or hazard controls directed by DOE.

§ 830.203 Unreviewed safety question process.

(a) The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must establish, implement, and take actions consistent with a USQ process that meets the requirements of this section.

(b) The contractor responsible for a hazard category 1, 2, or 3 DOE existing nuclear facility must submit for DOE approval a procedure for its USQ process by April 10, 2001. Pending DOE approval of the USQ procedure, the contractor must continue to use its existing USQ procedure. If the existing procedure already meets the requirements of this section, the contractor must notify DOE by April 10, 2001 and request that DOE issue an approval of the existing procedure.

(c) The contractor responsible for a hazard category 1, 2, or 3 DOE new nuclear facility must submit for DOE approval a procedure for its USQ process on a schedule that allows DOE approval in a safety evaluation report issued pursuant to section 207(d) of this Part.

(d) The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must implement the DOE-approved USQ procedure in situations where there is a:

(1) Temporary or permanent change in the facility as described in the existing documented safety analysis;

(2) Temporary or permanent change in the procedures as described in the existing documented safety analysis;

(3) Test or experiment not described in the existing documented safety analysis; or (4) Potential inadequacy of the documented safety analysis because the analysis potentially may not be bounding or may be otherwise inadequate.

(e) A contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must obtain DOE approval prior to taking any action determined to involve a USQ.

(f) The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must annually submit to DOE a summary of the USQ determinations performed since the prior submission.

(g) If a contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility discovers or is made aware of a potential inadequacy of the documented safety analysis, it must:

(1) Take action, as appropriate, to place or maintain the facility in a safe condition until an evaluation of the safety of the situation is completed;

(2) Notify DOE of the situation;

(3) Perform a USQ determination and notify DOE promptly of the results; and (4) Submit the evaluation of the safety of the situation to DOE prior to removing any operational restrictions initiated to meet paragraph (g)(1) of this section.

§ 830.204 Documented safety analysis.

(a) The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must obtain approval from DOE for the methodology used to prepare the documented safety analysis for the facility unless the contractor uses a methodology set forth in Table 2 of Appendix A to this Part.

(b) The documented safety analysis for a hazard category 1, 2, or 3 DOE nuclear facility must, as appropriate for the complexities and hazards associated with the facility:

(1) Describe the facility (including the design of safety structures, systems and components) and the work to be performed;

(2) Provide a systematic identification of both natural and man-made hazards associated with the facility;

(3) Evaluate normal, abnormal, and accident conditions, including consideration of natural and man-made external events, identification of energy sources or processes that might contribute to the generation or uncontrolled release of radioactive and other hazardous materials, and consideration of the need for analysis of accidents which may be beyond the design basis of the facility;

(4) Derive the hazard controls necessary to ensure adequate protection of workers, the public, and the environment, demonstrate the adequacy of these controls to eliminate, limit, or mitigate identified hazards, and define the process for maintaining the hazard controls current at all times and controlling their use;

(5) Define the characteristics of the safety management programs necessary to ensure the safe operation of the facility, including (where applicable) quality assurance, procedures, maintenance, personnel training, conduct of operations, emergency preparedness, fire protection, waste management, and radiation protection; and

(6) With respect to a nonreactor nuclear facility with fissionable material in a form and amount sufficient to pose a potential for criticality, define a criticality safety program that:

(i) Ensures that operations with fissionable material remain subcritical under all normal and credible abnormal conditions,

(ii) Identifies applicable nuclear criticality safety standards, and

(iii) Describes how the program meets applicable nuclear criticality safety standards.

§ 830.205 Technical safety requirements.

(a) A contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must:

(1) Develop technical safety requirements that are derived from the documented safety analysis;

(2) Prior to use, obtain DOE approval of technical safety requirements and any change to technical safety requirements; and

(3) Notify DOE of any violation of a technical safety requirement.

(b) A contractor may take emergency actions that depart from an approved technical safety requirement when no actions consistent with the technical safety requirement are immediately apparent, and when these actions are needed to protect workers, the public or the environment from imminent and significant harm. Such actions must be approved by a certified operator for a reactor or by a person in authority as designated in the technical safety requirements for nonreactor nuclear facilities. The contractor must report the emergency actions to DOE as soon as practicable.

(c) A contractor for an environmental restoration activity may follow the provisions of 29 CFR 1910.120 or 1926.65 to develop the appropriate hazard controls (rather than the provisions for technical safety requirements in paragraph (a) of this section), provided the activity involves either:

(1) Work not done within a permanent structure, or

(2) The decommissioning of a facility with only low-level residual fixed radioactivity.

§ 830.206 Preliminary documented safety analysis.

If construction begins after December 11, 2000, the contractor responsible for a hazard category 1, 2, or 3 new DOE nuclear facility or a major modification to a hazard category 1, 2, or 3 DOE nuclear facility must:

(a) Prepare a preliminary documented safety analysis for the facility, and

(b) Obtain DOE approval of:

(1) The nuclear safety design criteria to be used in preparing the preliminary documented safety analysis unless the contractor uses the design criteria in DOE Order 420.1, Facility Safety; and

(2) The preliminary documented safety analysis before the contractor can procure materials or components or begin construction; provided that DOE may authorize the contractor to perform limited procurement and construction activities without approval of a preliminary documented safety analysis if DOE determines that the activities are not detrimental to public health and safety and are in the best interests of DOE.

§ 830.207 DOE approval of safety basis.

(a) By April 10, 2003, a contractor responsible for a hazard category 1, 2, or 3 existing DOE nuclear facility must submit for DOE approval a safety basis that meets the requirements of this Subpart.

(b) Pending issuance of a safety evaluation report in which DOE approves a safety basis for a hazard category 1, 2, or 3 existing DOE nuclear facility, the contractor responsible for the facility must continue to perform work in accordance with the safety basis for the facility in effect on October 10, 2000, or as approved by DOE at a later date, and maintain the existing safety basis consistent with the requirements of this Subpart.

(c) If the safety basis for a hazard category 1, 2, or 3 existing DOE nuclear facility already meets the requirements of this Subpart and reflects the current work and hazards associated with the facility, the contractor responsible for the facility must, by April 9, 2001, notify DOE, document the adequacy of the existing safety basis and request DOE to issue a safety evaluation report that approves the existing safety basis. If DOE does not issue a safety evaluation report by October 10, 2001, the contractor must submit a safety basis pursuant to paragraph (a) of this section.

(d) With respect to a hazard category 1, 2, or 3 new DOE nuclear facility or a major modification to a hazard category 1, 2, or 3 DOE nuclear facility, a contractor may not begin operation of the facility or modification prior to the issuance of a safety evaluation report in which DOE approves the safety basis for the facility or modification.

Appendix A to Subpart B to Part 830—General Statement of Safety Basis Policy

A. Introduction

This appendix describes DOE's expectations for the safety basis requirements of 10 CFR Part 830, acceptable methods for implementing these requirements, and criteria DOE will use to evaluate compliance with these requirements. This Appendix does not create any new requirements and should be used consistently with DOE Policy 450.2A, ''Identifying, Implementing and Complying with Environment, Safety and Health Requirements'' (May 15, 1996).

B. Purpose

1. The safety basis requirements of Part 830 require the contractor responsible for a DOE nuclear facility to analyze the facility, the work to be performed, and the associated hazards and to identify the conditions, safe boundaries, and hazard controls necessary to protect workers, the public and the environment from adverse consequences. These analyses and hazard controls constitute the safety basis upon which the contractor and DOE rely to conclude that the facility can be operated safely. Performing work consistent with the safety basis provides reasonable assurance of adequate protection of workers, the public, and the environment.

2. The safety basis requirements are intended to further the objective of making safety an integral part of how work is performed throughout the DOE complex. Developing a thorough understanding of a nuclear facility, the work to be performed, the associated hazards and the needed hazard controls is essential to integrating safety into

management and work at all levels. Performing work in accordance with the safety basis for a nuclear facility is the realization of that objective.

C. Scope

1. A contractor must establish and maintain a safety basis for a hazard category 1, 2, or 3 DOE nuclear facility because these facilities have the potential for significant radiological consequences. DOE–STD–1027–92 (''Hazard Categorization and Accident Analysis Techniques for compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports,'' Change Notice 1, September 1997) sets forth the methodology for categorizing a DOE nuclear facility (see Table 1). The hazard categorization must be based on an inventory of all radioactive materials within a nuclear facility.

2. Unlike the quality assurance requirements of Part 830 that apply to all DOE nuclear facilities (including radiological facilities), the safety basis requirements only apply to hazard category 1, 2, and 3 nuclear facilities and do not apply to nuclear facilities below hazard category 3.

TABLE 1

A DOE nuclear facility categorized as * * *	Has the potential for * * *
Hazard category 1	Significant off-site consequences.
Hazard category 2	Significant on-site consequences beyond localized consequences.
Hazard category 3	Only local significant consequences.
Below category 3	Only consequences less than those that provide a basis for categorization as a hazard category 1, 2, or 3 nuclear facility.

D. Integrated Safety Management

1. The safety basis requirements are consistent with integrated safety management. DOE expects that, if a contractor complies with the Department of Energy Acquisition Regulation (DEAR) clause on integration of environment, safety, and health into work planning and execution (48 CFR 970.5223–1, Integration of Environment, Safety and Health into Work Planning and Execution) and the DEAR clause on laws, regulations, and DOE directives (48 CFR 970.5204–2, Laws, Regulations and DOE Directives), the contractor will have established the foundation to meet the safety basis requirements.

2. The processes embedded in a safety management system should lead to a contractor establishing adequate safety bases and safety management programs that will meet the safety basis requirements of this Subpart. Consequently, the DOE expects if a contractor has adequately implemented integrated safety management, few additional requirements will stem from this Subpart and, in such cases, the existing safety basis prepared in accordance with integrated safety management provisions, including existing DOE safety requirements in contracts, should meet the requirements of this Subpart.

3. DOE does not expect there to be any conflict between contractual requirements and regulatory requirements. In fact, DOE expects that contract provisions will be used to provide more detail on implementation of safety basis requirements such as preparing a documented safety analysis, developing technical safety requirements, and implementing a USQ process.

E. Enforcement of Safety Basis Requirements

1. Enforcement of the safety basis requirements will be performance oriented. That is, DOE will focus its enforcement efforts on whether a contractor operates a nuclear facility consistent with the safety basis for the facility and, in particular, whether work is performed in accordance with the safety basis.

2. As part of the approval process, DOE will review the content and quality of the safety basis documentation. DOE intends to use the approval process to assess the adequacy of a safety basis developed by a contractor to ensure that workers, the public, and the environment are provided reasonable assurance of adequate protection from identified hazards. Once approved by DOE, the safety basis documentation will not be subject to regulatory enforcement actions unless DOE determines that the information which supports the documentation is not complete and accurate in all material respects, as required by 10 CFR 820.11. This is consistent with the DOE enforcement provisions and policy in 10 CFR Part 820.

3. DOE does not intend the adoption of the safety basis requirements to affect the existing quality assurance requirements or the existing obligation of contractors to comply with the quality assurance requirements. In particular, in conjunction with the adoption of the safety basis requirements, DOE revised the language in 10 CFR 830.122(e)(1) to make clear that hazard controls are part of the work processes to which a contractor and other persons must adhere when performing work. This obligation to perform work consistent with hazard controls adopted to meet regulatory or contract requirements existed prior to the adoption of the safety basis requirements and is both consistent with and independent of the safety basis requirements.

4. A documented safety analysis must address all hazards (that is, both radiological and nonradiological hazards) and the controls necessary to provide adequate protection to the public, workers, and the environment from these hazards. Section 234A of the Atomic Energy Act, however, only authorizes DOE to issue civil penalties for violations of requirements related to nuclear safety. Therefore, DOE will impose civil penalties for violations of the safety basis requirements (including hazard controls) only if they are related to nuclear safety.

F. Documented Safety Analysis

1. A documented safety analysis must demonstrate the extent to which a nuclear facility can be operated safely with respect to workers, the public, and the environment.

2. DOE expects a contractor to use a graded approach to develop a documented safety analysis and describe how the graded approach was applied. The level of detail, analysis, and documentation will reflect the complexity and hazard associated with a particular facility. Thus, the documented safety analysis for a simple, low hazard facility may be relatively short and qualitative in nature, while the documented safety analysis for a complex, high hazard facility may be quite elaborate and more quantitative. DOE will work with its contractors to ensure a documented safety analysis is appropriate for the facility for which it is being developed.

3. Because DOE has ultimate responsibility for the safety of its facilities, DOE will review each documented safety analysis to determine whether the rigor and detail of the documented safety analysis are appropriate for the complexity and hazards expected at the nuclear facility. In particular, DOE will evaluate the documented safety analysis by considering the extent to which the documented safety analysis (1) satisfies the provisions of the methodology used to prepare the documented safety analysis and (2) adequately addresses the criteria set forth in 10 CFR 830.204(b). DOE will prepare a Safety Evaluation Report to document the results of its review of the documented safety analysis. A documented safety analysis must contain any conditions or changes required by DOE.

4. In most cases, the contract will provide the framework for specifying the methodology and schedule for developing a documented safety analysis. Table 2 sets forth acceptable methodologies for preparing a documented safety analysis.

TABLE 2

The contractor responsible for * * *	May prepare its documented safety analyses by * * *
(1) A DOE reactor	Using the method in U.S. Nuclear Regulatory Commission Regulatory Guide 1.70, Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants, or successor document.
(2) A DOE nonreactor nuclear facility	Using the method in DOE–STD–3009, Change Notice No. 1, January 2000, Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis Reports, July 1994, or successor document.
(3) A DOE nuclear facility with a limited operational life	Using the method in either: (1) DOE-STD–3009-, Change Notice No. 1, January 2000, or successor document, or (2) DOE-STD–3011–94, Guidance for Preparation of DOE 5480.22 (TSR) and DOE 5480.23 (SAR) Implementation Plans, November 1994, or successor document.
(4) The deactivation or the transition surveillance and maintenance of a DOE nuclear facility.	Using the method in either: (1) DOE-STD–3009, Change Notice No. 1, January 2000, or successor document, or (2) DOE-STD–3011–94 or successor document.
(5) The decommissioning of a DOE nuclear facility	(1) Using the method in DOE-STD–1120–98, Integration of Environment, Safety, and Health into Facility Disposition Activities, May 1998, or successor document; (2) Using the provisions in 29 CFR 1910.120 (or 29 CFR 1926.65 for construction activities) for developing Safety and Health Programs, Work Plans, Health and Safety Plans, and Emergency Response Plans to address public safety, as well as worker safety; and (3) Deriving hazard controls based on the Safety and Health Programs, the Work Plans, the Health and Safety Plans, and the Emergency Response Plans.
(6) A DOE environmental restoration activity that involves either work not done within a permanent structure or the decommissioning of a facility with only low-level residual fixed radioactivity.	(1) Using the method in DOE-STD–1120–98 or successor document, and (2) Using the provisions in 29 CFR 1910.120 (or 29 CFR 1926.65 for construction activities) for developing a Safety and Health Program and a site-specific Health and Safety Plan (including elements for Emergency Response Plans, conduct of operations, training and qualifications, and maintenance management).
(7) A DOE nuclear explosive facility and the nuclear explosive operations conducted therein.	Developing its documented safety analysis in two pieces: (1) A Safety Analysis Report for the nuclear facility that considers the generic nuclear explosive operations and is prepared in accordance with DOE-STD–3009, Change Notice No. 1, January 2000, or successor document, and (2) A Hazard Analysis Report for the specific nuclear explosive operations prepared in accordance with DOE-STD–3016–99, Hazards Analysis Reports for Nuclear Explosive Operations, February 1999, or successor document.
(8) A DOE hazard category 3 nonreactor nuclear facility	Using the methods in Chapters 2, 3, 4, and 5 of DOE-STD–3009, Change Notice No. 1, January 2000, or successor document to address in a simplified fashion: (1) The basic description of the facility/activity and its operations, including safety structures, systems, and components; (2) A qualitative hazards analysis; and (3) The hazard controls (consisting primarily of inventory limits and safety management programs) and their bases.
(9) Transportation activities	(1) Preparing a Safety Analysis Report for Packaging in accordance with DOE-O–460.1A, Packaging and Transportation Safety, October 2, 1996, or successor document and (2) Preparing a Transportation Safety Document in accordance with DOE-G–460.1–1, Implementation Guide for Use with DOE O 460.1A, Packaging and Transportation Safety, June 5, 1997, or successor document.
(10) Transportation and onsite transfer of nuclear explosives, nuclear components, Navel nuclear fuel elements, Category I and Category II special nuclear materials, special assemblies, and other materials of national security.	(1) Preparing a Safety Analysis Report for Packaging in accordance with DOE-O–461.1, Packaging and Transportation of Materials of National Security Interest, September 29, 2000, or successor document and (2) Preparing a Transportation Safety Document in accordance with DOE-M–461.1–1, Packaging and Transfer of Materials of National Security Interest Manual, September 29, 2000, or successor document.

5. Table 2 refers to specific types of nuclear facilities. These references are not intended to constitute an exhaustive list of the specific types of nuclear facilities. Part 830 defines nuclear facility broadly to include all those facilities, activities, or operations that involve, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear or a nuclear explosive

hazard potentially exists to the employees or the general public, and to include any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established by Part 830. The only exceptions are those facilities specifically excluded such as accelerators. Table 3 defines the specific nuclear facilities referenced in Table 2 that are not defined in 10 CFR 830.3

TABLE 3

For purposes of Table 2, * * *	means * * *
(1) Deactivation	The process of placing a facility in a stable and known condition, including the removal of hazardous and radioactive materials
(2) Decontamination	The removal or reduction of residual radioactive and hazardous materials by mechanical, chemical, or other techniques to achieve a stated objective or end condition
(3) Decommissioning	Those actions taking place after deactivation of a nuclear facility to retire it from service and includes surveillance and maintenance, decontamination, and/or dismantlement.
(4) Environmental restoration activities	The process by which contaminated sites and facilities are identified and characterized and by which existing contamination is contained, or removed and disposed
(5) Generic nuclear explosive operation	A characterization that considers the collective attributes (such as special facility system requirements, physical weapon characteristics, or quantities and chemical/physical forms of hazardous materials) for all projected nuclear explosive operations to be conducted at a facility
(6) Nuclear explosive facility	A nuclear facility at which nuclear operations and activities involving a nuclear explosive may be conducted
(7) Nuclear explosive operation	Any activity involving a nuclear explosive, including activities in which main-charge, high-explosive parts and pits are collocated.
(8) Nuclear facility with a limited operational life	A nuclear facility for which there is a short remaining operational period before ending the facility's mission and initiating deactivation and decommissioning and for which there are no intended additional missions other than cleanup
(9) Specific nuclear explosive operation	A specific nuclear explosive subjected to the stipulated steps of an individual operation, such as assembly or disassembly
(10) Transition surveillance and maintenance activities	Activities conducted when a facility is not operating or during deactivation, decontamination, and decommissioning operations when surveillance and maintenance are the predominant activities being conducted at the facility. These activities are necessary for satisfactory containment of hazardous materials and protection of workers, the public, and the environment. These activities include providing periodic inspections, maintenance of structures, systems, and components, and actions to prevent the alteration of hazardous materials to an unsafe state

6. If construction begins after December 11, 2000, the contractor responsible for the design and construction of a new DOE nuclear facility or a major modification to an existing DOE nuclear facility must prepare a preliminary documented safety analysis. A preliminary documented safety analysis can ensure that substantial costs and time are not wasted in constructing a nuclear facility that will not be acceptable to DOE. If a contractor is required to prepare a preliminary documented safety analysis, the contractor must obtain DOE approval of the preliminary documented safety analysis prior to procuring materials or components or beginning construction. DOE, however, may authorize the contractor to perform limited procurement and construction activities without approval of a preliminary documented safety analysis if DOE determines that the activities are not detrimental to public health and safety and are in the best interests of DOE. DOE Order 420.1, Facility Safety, sets forth acceptable nuclear safety design criteria for use in preparing a preliminary documented safety analysis. As a general matter, DOE does not expect preliminary documented safety analyses to be needed for activities that do not involve significant construction such as environmental restoration activities, decontamination and decommissioning activities, specific nuclear explosive operations, or transition surveillance and maintenance activities.

G. Hazard Controls

1. Hazard controls are measures to eliminate, limit, or mitigate hazards to workers, the public, or the environment. They include (1) physical, design, structural, and engineering features; (2) safety structures, systems, and components; (3) safety management programs; (4) technical safety requirements; and (5) other controls necessary to provide adequate protection from hazards.

2. The types and specific characteristics of the safety management programs necessary for a DOE nuclear facility will be dependent on the complexity and hazards associated with the nuclear facility and the work being performed. In most cases, however, a contractor should consider safety management programs covering topics such as quality assurance, procedures, maintenance, personnel training, conduct of operations, criticality safety, emergency preparedness, fire protection, waste management, and radiation protection. In general, DOE Orders set forth DOE's expectations concerning specific topics. For example, DOE Order 420.1 provides DOE's expectations with respect to fire protection and criticality safety.

3. Safety structures, systems, and components require formal definition of minimum acceptable performance in the documented safety analysis. This is accomplished by first defining a safety function, then describing the structure, systems, and components, placing functional requirements on those portions of the structures, systems, and components required for the safety function, and identifying performance criteria that will ensure functional requirements are met. Technical safety requirements are developed to ensure the operability of the safety structures, systems, and components and define actions to be taken if a safety structure, system, or component is not operable.

4. Technical safety requirements establish limits, controls, and related actions necessary for the safe operation of a nuclear facility. The exact form and contents of technical safety requirements will depend on the circumstances of a particular nuclear facility as defined in the documented safety analysis for the nuclear facility. As appropriate,

technical safety requirements may have sections on (1) safety limits, (2) operating limits, (3) surveillance requirements, (4) administrative controls, (5) use and application, and (6) design features. It may also have an appendix on the bases for the limits and requirements. DOE Guide 423.X, Implementation Guide for Use in Developing Technical Safety Requirements (TSRs) provides a complete description of what technical safety requirements should contain and how they should be developed and maintained.

5. DOE will examine and approve the technical safety requirements as part of preparing the safety evaluation report and reviewing updates to the safety basis. As with all hazard controls, technical safety requirements must be kept current and reflect changes in the facility, the work and the hazards as they are analyzed in the documented safety analysis. In addition, DOE expects a contractor to maintain technical safety requirements, and other hazard controls as appropriate, as controlled documents with an authorized users list.

6. Table 4 sets forth DOE's expectations concerning acceptable technical safety requirements.

TABLE 4

As appropriate for a particular DOE nuclear facility, the section of the technical safety requirements on * * *	Will provide information on * * *
(1) Safety limits	The limits on process variables associated with those safety class physical barriers, generally passive, that are necessary for the intended facility function and that are required to guard against the uncontrolled release of radioactive materials. The safety limit section describes, as precisely as possible, the parameters being limited, states the limit in measurable units (pressure, temperature, flow, *etc.*), and indicates the applicability of the limit. The safety limit section also describes the actions to be taken in the event that the safety limit is exceeded. These actions should first place the facility in the safe, stable condition attainable, including total shutdown (except where such action might reduce the margin of safety) or should verify that the facility already is safe and stable and will remain so. The technical safety requirement should state that the contractor must obtain DOE authorization to restart the nuclear facility following a violation of a safety limit. The safety limit section also establishes the steps and time limits to correct the out-of-specification condition.
(2) Operating limits	Those limits which are required to ensure the safe operation of a nuclear facility. The operating limits section may include subsections on limiting control settings and limiting conditions for operation.
(3) Limiting control settings	The settings on safety systems that control process variables to prevent exceeding a safety limit. The limited control settings section normally contains the settings for automatic alarms and for the automatic or nonautomatic initiation of protective actions related to those variables associated with the function of safety class structures, systems, or components if the safety analysis shows that they are relied upon to mitigate or prevent an accident. The limited control settings section also identifies the protective actions to be taken at the specific settings chosen in order to correct a situation automatically or manually such that the related safety limit is not exceeded. Protective actions may include maintaining the variables within the requirements and repairing the automatic device promptly or shutting down the affected part of the process and, if required, the entire facility.
(4) Limiting conditions for operations	The limits that represent the lowest functional capability or performance level of safety structures, systems, and components required to perform an activity safely. The limiting conditions for operation section describes, as precisely as possible, the lowest functional capability or performance level of equipment required for continued safe operation of the facility. The limiting conditions for operation section also states the action to be taken to address a condition not meeting the limiting conditions for operation section. Normally this simply provides for the adverse condition being corrected in a certain time frame and for further action if this is impossible.
(5) Surveillance requirements	Requirements relating to test, calibration, or inspection to assure that the necessary operability and quality of safety structures, systems, and components is maintained; that facility operation is within safety limits; and that limiting control settings and limiting conditions for operation are met. If a required surveillance is not successfully completed, the contractor is expected to assume the systems or components involved are inoperable and take the actions defined by the technical safety requirement until the systems or components can be shown to be operable. If, however, a required surveillance is not performed within its required frequency, the contractor is allowed to perform the surveillance within 24 hours or the original frequency, whichever is smaller, and confirm operability.
(6) Administrative controls	Organization and management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility consistent with the technical safety requirement. In general, the administrative controls section addresses (1) the requirements associated with administrative controls, (including those for reporting violations of the technical safety requirement); (2) the staffing requirements for facility positions important to safe conduct of the facility; and (3) the commitments to the safety management programs identified in the documented safety analysis as necessary components of the safety basis for the facility.
(7) Use and application provisions	The basic instructions for applying the safety restrictions contained in a technical safety requirement. The use and application section includes definitions of terms, operating modes, logical connectors, completion times, and frequency notations.
(8) Design features	Design features of the facility that, if altered or modified, would have a significant effect on safe operation.

TABLE 4—Continued

As appropriate for a particular DOE nuclear facility, the section of the technical safety requirements on * * *	Will provide information on * * *
(9) Bases appendix	The reasons for the safety limits, operating limits, and associated surveillance requirements in the technical safety requirements. The statements for each limit or requirement shows how the numeric value, the condition, or the surveillance fulfills the purpose derived from the safety documentation. The primary purpose for describing the basis of each limit or requirement is to ensure that any future changes to the limit or requirement is done with full knowledge of the original intent or purpose of the limit or requirement.

H. Unreviewed Safety Questions

1. The USQ process is an important tool to evaluate whether changes affect the safety basis. A contractor must use the USQ process to ensure that the safety basis for a DOE nuclear facility is not undermined by changes in the facility, the work performed, the associated hazards, or other factors that support the adequacy of the safety basis.

2. The USQ process permits a contractor to make physical and procedural changes to a nuclear facility and to conduct tests and experiments without prior approval, provided these changes do not cause a USQ. The USQ process provides a contractor with the flexibility needed to conduct day-to-day operations by requiring only those changes and tests with a potential to impact the safety basis (and therefore the safety of the nuclear facility) be approved by DOE. This allows DOE to focus its review on those changes significant to safety. The USQ process helps keep the safety basis current by ensuring appropriate review of and response to situations that might adversely affect the safety basis.

3. DOE Guide 424.X, Implementation Guide for Addressing Unreviewed Safety Question (USQ) Requirements, provides DOE's expectations for a USQ process. The contractor must obtain DOE approval of its procedure used to implement the USQ process.

I. Functions and Responsibilities

1. The DOE Management Official for a DOE nuclear facility (that is, the Assistant Secretary, the Assistant Administrator, or the Office Director who is primarily responsible for the management of the facility) has primary responsibility within DOE for ensuring that the safety basis for the facility is adequate and complies with the safety basis requirements of Part 830. The DOE Management Official is responsible for ensuring the timely and proper (1) review of all safety basis documents submitted to DOE and (2) preparation of a safety evaluation report concerning the safety basis for a facility.

2. DOE will maintain a public list on the internet that provides the status of the safety basis for each hazard category 1, 2, or 3 DOE nuclear facility and, to the extent practicable, provides information on how to obtain a copy of the safety basis and related documents for a facility.

[FR Doc. 01–608 Filed 1–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–81–AD; Amendment 39–12068; AD 2000–26–18]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. This AD requires you to replace the eyebolts on the airbrake, inspect the airbrake sheets for proper clearance and adjust as necessary, and inspect for damage to the landing gear doors and replace any damaged parts. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent aerodynamic flutter of the upper covering straps on the airbrake cover caused by the current design airbrake eyebolts, which could result in damage to the airbrake system and landing gear doors. Continued operation with such damaged components could result in loss of control of the sailplane.

DATES: This AD becomes effective on February 2, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of February 2, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before February 15, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–81–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–81–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Stemme Model S10 and S10–V sailplanes. The LBA reports that the current design airbrake eyebolts could cause aerodynamic flutter of the upper airbrake straps at high airspeeds. This can cause damage to the airbrake system.

One reported occurrence resulted in flutter of the upper covering straps on the airbrake cover, which resulted in an uncommanded yawing condition and separation of the landing gear door from the sailplane. This caused damage to the horizontal stabilizer.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not corrected, could result in aerodynamic flutter of the upper covering straps on the airbrake cover and damage to the airbrake system and landing gear doors. Continued operation with such damaged components could result in loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

Stemme has issued Service Bulletin No. A31–10-055 (pages 5 through 8 English translation), dated October 9, 2000. This service bulletin includes procedures for:

—Replacing the eyebolts on the airbrake;
—Inspecting the airbrake sheets for proper clearance and adjusting, as necessary; and
—inspecting for damage to the landing gear doors and replacing any damaged parts.

What Action Did LBA Take?

The LBA classified this service bulletin as mandatory and issued German AD 2000–369, effective November 30, 2000, in order to assure the continued airworthiness of these sailplanes in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has examined the findings of LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Stemme Models S10 and S10–V sailplanes of the same type design;
—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected sailplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to accomplish the actions previously specified in accordance with Stemme Service Bulletin No. A31–10–055 (pages 5 through 8 English translation), dated October 9, 2000.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in airbrake system failure with possible loss of control of the sailplane, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, we invite your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

We are reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–81–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–26–18 Stemme GmbH & Co. KG: Amendment 39–12068; Docket No. 2000–CE–81–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to the following sailplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
S10	10–03 through 10–63.
S10–V	14–002 through 14–030 and 14–012M through 14–063

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent aerodynamic flutter of the upper airbrake caused by the current design airbrake eyebolts, which could result in damage to the airbrake system and landing gear doors. Continued operation with such damaged components could result in loss of control of the sailplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions, unless already accomplished since October 9, 2000:

Action	Compliance Time	Procedures
(1) If the sailplane is still equipped with eyebolts (part number 12TI–DB) on the airbrake, replace the eyebolts with improved design eyebolts.	Within the next 5 hours time-in-service (TIS) after February 2, 2001 (the effective date of this AD).	In accordance with the procedures in Stemme Service Bulletin No. A31–10–055 (pages 5 through 8 English translation), dated October 9, 2000.
(2) Inspect the airbrake sheets for proper clearance and adjust, as necessary.	Accomplish the inspection within the next 5 hours TIS after February 2, 2001 (the effective date of this AD). Accomplish any necessary adjustments prior to further flight after the inspection.	In accordance with the procedures in Stemme Service Bulletin No. A31–10–055 (pages 5 through 8 English translation), dated October 9, 2000.
(3) Inspect the landing gear doors for damage and replace any damaged parts.	Accomplish the inspection within the next 5 hours TIS after February 2, 2001 (the effective date of this AD). Accomplish any necesary replacements prior to further flight after the inspection.	In accordance with the procedures in Stemme Service Bulletin No. A31–10–055 (pages 5 through 8 English translation), dated October 9, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Stemme Service Bulletin No. A31–10–055 (pages 5 through 8 English translation), dated October 9, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC .

(i) *When does this amendment become effective?* This amendment becomes effective on February 2, 2001.

Note 2: The subject of this AD is addressed in German AD 2000–369, effective November 30, 2000.

Issued in Kansas City, Missouri, on December 29, 2000.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–305 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–144–AD; Amendment 39–12070; AD 2000–26–20]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–1159A (G–III) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream Model G–1159A (G–III) series airplanes, that requires modification of the master caution panel by installing an additional legend labeled ''BATT ON BUS'' and associated wiring to indicate when the airplane batteries are powering the direct current (DC) essential bus. This action is necessary to ensure that the flight crew is aware that an electrical system failure has occurred and that the main airplane batteries are powering the essential DC bus. If the flight crew is unaware of this situation, action to stop the depletion of the airplane batteries will not be taken and critical equipment, such as communications and navigation equipment, could fail. This action is intended to address the identified unsafe condition.

DATES: Effective February 14, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office,

One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berryman, 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) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Gulfstream Model G–1159A (G–III) series airplanes was published in the **Federal Register** on October 12, 2000 (65 FR 60593). That action proposed to require modification of the master caution panel by installing an additional legend labeled ''BATT ON BUS'' and associated wiring to indicate when the airplane batteries are powering the direct current (DC) essential bus.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 198 airplanes of the affected design in the worldwide fleet. The FAA estimates that 144 airplanes of U.S. registry will be affected by this AD, that it will take approximately 55 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,587 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $703,728, or $4,887 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. 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 adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–26–20 Gulfstream Aerospace Corporation: Amendment 39–12070. Docket 2000–NM–144–AD.

Applicability: Model G–1159A (G–III) series airplanes, serial numbers 357 and 402 through 498 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from being unaware that an electrical system failure has occurred and that the airplane main batteries are powering the direct current (DC) essential bus, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD, modify the wiring in the pilot's and co-pilot's junction boxes, the auxiliary power relay box, the power distribution box, and the master caution panel, in accordance with Gulfstream Customer Bulletin No. 149, dated March 23, 1999, and Gulfstream Aircraft Service Change No. 294, dated February 3, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Gulfstream Customer Bulletin No. 149, dated March 23, 1999, and Gulfstream Aircraft Service Change No. 294, dated February 3, 1999. (**Note:** The issue date of Gulfstream Aircraft Service Change No. 294 is indicated only on the title page of the document; no other page of the document contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 14, 2001.

Issued in Renton, Washington, on December 29, 2000.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–339 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–15]

Establishment of Class E Airspace; Indian Mountain, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Long Range Radar site (LRRS) at Indian Mountain, AK. The United States Air Force requested this action to create controlled airspace for the instrument approach and departure procedures to runway (RWY) 16 and from RWY 34 at Indian Mountain, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Indian Mountain, AK.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Major Roger Stirm, Department of the Air Force Representative, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5892; fax: (907) 271–2850; email: Roger.Stirm@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Indian Mountain, AK, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 57573). The proposal was requested by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 16 and from RWY 34 at Indian Mountain, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. This rule provides adequate controlled airspace for aircraft flying IFR operations at Indian Mountain, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the commenters and the FAA. Public comments to the proposal were submitted by two pilots from United States Fish and Wildlife Service (USFWS), Alaska Aviation Safety Foundation, Alaska Airmen's Association, and Alaska Communications Systems (ACS) Chief Pilot. Each expressed concern with the size of the proposed Class E airspace. The substance of their concern was that the proposed Class E airspace was larger than needed. In addition, Mr. Felix M. Maguire representing both the Alaska Airmen's Association and ACS as their Chief Pilot expressed concern that the approach was barely within the proposed airspace and that the missed approach was entirely outside the proposed airspace. The U.S. Air Force pointed out that the procedures used by Mr. Maguire to evaluate airspace needs were not developed by the U.S. Air Force and therefore have no validity in correctly analyzing the requested airspace. The FAA has considered these comments. The U.S. Air Force, after re-evaluation, responded with a revised request for Class E airspace at Indian Mountain (PAIM). This request substantially reduced the size of the original request and did not include any additional airspace, outside what was proposed in the original NPRM. As for Mr. Maguire's concern about the approach procedure being barely within the proposed airspace and that the missed approach was entirely outside the proposed airspace, the FAA concurs. The additional airspace south of Indian Mountain (PAIM) needed for missed approach and departure procedures is already 1,200 foot Class E airspace and therefore, is not needed in this rulemaking. The majority of the revised requested airspace encompasses the primary holding assessment area in accordance with FAA Order 7130.3. The FAA has determined that the requested airspace is needed to provide adequate controlled airspace for aircraft flying IFR operations at Indian Mountain LRRS, Alaska. The coordinates for Indian Mountain LRRS were published with an error in the latitude coordinates and is corrected to read as follows: (lat. 65° 59′ 34″ N., long. 153° 42′ 16″ W.). The airspace description does overlap existing Class E airspace and the exclusionary verbiage was inadvertently left out. The following verbiage has been added to the end of the airspace description: ''excluding the existing Class E airspace.'' Accordingly, as discussed, since the revised airspace description is less of a burden to the public, the rule is adopted with the incorporated airspace revisions.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Indian Mountain, AK, through a request by the U.S. Air Force to create controlled airspace for the instrument approach and departure procedures to RWY 16 and from RWY 34 at Indian Mountain, AK. This action is necessary in order for the approach and departure procedures to be published in the U.S. Government Flight Information Publication, U.S. Terminal Procedures—Alaska. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Indian Mountain, AK.

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

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Indian Mountain, AK [New]

Indian Mountain LRRS, AK

(lat. 65° 59′ 34″ N., long. 153° 42′ 16″ W.)

That airspace extending upward from 700 feet above the surface within a 4 mile radius of Indian Mountain LRRS; and that adjacent airspace extending upward from 1,200 feet above the surface from lat. 66° 00′ 00″ N long. 154° 05′ 00″ W, to lat. 66° 00′ 00″ N long. 153° 00′ 00″ W, to lat. 66° 09′ 00″ N long. 153° 00′ 00″ W, to lat. 66° 09′ 00″ N long. 153° 40′ 00″ W, to lat. 66° 06′ 00″ N long. 154° 00′ 00″, thence to the point of the beginning, excluding the existing Class E airspace.

* * * * *

Issued in Anchorage, AK, on January 2, 2001.

Stephen P. Creamer,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–701 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 98N–0720]

Conforming Regulations Regarding Removal of Section 507 of the Federal Food, Drug, and Cosmetic Act; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for applications for FDA approval to market a new drug to correct inadvertent errors. This action is necessary to ensure the accuracies and consistency of the regulation.

DATES: This rule is effective January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1999 (64 FR 396), FDA published a direct final rule that removed from the agency's regulations references to the now-repealed statutory provision of the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs (conforming regulation). Section 314.430(f) (21 CFR 314.430(f)) provides that safety and effectiveness data and information in an application may be disclosed to the public when certain events happen. Prior to the conforming regulation, § 314.430(f)(6) read: ''For applications or abbreviated applications submitted under sections 505(j) and 507 of the act, when FDA sends an approval letter to the applicant''.

The conforming regulation inadvertently changed ''section 505(j)'' to ''section 505'' and failed to remove the word ''applications'' from the introductory clause the first time it appeared. This document corrects those errors. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 374, 379e.

§ 314.430 [Amended]

2. Section 314.430 *Availability for public disclosure of data and information in an application or abbreviated application* is amended in paragraph (f)(6) by removing ''applications or'' and by removing ''505'' and adding in its place ''505(j)''.

Dated: January 4, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–680 Filed 1–9–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate, Monensin, and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient decoquinate, monensin, and tylosin Type A medicated articles to make three-way combination drug Type B and Type C medicated feeds used for prevention of coccidiosis, improved feed efficiency, and reduction of incidence of liver abscesses in growing-finishing cattle fed in confinement for slaughter.

DATES: This rule is effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–149 that provides for use of DECCOX® (27.2 gram per pound (g/lb) decoquinate), Rumensin® (20, 30, 45, 60, 80, or 90.7 g/lb monensin activity as monensin sodium) and TYLAN® (10, 40, or 100 g/lb tylosin phosphate) Type A medicated articles to make three-way combination Type B and Type C medicated feeds for use in growing-finishing cattle fed in confinement for slaughter. The Type C medicated feeds contain 13.6 to 27.2 g/ton decoquinate, 5 to 30 g/ton monensin, and 8 to 10 g/ton tylosin, and are used for the prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, improved feed efficiency, and reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces pyogenes*. The NADA is approved as of November 16, 2000, and the regulations in 21 CFR 558.195 and 558.625 are being amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.195 is amended in the table in paragraph (d) by adding an entry after ''Monensin 5 to 30'' and before ''Chlortetracycline approximately 400'' to read as follows:

§ 558.195 Decoquinate.

* * * * *

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
	Monensin 5 to 30; plus tylosin 8 to 10	Cattle fed in confinement for slaughter; for prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, improved feed efficiency, and reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces pyogenes*.	Feed only to cattle fed in confinement for slaughter. Feed continuously as the sole ration to provide 22.7 mg of decoquinate per 100 lb body weight per day, 50 to 360 mg of monensin per head per day, and 60 to 90 mg of tylosin per head per day. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food. Also see (c)(1) of this paragraph and § 558.355(d)(8). Monensin as monensin sodium and tylosin as tylosin phosphate provided by 000986 in § 510.600(c) of this chapter.	046573
*	*	* *	* *	*

§ 558.355 [Amended]

3. Section 558.355 *Monensin* is amended in paragraph (f)(7) by adding ''alone or with tylosin'' after ''decoquinate''.

4. Section 558.625 is amended by redesignating paragraphs (f)(2)(i) through (f)(2)(v) as (f)(2)(ii) through (f)(2)(vi), and by adding paragraph (f)(2)(i) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(2) * * *

(i) Decoquinate and monensin as in § 558.195.

* * * * *

Dated: December 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–628 Filed 1–9–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 640

[Docket No. 98N–0673]

Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma; Confirmation in Part and Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation in part and technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is confirming in part the direct final rule issued in the **Federal Register** of August 19, 1999. The direct final rule amends the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. FDA is confirming the provisions for which no significant adverse comments were received. The agency received significant adverse comments on certain provisions and is amending Title 21 Code of Federal Regulations to reinstate the former provisions.

DATES: The effective date for the amendments to the sections published in the **Federal Register** of August 19, 1999 (64 FR 45366), and listed in table 1 of this document, is confirmed as February 11, 2000. The amendments listed in table 2 of this document are effective January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: Written comments concerning the direct final rule were to be submitted on or before December 3, 1999. FDA stated that the effective date of the direct final rule would be February 11, 2000. If no timely significant comments were submitted to FDA during the comment period, FDA intended to publish a document in the **Federal Register** within 30 days after the comment period ended, confirming the effective date of the final rule. If timely significant comments were received, the agency intended to publish a document in the **Federal Register** withdrawing the direct final rule before its effective date. Because of complex issues related to this rulemaking and because of competing priorities, FDA did not issue a document either confirming or withdrawing the direct final rule before its effective date. Therefore the Code of Federal Regulations was revised as of April 1, 2000, to codify the regulations in the direct final rule.

The agency received significant comments to the docket. If a significant adverse comment applies to an amendment, paragraph, or section of the rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

Thus, FDA is confirming in part the direct final rule (sections listed in table 1 of this document) effective February 11, 2000.

The agency is making technical amendments to 21 CFR 640.25(c), 640.56(c), and 640.71(a) by replacing ''Clinical Laboratories Improvement Act of 1967 (CLIA)'' with ''Clinical Laboratories Improvement Amendments of 1988 (CLIA).'' This action is necessary for consistency when referring to CLIA in the regulations.

TABLE 1.—AMENDMENTS EFFECTIVE FEBRUARY 11, 2000

21 CFR Section	Action
606.3(c), (e), and (f)	Revised.
606.100(b) and (d)	Revised introductory text.
606.100(b)(7) and (b)(18)	Revised.
606.121(a), (d)(2), and (e)(1)(ii)	Revised.
606.122(f) and (n)(4)	Revised.
606.151(e)	Revised.
606.160(b)(2)(v)	Revised.
606.170(b)	Revised.
640.2(b) and (d)	Removed.
640.2(c), (e), and (f)	Redesignated as (b), (c), and (d).
640.2(c)(2)	Revised.
640.3(b)	Revised introductory text.
640.3(b)(3), (c)(2), and (c)(3)	Revised.
640.3(e)	Removed and reserved.
640.4(d)(1) through (d)(4), and (h)	Removed.
640.4(i)	Redesignated as paragraph (h).
640.4(b) and (d)	Revised.
640.6(c)	Removed.
640.13(a)	Revised.
640.16(b)	Revised.
640.22(a)	Revised.
640.25(c)	Nomenclature change.
640.31(c)	Removed.

TABLE 1.—AMENDMENTS EFFECTIVE FEBRUARY 11, 2000—Continued

21 CFR Section	Action
640.32(a)	Revised.
640.34(e)(2), (e)(3), and (g)(2)	Revised.
640.51(c)	Removed.
640.52(a)	Revised.
640.56(c)	Nomenclature change.
640.63(c)(3), (c)(5), (c)(12), and (c)(13)	Revised.
640.65(b)(4) and (b)(5)	Revised.
640.65(b)(8)	Added.
640.69(d)	Revised.
640.71(a)	Nomenclature change.
640.72(a)(1)	Revised.

FDA received significant adverse comments on certain provisions of the rule, listed in table 2 of this document. Accordingly in this rulemaking, because these provisions became effective on February 11, 2000, the agency is amending these sections identified in table 2 of this document to reinstate the former provisions.

TABLE 2.—AMENDMENTS EFFECTIVE JANUARY 10, 2001

21 CFR Section	Action
606.3(j)	Revised.
606.151(b) and (c)	Revised.
640.2(b)	Revised.
640.3(c)(1)	Revised.
640.4(g)	Revised introductory text.
640.4(g)(1), (g)(2), (g)(4), and (g)(5)	Revised.
640.5	Revised introductory text.
640.5(c)	Revised.
640.15	Revised.
640.16(a)	Revised.
640.23(a)	Revised.
640.24(b)	Revised.
640.25(c) introductory text	Amended.
640.34(a) through (e)(1)	Revised.
640.54(a)(2)	Revised.
640.56(c) introductory text	Revised.
640.62	Revised.
640.63(c)(11)	Revised.
640.71(a)	Amended.

Comments received by the agency regarding the reinstated portions of the rule will be applied to the corresponding portion of the companion proposed rule (64 FR 45375, August 19, 1999), and will be considered in developing a final rule using the usual Administrative Procedure Act notice and comment procedures.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated by the Commissioner of Food and Drugs, the direct final rule published on August 19, 1999 (64 FR 45366), is confirmed in part and 21 CFR parts 606 and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.3 is amended by revising paragraph (j) to read as follows:

§ 606.3 Definitions.

* * * * *

(j) *Compatibility testing* means the in vitro serological tests performed on donor and recipient blood samples to establish the serological matching of a donor's blood or blood components with that of a potential recipient.

3. Section 606.151 is amended by revising paragraphs (b) and (c) to read as follows:

§ 606.151 Compatibility testing.

* * * * *

(b) The use of fresh recipient serum samples less than 48 hours old for all pretransfusion testing.

(c) The testing of the donor's cells with the recipient's serum (major crossmatch) by a method that will demonstrate agglutinating, coating, and hemolytic antibodies, which shall include the antiglobulin method.

* * * * *

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

4. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

5. Section 640.2 is amended by revising paragraph (b) to read as follows:

§ 640.2 General requirements.

* * * * *

(b) *Final container*. The original blood container shall be the final container and shall not be entered prior to issue for any purpose except for blood collection. Such container shall be uncolored and transparent to permit visual inspection of the contents and any closure shall be such as will maintain an hermetic seal and prevent contamination of the contents. The container material shall not interact with the contents under customary conditions of storage and use, in such a manner as to have an adverse effect upon the safety, purity, or potency of the blood.

* * * * *

6. Section 640.3 is amended by revising paragraph (c)(1) to read as follows:

§ 640.3 Suitability of donor.

* * * * *

(c) * * *

(1) A history of viral hepatitis;

* * * * *

7. Section 640.4 is amended by revising the introductory text of paragraph (g) and by revising paragraphs (g)(1), (g)(2), (g)(4) and (g)(5) to read as follows:

§ 640.4 Collection of the blood.

* * * * *

(g) *Pilot samples for laboratory tests*. Pilot samples for laboratory tests shall meet the following standards:

(1) One or more pilot samples shall be provided with each unit of blood when issued or reissued except as provided in § 640.2(c)(2) and all pilot samples shall be from the donor who is the source of the unit of blood.

(2) All samples for laboratory tests performed by the manufacturer and all pilot samples accompanying a unit of blood shall be collected at the time of filling the final container by the person who collects the unit of blood.

* * * * *

(4) All containers for pilot samples accompanying a unit of blood shall be attached to the whole blood container before blood collection in a tamperproof manner that will conspicuously indicate removal and reattachment.

(5) When CPDA–1 is used, pilot samples for compatibility testing shall contain blood mixed with CPDA–1.

* * * * *

8. Section 640.5 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 640.5 Testing the blood.

All laboratory tests shall be made on a pilot sample specimen of blood taken from the donor at the time of collecting the unit of blood, and these tests shall include the following:

* * * * *

(c) *Determination of the Rh factors*. Each container of Whole Blood shall be classified as to Rh type on the basis of tests done on the pilot sample. The label shall indicate the extent of typing and the results of all tests performed. If the test, using Anti-D Blood Grouping Reagent, is positive, the container may be labeled ''Rh Positive''. If this test is negative, the results shall be confirmed by further testing which may include tests for the Rh_o variant (D^u) and for other Rh-Hr factors. Blood may be labeled ''Rh Negative'' if negative to tests for the Rh_o (D) and Rh_o variant (D^u) factors. If the test using Anti-D Blood Grouping Reagent is negative, but not tested for the Rh_o variant (D^u), the label must indicate that this test was not done. Only Anti-Rh Blood Grouping Reagents licensed under, or that otherwise meet the requirements of, the regulations of this subchapter shall be used, and the technique used shall be that for which the serum is specifically designed to be effective.

* * * * *

9. Section 640.15 is revised to read as follows:

§ 640.15 Pilot samples.

Pilot samples collected in integral tubing or in separate pilot tubes shall meet the following standards:

(a) One or more pilot samples of either the original blood or of the Red Blood Cells being processed shall be provided with each unit of Red Blood Cells when issued or reissued.

(b) Before they are filled, all pilot sample tubes shall be marked or identified so as to relate them to the donor of that unit of red cells.

(c) Before the final container is filled or at the time the final product is prepared, the pilot sample tubes to accompany a unit of cells shall be attached securely to the final container in a tamper proof manner that will conspicuously indicate removal and reattachment.

(d) All pilot sample tubes accompanying a unit of Red Blood Cells shall be filled at the time the blood is collected or at the time the final product is prepared, in each instance by the person who performs the collection or preparation.

10. Section 640.16 is amended by revising paragraph (a) to read as follows:

§ 640.16 Processing.

(a) *Separation*. Within 21 days from date of blood collection (within 35 days from date of blood collection when CPDA–1 solution is used as the anticoagulant), Red Blood Cells may be prepared either by centrifugation done in a manner that will not tend to increase the temperature of the blood or by normal undisturbed sedimentation. A portion of the plasma sufficient to insure optimal cell preservation shall be left with the red blood cells except when a cryoprotective substance is added for prolonged storage.

* * * * *

11. Section 640.23 is amended by revising paragraph (a) to read as follows:

§ 640.23 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Platelets shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

12. Section 640.24 is amended by revising paragraph (b) to read as follows:

§ 640.24 Processing.

* * * * *

(b) Immediately after collection, the whole blood or plasma shall be held in storage between 20 and 24 °C, unless it must be transported from the donor clinic to the processing laboratory. During such transport, all reasonable methods shall be used to maintain the temperature as close as possible to a range between 20 and 24 °C until it arrives at the processing laboratory where it shall be held between 20 and 24 °C until the platelets are separated. The platelet concentrate shall be separated within 4 hours after the collection of the unit of whole blood or plasma.

* * * * *

§ 640.25 [Amended]

13. Section 640.25 *General requirements* is amended in the introductory text of paragraph (c) by removing ''Clinical Laboratories Improvement Act of 1967'' and by adding in its place ''Clinical Laboratories Improvement Amendments of 1988.''

14. Section 640.34 is amended by revising paragraphs (a) through (e)(1) to read as follows:

§ 640.34 Processing.

(a) *Plasma*. Plasma shall be separated from the red blood cells within 26 days after phlebotomy (within 40 days after phlebotomy when CPDA–1 solution is used as the anticoagulant), and shall be

stored at -18 °C or colder within 6 hours after transfer to the final container, unless the product is to be stored as Liquid Plasma.

(b) *Fresh Frozen Plasma*. Fresh Frozen Plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and minimal manipulation of the donor's tissue. The plasma shall be separated from the red blood cells, frozen solid within 6 hours after phlebotomy and stored at -18 °C or colder.

(c) *Liquid Plasma*. Liquid Plasma shall be separated from the red blood cells within 26 days after phlebotomy (within 40 days after phlebotomy when CPDA–1 solution is used as the anticoagulant), and shall be stored at a temperature of 1 to 6 °C within 4 hours after filling the final container.

(d) *Platelet Rich Plasma*. Platelet Rich Plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and manipulation of the donor's tissue. The plasma shall be separated from the red blood cells by centrifugation within 4 hours after phlebotomy. The time and speed of centrifugation shall have been shown to produce a product with at least 250,000 platelets per microliter. The plasma shall be stored at a temperature between 20 to 24 °C or between 1 and 6 °C, immediately after filling the final container. A gentle and continuous agitation of the product shall be maintained throughout the storage period, if stored at a temperature of 20 to 24 °C.

(e) *Modifications of Plasma*. It is possible to separate Platelets and/or Cryoprecipitated AHF from Plasma. When these components are to be separated, the plasma shall be collected as described in § 640.32 for Plasma.

(1) Platelets shall be separated as prescribed in subpart C of part 640, prior to freezing the plasma. The remaining plasma may be labeled as Fresh Frozen Plasma, if frozen solid within 6 hours after phlebotomy.

* * * * *

15. Section 640.54 is amended by revising paragraph (a)(2) to read as follows:

§ 640.54 Processing.

(a) * * *

(2) The plasma shall be frozen solid within 6 hours after blood collection. A combination of dry ice and organic solvent may be used for freezing: *Provided*, That the procedure has been shown not to cause the solvent to penetrate the container or leach plasticizer from the container into the plasma.

* * * * *

§ 640.56 [Amended]

16. Section 640.56 *Quality control test for potency* is amended in the introductory text of paragraph (c) by removing ''Clinical Laboratories Improvement Act of 1988'' and by adding in its place ''Clinicial Laboratories Improvement Amendments of 1988''.

17. Section 640.62 is revised to read as follows:

§ 640.62 Medical supervision.

A qualified licensed physician shall be on the premises when donor suitability is being determined, immunizations are being made, whole blood is being collected, and red blood cells are being returned to the donor.

18. Section 640.63 is amended by revising paragraph (c)(11) to read as follows:

§ 640.63 Suitability of donor.

* * * * *

(c) * * *

(11) Freedom from a history of viral hepatitis;

* * * * *

§ 640.71 [Amended]

19. Section 640.71 *Manufacturing responsibility* is amended in the introductory text of paragraph (a) by removing ''Clinical Laboratories Improvement Act of 1988'' and by adding in its place ''Clinicial Laboratories Improvement Amendments of 1988''.

Dated: December 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–533 Filed 1–9–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8921]

RIN 1545–AY23

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to section 125 cafeteria plans. The final regulations clarify the circumstances under which a cafeteria plan may permit an employee to change his or her cafeteria plan election with respect to accident or health coverage, group-term life insurance coverage, dependent care assistance and adoption assistance during the plan year.

DATES: *Effective Date:* These regulations are effective January 10, 2001.

Applicability Date: See the *Scope of Regulations and Effective Date* portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Christine L. Keller or Janet A. Laufer at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 125 of the Internal Revenue Code (Code). Section 125 generally provides that an employee in a cafeteria plan will not have an amount included in gross income solely because the employee may choose among two or more benefits consisting of cash and qualified benefits. A qualified benefit generally is any benefit that is excludable from gross income under an express provision of the Code, including coverage under an employer-provided accident or health plan under sections 105 and 106, group-term life insurance under section 79, elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k), dependent care assistance under section 129, and adoption assistance under section 137.[1] Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

In 1984 and 1989, proposed regulations were published relating to cafeteria plans.[2] In general, the 1984 and 1989 proposed regulations require that, for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances. Specifically, Q&A–8 of § 1.125–1 and Q&A–6(b), (c), and (d) of § 1.125–2 permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage,

[1] Section 125(f) provides that the following are not qualified benefits (even though they are generally excludable from gross income under an express provision of the Internal Revenue Code: Products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132.

[2] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

changes in family status, and separation from service.

In 2000, final regulations [3] were issued permitting a participant in a cafeteria plan to change his or her accident or health coverage election during a period of coverage in specific circumstances such as where special enrollment rights arise under section 9801(f) (added to the Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)(110 Stat. 1936), where eligibility for Medicare or Medicaid is gained or lost, or where a court issues a judgment, decree, or order requiring that an employee's child or foster child who is a dependent receive health coverage. In addition, the final regulations permit an employee to change his or her accident or health coverage election or group-term life insurance election if certain change in status rules are satisfied.

On the same day that the final regulations were issued, proposed regulations [4] were also issued containing change in status rules that apply to other types of qualified benefits (*i.e.,* dependent care assistance and adoption assistance) and describing the circumstances under which changes in the cost or coverage of qualified benefits provide a basis for changes in cafeteria plan elections. The IRS and Treasury received written comments on the proposed regulations and held a public hearing on August 17, 2000. Having considered the comments and the statements made at the hearing, the IRS and Treasury revise the final regulations and adopt the proposed regulations as modified by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions

1. Changes in the March 2000 Final Regulations

With respect to group-term life insurance and disability coverage, the final regulations issued earlier this year provided flexibility by stating that, in the event of a change in an employee's marital status or a change in the employment status of the employee's spouse or dependent, an employee may elect either to increase such coverage or to decrease such coverage.[5] Commentators recommended that this rule also apply in the case of birth, adoption, placement for adoption, or death. The argument was made that in these other situations—because these types of coverage are generally designed to provide income, instead of expense reimbursements—it may be appropriate for the employee to seek to increase or decrease the coverage. In accordance with these recommendations and in the interest of simplicity, the final regulations have been modified to allow participants to increase or decrease these types of coverage for all change of status events. Further, as also suggested by commentators, the final regulations have been modified to expand the rule to apply to coverage to which section 105(c) (which is coverage for permanent loss or loss of use of a member or function of the body) applies.

Commentators requested clarification as to how the election change rules with respect to special enrollment rights under section 9801(f) (enacted under HIPAA) apply to a participant who marries if the group health plan allows the participant to change his or her health coverage election retroactively to the date of the marriage. In response to this comment, language has been added to an example in the final regulations to clarify that an election change can be funded through salary reduction under a cafeteria plan only on a prospective basis, except for the retroactive enrollment right under section 9801(f) that applies in the case of an election made within 30 days of a birth, adoption, or placement for adoption.

With respect to accident or health coverage, the consistency rule in the final regulations requires that any employee who wishes to decrease or cancel coverage because he or she becomes eligible for coverage under a spouse's or dependent's plan due to a marital or employment change in status can do so only if he or she actually obtains coverage under that other plan. Commentators requested clarification as to the type of proof an employer must receive to satisfy this rule, expressing concern that a plan could not implement a change on a timely basis because of a need to obtain proper proof of the other coverage. An example in the final regulations has been revised to make it clear that employers may generally rely on an employee's certification that the employee has or will obtain coverage under the other plan (assuming that the employer has no reason to believe that the employee certification is incorrect).

The final regulations allow a participant to change his or her election if a judgment, decree or order resulting from a divorce, legal separation, annulment, or change in legal custody requires that an employee's spouse, former spouse, or other individual provide accident or health coverage for the employee's child or for a foster child who is a dependent of the employee. The final regulations were modified to clarify that the participant can only change his or her election if the spouse, former spouse, or other individual actually provides accident or health coverage for the child.

2. Changes From the March 2000 Proposed Regulations

The final regulations being issued today are generally consistent with the proposed regulations that were issued earlier this year, but include various modifications.

Cost and coverage rules

The proposed regulations included rules allowing election changes in connection with a significant increase in cost or a significant curtailment in coverage, irrespective of whether the plan is insured or not insured. These cost and coverage rules (and the other rules in paragraph (f) of § 1.125–4) do not apply with respect to coverage under a health FSA.[6] However, all of the rules in paragraphs (a) through (e) and paragraph (g) of the final regulations under § 1.125–4 do apply with respect to coverage under a health FSA. One modification reflected in the final regulations is to clarify that the cost increase rules apply when the amount of an employee's elective contributions under section 125 increases either due to the employee contributing a larger portion of the total cost of the qualified benefits plan (which might occur, for example, if part-time employees pay a larger portion of a plan's cost and the employee switches to part-time status) or due to an increase in the total cost of the qualified benefits plan.

In response to comments, modifications were also made to allow election changes during a period of coverage when there is a significant *decrease* in the cost of a qualified benefits plan or in the cost of a benefits package option under the qualified

[3] TD 8878 at 65 FR 15548 (March 23, 2000). These final regulations were preceded by temporary regulations issued in 1997. See 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997).

[4] REG–117162–99 at 65 FR 15587 (March 23, 2000).

[5] For example, an employee might seek to increase group-item life insurance due to a marriage (because of the need to provide income to the new spouse in the event that the chief wage-earner dies) or to decrease group-term life insurance due to a marriage (because the new spouse may be a wage-earner who can support the family in the event that the employee dies).

[6] A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), an FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage. A health FSA is an accident or health plan that is an FSA.

benefits plan, as well as when there is a significant increase. Under the regulations as modified, if there is a significant decrease in the cost of a qualified benefits plan during the plan year, the final regulations permit a cafeteria plan to allow all employees, even those who have not previously participated in the cafeteria plan, to elect to participate in the qualified benefits plan through the cafeteria plan. Similarly, if there is a significant decrease in the cost of a benefits package option during the plan year, the final regulations permit a cafeteria plan to allow all eligible employees to elect that option (including employees who have elected another option, as well as those who have not previously participated in the cafeteria plan).

Further, in response to comments, modifications were also made to allow midyear election changes when there is a significant improvement in the coverage provided under a benefit package option, as well as when there is a new benefit package option offered under the plan.

Commentators also requested clarification as to whether a cafeteria plan could allow participants to drop coverage in response to a significant change in the cost or coverage of a qualified benefit. The final regulations clarify this issue, and provide that, if there is no other similar coverage, employees may drop coverage (including a change from family to single coverage) in response either to an increase in the cost of a qualified benefit or to a loss of coverage. The regulations also permit an employee to elect similar coverage in response to a significant curtailment in coverage. However, the regulations do not allow an employee to drop coverage altogether if there is a significant curtailment in coverage that does not constitute a loss of coverage. The regulations list the curtailments that are treated as a loss of coverage for this purpose, and include a complete loss of coverage (such as when an HMO ceases to be available in an area where an individual resides, or when an employee or a covered member of the employee's family loses all coverage under a benefit package option by reason of a lifetime or annual limitation). In addition, the final regulations allow a cafeteria plan, in its discretion,[7] to treat certain other events as a loss of coverage. These events include a substantial decrease in medical care providers (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decease in the physicians participating in a preferred provider network or an HMO), a reduction in the benefits for a specific type of medical condition or treatment with respect to which the employee or the employee's spouse or dependent is currently in a course of treatment,[8] or any other similar fundamental loss of coverage.

For purposes of these rules, a significant curtailment occurs only if there is an overall reduction in coverage provided so as to constitute reduced coverage generally (*i.e.,* a reduction in the fair market value of the coverage). Therefore, in most cases, the loss of one particular physician in a network does not constitute a significant curtailment.

In response to comments, the rule under the proposed regulations that allowed an employee to change his or her election in response to a change made under a spouse's or dependent's plan has been clarified and broadened. Under the final regulations, the rule applies to coverage available from any employer plan, including any plan of the same employer and any plan of a different employer. In addition, the regulations have been modified to allow an employee to elect to participate in a cafeteria plan if the employee (or the employee's spouse or dependent) loses coverage under a group health plan sponsored by a governmental or educational institution, such as a state program under the State Children Health Insurance Program (SCHIP).[9] The regulations do not allow a cafeteria plan participant to cease participation in a cafeteria plan if he or she becomes eligible for SCHIP coverage during the year because of a concern that such a rule would violate a fundamental principle of Title XXI of the Social Security Act that SCHIP coverage not supplant existing public or private coverage.

Scope of Regulations and Effective Date

These final regulations address all of the changes in status for which a cafeteria plan may permit election changes, including changes with respect to accident or health coverage, group-term life insurance, dependent care assistance and adoption assistance. In addition, the regulations contain guidance concerning election changes that are permitted because of changes in the cost or coverage of a qualified benefit plan.

Unless specifically noted, these regulations do not override other cafeteria plan requirements such as the rules pertaining to health flexible spending arrangements, and the rules concerning the Family and Medical Leave Act (Public Law 103–3 (107 Stat. 6)).[10]

The changes made by these regulations with respect to the March 2000 final regulations are applicable for cafeteria plan years beginning on or after January 1, 2001, except that the clarification made in paragraph (d)(1)(ii)(B) of these regulations (relating to a spouse, former spouse, or other individual obtaining accident or health coverage for an employee's child in response to a judgment, decree, or order) is applicable for cafeteria plan years beginning on or after January 1, 2002. With respect to the change made in paragraph (d)(1)(ii)(B) of these regulations, taxpayers may, until January 1, 2002, rely on either paragraph (d)(1)(ii)(B) of these regulations or the final regulations published in March 2000 (as § 1.125–4(d)(1)(ii)).

The changes made from the March 2000 proposed regulations (including the rules relating to cost or coverage in paragraph (f) of these regulations) are applicable for cafeteria plan years beginning on or after January 1, 2002. With respect to these changes (including the rules relating to cost or coverage in paragraph (f) of these regulations), taxpayers may, until January 1, 2002, rely on either these regulations, the proposed regulations published in March 2000 (under § 1.125–4), or the cost or coverage change rules in the 1989 proposed regulations (at § 1.125–2 (Q&A–6(b)).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be

[7] Such discretion may be exercised on a case by case basis, provided that the exercise of discretion satisfies section 125(c) which prohibits discrimination in favor of highly compensated participants.

[8] Any reduction in coverage that affects a specific individual must not violate the prohibition in section 9802 against discrimination on the basis of health status (and parallel HIPAA provisions in the Employee Retirment Income Security Act of 1974 and the Public Health Service Act). See §§ 54.9802–1 and 54.9802–1T(b)(2).

[9] Added to the Society Security Act by section 4901 of the Balanced Budget Act of 1997, Public Law 105–33 (August 5, 1997).

[10] See § 1.125–3, published as a proposed rule at 60 FR 66229 (December 21, 1995).

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Christine L. Keller and Janet A. Laufer, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. 1.125–4 is amended by:

1. Revising paragraphs (b)(2) *Example 2*(ii).

2. Revising paragraph (c)(1) and adding paragraph (c)(2)(vi).

3. Adding a sentence to the end of paragraph (c)(3)(i).

4. Removing the last sentence in paragraph (c)(3)(iii) and adding a sentence in its place.

5. Adding paragraph (c)(4) *Example 3* (iii).

6. Revising paragraph (c)(4) *Example 4* (ii) and adding paragraph (iii).

7. Adding paragraph (c)(4) *Example 9* and (c)(4) *Example 10.*

8. Revising paragraph (d)(1)(ii).

9. Revising paragraphs (f), (g), (i)(3) and (i)(4).

10. Adding a sentence at the end of paragraph (i)(8), and adding paragraph (i)(9).

11. Revising paragraph (j).

The additions and revisions read as follows:

§ 1.125–4 Permitted election changes.

* * * * *

(b) * * *

(2) * * *

Example 2. * * *

(ii) *M*'s cafeteria plan may permit *E* to change *E*'s salary reduction election to reflect the change to family coverage under *M*'s accident or health plan because the marriage would result in special enrollment rights under section 9801(f), pursuant to which an election of family coverage under *M*'s accident or health plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan. Since no retroactive coverage is required in the event of marriage under section 9801(f), *E*'s salary reduction election may only be changed on a prospective basis. (*E*'s marriage to *F* is also a change in status under paragraph (c) of this section, as illustrated in Example 1 of paragraph (c)(4) of this section.)

(c) *Changes in status*—(1) *Change in status rule.* A cafeteria plan may permit an employee to revoke an election during a period of coverage with respect to a qualified benefits plan (defined in paragraph (i)(8) of this section) to which this paragraph (c) applies and make a new election for the remaining portion of the period (referred to in this section as an election change) if, under the facts and circumstances—

(i) A change in status described in paragraph (c)(2) of this section occurs; and

(ii) The election change satisfies the consistency rule of paragraph (c)(3) of this section.

* * * * *

(2) * * *

(vi) *Adoption assistance.* For purposes of adoption assistance provided through a cafeteria plan, the commencement or termination of an adoption proceeding.

(3) *Consistency rule*—(i) *Application to accident or health coverage and group-term life insurance.* * * * A change in status that affects eligibility under an employer's plan includes a change in status that results in an increase or decrease in the number of an employee's family members or dependents who may benefit from coverage under the plan.

* * * * *

(iii) *Application of consistency rule.* * * * With respect to group-term life insurance and disability coverage (as defined in paragraph (i)(4) of this section), an election under a cafeteria plan to increase coverage (or an election to decrease coverage) in response to a change in status described in paragraph (c)(2) of this section is deemed to correspond with that change in status as required by paragraph (c)(3)(i) of this section.

(4) * * *

Example 3. * * *

(iii) In addition, under paragraph (f)(4) of this section, if *F* makes an election change to cover *G* under *F*'s employer's plan, then *E* may make a corresponding change to elect employee-only coverage under *P*'s cafeteria plan.

Example 4. * * *

(ii) The transfer is a change in status under paragraph (c)(2)(iii) of this section (relating to a change in worksite), and, under the consistency rule in paragraph (c)(3) of this section, the cafeteria plan may permit *A* to make an election change to elect the indemnity option or HMO #2 or to cancel accident or health coverage.

(iii) The change in work location has no effect on *A*'s eligibility under R's health FSA, so no change in *A's* health FSA is authorized under this paragraph (c).

* * * * *

Example 9. (i) Employee *A* has one child, *B.* Employee *A*'s employer, *X,* maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Prior to the beginning of the calendar year, *A* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *B* reaches the age of 13, and *A* wants to cancel coverage under the dependent care FSA.

(ii) When *B* turns 13, *B* ceases to satisfy the definition of qualifying individual under section 21(b)(1) of the Internal Revenue Code. Accordingly, *B*'s attainment of age 13 is a change in status under paragraph (c)(2)(iv) of this section that affects *A*'s employment-related expenses as defined in section 21(b)(2). Therefore, *A* may make a corresponding change under *X*'s cafeteria plan to cancel coverage under the dependent care FSA.

Example 10. (i) Employer *Y* maintains a calendar year cafeteria plan under which full-time employees may elect coverage under either an indemnity option or an HMO. Employee *C* elects the employee-only indemnity option. During the year, *C* marries *D. D* has two children from a previous marriage, and has family group health coverage in a cafeteria plan sponsored by *D*'s employer, *Z. C* wishes to change from employee-only indemnity coverage to HMO coverage for the family. *D* wishes to cease coverage in *Z*'s group health plan and certifies to *Z* that *D* will have family coverage under *C*'s plan (and *Z* has no reason to believe the certification is incorrect).

(ii) The marriage is a change in status under paragraph (c)(2)(i) of this section. Under the consistency rule in paragraph (c)(3) of this section, *Y*'s cafeteria plan may permit *C* to change his or her salary reduction contributions to reflect the change from employee-only indemnity to HMO family coverage, and *Z* may permit *D* to revoke coverage under *Z*'s cafeteria plan.

(d) * * * (1) * * *

(ii) Permits the employee to make an election change to cancel coverage for the child if:

(A) The order requires the spouse, former spouse, or other individual to provide coverage for the child; and

(B) That coverage is, in fact, provided.

* * * * *

(f) *Significant cost or coverage changes*—(1) *In general.* Paragraphs (f)(2) through (5) of this section set forth rules for election changes as a result of changes in cost or coverage. This paragraph (f) does not apply to an

election change with respect to a health FSA (or on account of a change in cost or coverage under a health FSA).

(2) *Cost changes*—(i) *Automatic changes.* If the cost of a qualified benefits plan increases (or decreases) during a period of coverage and, under the terms of the plan, employees are required to make a corresponding change in their payments, the cafeteria plan may, on a reasonable and consistent basis, automatically make a prospective increase (or decrease) in affected employees' elective contributions for the plan.

(ii) *Significant cost changes.* If the cost charged to an employee for a benefit package option (as defined in paragraph (i)(2) of this section) significantly increases or significantly decreases during a period of coverage, the cafeteria plan may permit the employee to make a corresponding change in election under the cafeteria plan. Changes that may be made include commencing participation in the cafeteria plan for the option with a decrease in cost, or, in the case of an increase in cost, revoking an election for that coverage and, in lieu thereof, either receiving on a prospective basis coverage under another benefit package option providing similar coverage or dropping coverage if no other benefit package option providing similar coverage is available. For example, if the cost of an indemnity option under an accident or health plan significantly increases during a period of coverage, employees who are covered by the indemnity option may make a corresponding prospective increase in their payments or may instead elect to revoke their election for the indemnity option and, in lieu thereof, elect coverage under another benefit package option including an HMO option (or drop coverage under the accident or health plan if no other benefit package option is offered).

(iii) *Application of cost changes.* For purposes of paragraphs (f)(2)(i) and (ii) of this section, a cost increase or decrease refers to an increase or decrease in the amount of the elective contributions under the cafeteria plan, whether that increase or decrease results from an action taken by the employee (such as switching between full-time and part-time status) or from an action taken by an employer (such as reducing the amount of employer contributions for a class of employees).

(iv) *Application to dependent care.* This paragraph (f)(2) applies in the case of a dependent care assistance plan only if the cost change is imposed by a dependent care provider who is not a relative of the employee. For this purpose, a relative is an individual who is related as described in section 152(a)(1) through (8), incorporating the rules of section 152(b)(1) and (2).

(3) *Coverage changes*—(i) *Significant curtailment without loss of coverage.* If an employee (or an employee's spouse or dependent) has a significant curtailment of coverage under a plan during a period of coverage that is not a loss of coverage as described in paragraph (f)(3)(ii) of this section (for example, there is a significant increase in the deductible, the copay, or the out-of-pocket cost sharing limit under an accident or health plan), the cafeteria plan may permit any employee who had been participating in the plan and receiving that coverage to revoke his or her election for that coverage and, in lieu thereof, to elect to receive on a prospective basis coverage under another benefit package option providing similar coverage. Coverage under a plan is significantly curtailed only if there is an overall reduction in coverage provided under the plan so as to constitute reduced coverage generally. Thus, in most cases, the loss of one particular physician in a network does not constitute a significant curtailment.

(ii) *Significant curtailment with loss of coverage.* If an employee (or the employee's spouse or dependent) has a significant curtailment that is a loss of coverage, the plan may permit that employee to revoke his or her election under the cafeteria plan and, in lieu thereof, to elect either to receive on a prospective basis coverage under another benefit package option providing similar coverage or to drop coverage if no similar benefit package option is available. For purposes of this paragraph (f)(3)(ii), a loss of coverage means a complete loss of coverage under the benefit package option or other coverage option (including the elimination of a benefits package option, an HMO ceasing to be available in the area where the individual resides, or the individual losing all coverage under the option by reason of an overall lifetime or annual limitation). In addition, the cafeteria plan may, in its discretion, treat the following as a loss of coverage—

(A) A substantial decrease in the medical care providers available under the option (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decrease in the physicians participating in a preferred provider network or an HMO);

(B) A reduction in the benefits for a specific type of medical condition or treatment with respect to which the employee or the employee's spouse or dependent is currently in a course of treatment; or

(C) Any other similar fundamental loss of coverage.

(iii) *Addition or improvement of a benefit package option.* If a plan adds a new benefit package option or other coverage option, or if coverage under an existing benefit package option or other coverage option is significantly improved during a period of coverage, the cafeteria plan may permit eligible employees (whether or not they have previously made an election under the cafeteria plan or have previously elected the benefit package option) to revoke their election under the cafeteria plan and, in lieu thereof, to make an election on a prospective basis for coverage under the new or improved benefit package option.

(4) *Change in coverage under another employer plan.* A cafeteria plan may permit an employee to make a prospective election change that is on account of and corresponds with a change made under another employer plan (including a plan of the same employer or of another employer) if—

(i) The other cafeteria plan or qualified benefits plan permits participants to make an election change that would be permitted under paragraphs (b) through (g) of this section (disregarding this paragraph (f)(4)); or

(ii) The cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the other cafeteria plan or qualified benefits plan.

(5) *Loss of coverage under other group health coverage.* A cafeteria plan may permit an employee to make an election on a prospective basis to add coverage under a cafeteria plan for the employee, spouse, or dependent if the employee, spouse, or dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, including the following—

(i) A State's children's health insurance program (SCHIP) under Title XXI of the Social Security Act;

(ii) A medical care program of an Indian Tribal government (as defined in section 7701(a)(40)), the Indian Health Service, or a tribal organization

(iii) A State health benefits risk pool; or

(iv) A Foreign government group health plan.

(6) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. (i) A calendar year cafeteria plan is maintained pursuant to a collective

bargaining agreement for the benefit of Employer *M*'s employees. The cafeteria plan offers various benefits, including indemnity health insurance and a health FSA. As a result of mid-year negotiations, premiums for the indemnity health insurance are reduced in the middle of the year, insurance co-payments for office visits are reduced under the indemnity plan by an amount which constitutes a significant benefit improvement, and an HMO option is added.

(ii) Under these facts, the reduction in health insurance premiums is a reduction in cost. Accordingly, under paragraph (f)(2)(i) of this section, the cafeteria plan may automatically decrease the amount of salary reduction contributions of affected participants by an amount that corresponds to the premium change. However, the plan may not permit employees to change their health FSA elections to reflect the mid-year change in copayments under the indemnity plan.

(iii) Also, the decrease in co-payments is a significant benefit improvement and the addition of the HMO option is an addition of a benefit package option. Accordingly, under paragraph (f)(3)(ii) of this section, the cafeteria plan may permit eligible employees to make an election change to elect the indemnity plan or the new HMO option. However, the plan may not permit employees to change their health FSA elections to reflect differences in co-payments under the HMO option.

Example 2. (i) Employer *N* sponsors an accident or health plan under which employees may elect either employee-only coverage or family health coverage. The 12-month period of coverage under *N*'s cafeteria plan begins January 1, 2001. *N*'s employee, *A,* is married to *B.* Employee *A* elects employee-only coverage under *N*'s plan. *B*'s employer, *O*, offers health coverage to *O*'s employees under its accident or health plan under which employees may elect either employee-only coverage or family coverage. *O*'s plan has a 12-month period of coverage beginning September 1, 2001. *B* maintains individual coverage under *O*'s plan at the time *A* elects coverage under *N*'s plan, and wants to elect no coverage for the plan year beginning on September 1, 2001, which is the next period of coverage under *O*'s accident or health plan. *A* certifies to *N* that *B* will elect no coverage under *O*'s accident or health plan for the plan year beginning on September 1, 2001 and *N* has no reason to believe that *A*'s certification is incorrect.

(ii) Under paragraph (f)(4)(ii) of this section, *N*'s cafeteria plan may permit *A* to change *A*'s election prospectively to family coverage under that plan effective September 1, 2001.

Example 3. (i) Employer *P* sponsors a calendar year cafeteria plan under which employees may elect either employee-only or family health coverage. Before the beginning of the year, *P*'s employee, *C,* elects family coverage under *P*'s cafeteria plan. *C* also elects coverage under the health FSA for up to $200 of reimbursements for the year to be funded by salary reduction contributions of $200 during the year. *C* is married to *D,* who is employed by Employer *Q. Q* does not maintain a cafeteria plan, but does maintain an accident or health plan providing its employees with employee-only coverage. During the calendar year, *Q* adds family coverage as an option under its health plan. *D* elects family coverage under *Q*'s plan, and *C* wants to revoke *C*'s election for health coverage and elect no health coverage under *P*'s cafeteria plan for the remainder of the year.

(ii) *Q*'s addition of family coverage as an option under its health plan constitutes a new coverage option described in paragraph (f)(3)(ii) of this section. Accordingly, pursuant to paragraph (f)(4)(i) of this section, *P*'s cafeteria plan may permit *C* to revoke *C*'s health coverage election if *D* actually elects family health coverage under *Q*'s accident or health plan. Employer *P*'s plan may not permit *C* to change *C*'s health FSA election.

Example 4. (i) Employer *R* maintains a cafeteria plan under which employees may elect accident or health coverage under either an indemnity plan or an HMO. Before the beginning of the year, *R*'s employee, *E* elects coverage under the HMO at a premium cost of $100 per month. During the year, *E* decides to switch to the indemnity plan, which charges a premium of $140 per month.

(ii) *E*'s change from the HMO to indemnity plan is not a change in cost or coverage under this paragraph (f), and none of the other election change rules under paragraphs (b) through (e) of this section apply.

(iii) Although *R*'s health plan may permit *E* to make the change from the HMO to the indemnity plan, *R*'s cafeteria plan may not permit *E* to make an election change to reflect the increased premium. Accordingly, if *E* switches from the HMO to the indemnity plan, *E* may pay the $40 per month additional cost on an after-tax basis.

Example 5. (i) Employee *A* is married to Employee *B* and they have one child, *C.* Employee *A*'s employer, *M,* maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *C* attends *X*'s on site child care center at an annual cost of $3,000. Prior to the beginning of the year, *A* elects salary reduction contributions of $3,000 during the year to fund coverage under the dependent care FSA for up to $3,000 of reimbursements for the year. Employee *A* now wants to revoke *A*'s election of coverage under the dependent care FSA, because *A* has found a new child care provider.

(ii) The availability of dependent care services from the new child care provider (whether the new provider is a household employee or family member of *A* or *B* or a person who is independent of *A* and *B*) is a significant change in coverage similar to a benefit package option becoming available. Because the FSA is a dependent care FSA rather than a health FSA, the coverage rules of this section apply and *M*'s cafeteria plan may permit *A* to elect to revoke *A*'s previous election of coverage under the dependent care FSA, and make a corresponding new election to reflect the cost of the new child care provider.

Example 6. (i) Employee *D* is married to Employee *E* and they have one child, *F.* Employee *D*'s employer, *N*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *F* is cared for by *Y*, *D*'s household employee, who provides child care services five days a week from 9 a.m. to 6 p.m. at an annual cost in excess of $5,000. Prior to the beginning of the year, *D* elects salary reduction contributions of $5,000 during the year to fund coverage under the dependent care FSA for up to $5,000 of reimbursements for the year. During the year, *F* begins school and, as a result, *Y*'s regular hours of work are changed to five days a week from 3 p.m. to 6 p.m. Employee *D* now wants to revoke *D*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual cost of $4,000 to reflect a reduced cost of child care due to *Y*'s reduced hours.

(ii) The change in the number of hours of work performed by *Y* is a change in coverage. Thus, *N*'s cafeteria plan may permit *D* to reduce *D*'s previous election under the dependent care FSA to $4,000.

Example 7. (i) Employee *G* is married to Employee *H* and they have one child, *J.* Employee *G*'s employer, *O*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *J* is cared for by *Z, G*'s household employee, who is not a relative of *G* and who provides child care services at an annual cost of $4,000. Prior to the beginning of the year, *G* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *G* raises *Z*'s salary. Employee *G* now wants to revoke *G*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual amount of $4,500 to reflect the raise.

(ii) The raise in *Z*'s salary is a significant increase in cost under paragraph (f)(2)(ii) of this section, and an increase in election to reflect the raise corresponds with that change in status. Thus, *O*'s cafeteria plan may permit *G* to elect to increase *G*'s election under the dependent care FSA.

Example 8. (i) Employer *P* maintains a calendar year cafeteria plan that allows employees to elect employee-only, employee plus one dependent, or family coverage under an indemnity plan. During the middle of the year, Employer *P* gives its employees the option to select employee-only or family coverage from an HMO plan. *P*'s employee, *J*, who had elected employee plus one dependent coverage under the indemnity plan, decides to switch to family coverage under the HMO plan.

(ii) Employer *P*'s midyear addition of the HMO option is an addition of a benefit package option. Under paragraph (f) of this section, Employee *J* may change his or her salary reduction contributions to reflect the change from indemnity to HMO coverage, and also to reflect the change from employee plus one dependent to family coverage (however, an election of employee-only coverage under the new option would not correspond with the addition of a new option). Employer *P* may not permit *J* to change *J*'s health FSA election.

(g) *Special requirements relating to the Family and Medical Leave Act.* An employee taking leave under the Family and Medical Leave Act (FMLA) (Public Law 103–3 (107 Stat. 6)) may revoke an existing election of accident or health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA.

* * * * *

(i) * * *

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a dependent of both parents, and, for purposes of dependent care assistance provided through a cafeteria plan, a dependent means a qualifying individual (as defined in section 21(b)(1)) with respect to the employee.

(4) *Disability coverage.* Disability coverage means coverage under an accident or health plan that provides benefits due to personal injury or sickness, but does not reimburse expenses incurred for medical care (as defined in section 213(d)) of the employee or the employee's spouse and dependents. For purposes of this section, disability coverage includes payments described in section 105(c).

* * * * *

(8) *Qualified benefits plan.* * * * A plan does not fail to be a qualified benefits plan merely because it includes an FSA, assuming that the FSA meets the requirements of section 125 and the regulations thereunder.

(9) *Similar coverage.* Coverage for the same category of benefits for the same individuals (*e.g.,* family to family or single to single). For example, two plans that provide coverage for major medical are considered to be similar coverage. For purposes of this definition, a health FSA is not similar coverage with respect to an accident or health plan that is not a health FSA. A plan may treat coverage by another employer, such as a spouse's or dependent's employer, as similar coverage.

(j) *Effective date*—(1) *General rule.* Except as provided in paragraph (j)(2) of this section, this section is applicable for cafeteria plan years beginning on or after January 1, 2001.

(2) *Delayed effective date for certain provisions.* The following provisions are applicable for cafeteria plan years beginning on or after January 1, 2002: paragraph (c) of this section to the extent applicable to qualified benefits other than an accident or health plan or a group-term life insurance plan; paragraph (d)(1)(ii)(B) of this section (relating to a spouse, former spouse, or other individual obtaining accident or health coverage for an employee's child in response to a judgment, decree, or order); paragraph (f) of this section (rules for election changes as a result of cost or coverage changes); and paragraph (i)(9) of this section (defining similar coverage).

§ 1.125–4T [Removed]

Par. 3. Section 1.125–4T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 15, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 01–258 Filed 1–9–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 8928]

RIN 1545–AW94

Continuation Coverage Requirements Applicable to Group Health Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on certain issues that arise in connection with the COBRA continuation coverage requirements applicable to group health plans. The regulations in this document supplement final COBRA regulations published on February 3, 1999, in the **Federal Register**. The regulations will generally affect sponsors and administrators of, and participants in, group health plans, and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

DATES: *Effective date:* These regulations are effective January 10, 2001.

Applicability dates: For dates of applicability, see the discussion under the heading **EFFECTIVE DATE** in this preamble.

FOR FURTHER INFORMATION CONTACT: Yurlinda Mathis at 202–622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) imposes continuation coverage requirements on group health plans in certain situations. This document contains amendments to the COBRA health care continuation coverage regulations in 26 CFR part 54. Proposed regulations interpreting COBRA were published in the **Federal Register** on June 15, 1987 (52 FR 22716). On February 3, 1999, final COBRA regulations were published in the **Federal Register** (64 FR 5160) (the 1999 final regulations), and a notice of proposed rulemaking (REG–121865–98) was published the same day (64 FR 5237) for certain issues not addressed in the final regulations (the 1999 proposed regulations). A public hearing was held on June 8, 1999. In addition, written comments responding to the notice of proposed rulemaking and to the final regulations were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation and Summary of Comments

Small Employer Plan Exception

Group health plans maintained by an employer that had fewer than 20 employees on a typical business day in the previous calendar year are not subject to COBRA. The 1999 proposed regulations relating to plans maintained by an employer with fewer than 20 employees in the previous calendar year are adopted as final regulations without change. Unlike the 1987 proposed regulations, the 1999 proposed regulations use a full-time equivalency method in counting part-time employees for purposes of determining if an employer had fewer than 20 employees. Several commenters expressed disapproval of this approach or inquired why it was being considered.

The 1987 proposed regulations contained rules about how to count part-time employees. An example can be used to illustrate how the 1987 rules were proposed to apply. In a calendar year two employers each employ 15 full-time employees and 12 part-time employees. Each part-time employee works 15 hours per week. Each employer has six typical business days each week. One employer schedules all 12 of the part-time employees to work two-and-a-half hours each typical business day per week. The other employer staggers the schedule of the part-time employees so that they each work seven-and-a-half hours on two typical business days per week, so that four part-time employees work on each typical business day. Under the 1987

proposed regulations, the part-time employees of the first employer counted as 12 employees whereas the part-time employees of the second employer counted only as four employees. In the following calendar year, a group health plan maintained by the first employer would have been subject to COBRA (because the first employer employed 27 employees on a typical business day in the preceding calendar year) but a group health plan maintained by the second employer would not have been subject to COBRA (because the second employer employed only 19 employees on a typical business day in the preceding calendar year).

The exception for employers with fewer than 20 employees reflects Congress' judgment that the costs and administrative burden associated with COBRA should not be imposed on small employers and that imposing such requirements on small employers may discourage them from providing group health coverage to their employees. There is no reason to distinguish, as the approach in the 1987 proposed regulations would have done, between two employers with identical numbers of full- and part-time employees based on the particular days that the part-time employees work.

In contrast to the result under the 1987 proposed regulations, the 1999 proposed regulations and these final regulations provide for the uniform treatment of employers employing the same number of part-time employees for equivalent periods, regardless of how the hours are scheduled. The full-time equivalency approach therefore avoids creating an incentive for employers to schedule the work of their part-time employees in a manner that is inconsistent with the convenience of the employees or the needs of the business.

One commenter asked if it is permissible to count part-time employees on an aggregate basis rather than an individual basis. On an individual basis, the number of part-time employees is computed by dividing the hours worked by each part-time employee by the hours required to be considered working full-time and then by adding all the quotients together. On an aggregate basis, the number of part-time employees is computed by adding all the hours worked by part-time employees and dividing that sum by the number of hours required for one worker to be considered working full-time. Because the two methods produce identical results, both methods are permissible.

Determination of Number of Plans

The 1999 proposed regulations relating to the determination of the number of plans that an employer or employee organization maintains are modified and reorganized. Under the 1999 proposed regulations, the number of plans is determined by the instruments governing the employer's or employee organization's arrangement or arrangements to provide health care benefits (the instruments rule). Another rule (the default rule) in the 1999 proposed regulations provides that if there are no instruments or if the instruments are unclear about whether there is one plan or more than one plan, all health care benefits (except benefits for long-term care) provided by a corporation, partnership, or other entity or trade or business, or by an employee organization, constitute one group health plan.

Under these final regulations, these rules are reorganized so that the default rule, under which all health care benefits provided by one entity or trade or business are treated as one plan, is presented first. The default rule applies unless it is clear from the instruments governing an arrangement or arrangements to provide health care benefits that the benefits are being provided under separate plans and the arrangement or arrangements are operated pursuant to such instruments as separate plans. In effect, this rule revises the instruments rule in the 1999 proposed regulations by adding the requirement that the arrangement or arrangements must be operated pursuant to the instruments as separate plans to avoid the application of the default rule. These organizational and substantive changes from the 1999 proposed regulations were developed at the suggestion of and with substantial assistance from the U.S. Department of Labor, Pension and Welfare Benefits Administration.

Health Flexible Spending Arrangements

The 1999 proposed regulations relating to health flexible spending arrangements (health FSAs) are adopted with one minor change and one addition. The minor change is the cross-reference in which a health FSA is defined. The 1999 proposed regulations cite the definition in proposed regulations under section 125. These final regulations cite the definition in section 106(c)(2) of the Internal Revenue Code. (Regulations published recently under section 125 also use the section 106(c)(2) definition. See 65 FR 15548, 15553 (March 23, 2000).)

The one addition is a clarification that, to the extent a health FSA is obligated to make COBRA continuation coverage available to a qualified beneficiary, all the general COBRA continuation coverage rules apply in the same way that they apply to coverage under other group health plans, including the rule for how plan limits on coverage apply to someone on COBRA continuation coverage. This addition was made in response to the request of one commenter and numerous inquiries about how the annual election of a certain dollar amount by an employee under a health FSA applies once there is a qualifying event.

Several commenters were pleased with the limited exception from the COBRA rules for health FSAs under the 1999 proposed regulations and asked that the final regulations go even further. They requested that when participants under a health FSA experience a qualifying event (and the benefits under the health FSA are excepted benefits under sections 9831 and 9832), the final regulations should allow the health FSA to compute the contributions made during that plan year on the participant's behalf, reduce that amount by reimbursements already made during the plan year, and—instead of requiring the health FSA to offer COBRA continuation coverage in those cases in which there is a positive balance—allow the participant to spend whatever balance remains during the remainder of the plan year without requiring or allowing additional contributions. However, such an approach is inconsistent with the requirements under sections 125 and 4980B and thus has not been adopted.

One commenter requested that the final regulations clarify that the applicable premium includes any employer subsidy. The statute makes clear that the applicable premium is computed based on the total cost of coverage, regardless of whether paid by the employer or employee. The regulations generally do not address how to calculate the applicable premium. However, the example for the health FSA exception makes clear that the maximum amount a plan is permitted to charge for COBRA coverage under a health FSA includes any employer subsidy.

One commenter requested that the final regulations clarify that a health FSA is obligated to make COBRA continuation coverage available only in connection with qualifying events that are a termination of employment or reduction of hours of employment. This suggestion is not adopted in the final

regulations because it is inconsistent with the statute. If health care expenses incurred for a spouse or dependent child of an active employee can be reimbursed under a health FSA, but, were it not for the COBRA continuation coverage rules, would not be reimbursed after the death of the employee, the divorce from the employee, or a dependent child's ceasing to be a dependent child under the generally applicable requirements under the health FSA, then the spouse or dependent child has experienced a qualifying event and is entitled to continue coverage under the health FSA to the same extent as they would following termination of the employee's employment.

Increase in Premium Loss of Coverage

The 1999 final regulations provide, in describing what constitutes a loss of coverage for determining whether a qualifying event has occurred, that any increase in premium or contribution that must be paid for coverage as a result of one of the events that can be a qualifying event is a loss of coverage. Several commenters questioned why this rule was adopted and pointed out that it creates administrative burdens in two situations without apparently providing any advantage to the people whose premium is being increased. The two situations concern retiring employees and full-time employees reducing their work hours to become part-time employees. In both situations, often employers will grant the employees access to the same coverage but will require them to pay a premium that is higher than what active employees pay though still significantly less than the 102 percent rate permitted under COBRA. The commenters wondered why it is necessary to provide these individuals with a COBRA notice if it is always advantageous for the individual to take the other coverage. They suggested that a loss of coverage should not be considered to have occurred if employees (or other qualified beneficiaries) can get access to the same coverage for less than the applicable premium under COBRA.

The IRS and Treasury were mindful of these situations before they adopted the rule in the 1999 final regulations. However, if a mere increase in premium were not considered a loss in coverage, the person whose premium is being increased would not be entitled by law to a 60-day election period nor to a 45-day period after the election for making the first premium payment. Although in many cases a qualified beneficiary might prefer a lower premium over these procedural protections under COBRA, in some cases these procedural protections might be more valuable. The likelihood of the COBRA procedural protections being more valuable than the lower premium becomes substantial as the amount required to be paid for part-time or retiree coverage approaches the amount of the applicable premium. Accordingly, the final regulations retain the rule in the 1999 final regulations so as not to deprive qualified beneficiaries of potentially valuable rights.

Termination of Coverage in Anticipation of a Qualifying Event

The 1999 final regulations provide that if coverage is reduced or eliminated in anticipation of an event, the elimination or reduction is disregarded in determining whether the event causes a loss of coverage. The regulations provide examples of an employer eliminating an employee's coverage in anticipation of a termination of employment and of an employee eliminating a spouse's coverage in anticipation of a divorce.

One commenter requested a clarification that a reduction or elimination more than six months before an event could not be considered to be in anticipation of the event. However, in many cases where coverage is eliminated by an employee in anticipation of a divorce, the divorce will follow the elimination by more than six months. Whether a reduction or elimination of coverage is in anticipation of a qualifying event is a question to be resolved based on all the relevant facts and circumstances. Thus, these final regulations do not amend the rule in the 1999 final regulations to limit the window during which an anticipatory reduction or elimination can be considered to have occurred.

The commenter also requested a clarification that the coverage the qualified beneficiary is entitled to in such a situation is the coverage the qualified beneficiary had before coverage was reduced or eliminated. The general rule in the 1999 final regulations for determining what is COBRA continuation coverage applies in this situation. Under the rule in the 1999 final regulations, the qualified beneficiary will generally be entitled to the coverage that the qualified beneficiary had before the qualifying event. However, if between the date of the elimination or reduction in coverage and the date of the qualifying event coverage is modified for similarly situated nonCOBRA beneficiaries, then the modified coverage must be made available to the qualified beneficiary.

Moving Outside Region of Region-Specific Coverage

The 1999 final regulations require employers and employee organizations to make alternative coverage available to qualified beneficiaries moving outside the service area of a region-specific benefit package. One commenter asked for a clarification that the alternative coverage must be made available immediately and cannot be deferred until the beginning of the plan's next open enrollment period. These final regulations clarify that the alternative coverage must be made available not later than the date of the qualified beneficiary's relocation, or, if later, the first day of the month following the month in which the qualified beneficiary requests the alternative coverage.

Another commenter expressed concern that a plan might have to incur extraordinary costs (such as negotiating for a separate network of providers in an indemnity plan with a preferred provider organization, or establishing a separate schedule of usual, customary, and reasonable costs) to provide coverage in areas to which a qualified beneficiary might relocate but in which there were no active employees of the employer or employee organization. The rule in the 1999 final regulations does not require employers or employee organizations to incur extraordinary costs to extend coverage to qualified beneficiaries in areas in which the employer or employee organization does not have active employees. In the case of an indemnity plan with a preferred provider organization, the plan need only provide benefits at the standard rate (that is, not at the rate for preferred providers) to a qualified beneficiary who moves outside the service area of the preferred provider network. Similarly, a plan is not required to establish a separate schedule of usual, customary, and reasonable costs solely for qualified beneficiaries who reside in a region where no active employees work or reside (regardless of whether this is to the qualified beneficiary's benefit or detriment based on prevailing costs in the region where the qualified beneficiary resides). Accordingly, these final regulations do not modify the rule in the 1999 final regulations based on this commenter's concern.

When COBRA Continuation Coverage Must Become Effective

The 1999 final regulations provide that, in the case of an indemnity or reimbursement arrangement, claims incurred during the election period do not have to be paid before the election

(and, if applicable, payment for the coverage) is made. In the case of indemnity or reimbursement arrangements that allow retroactive reinstatement of coverage, the 1999 final regulations provide that coverage for qualified beneficiaries can be terminated and then reinstated when the election is made. One commenter asked if these two rules mean that coverage must be reinstated at the time of the election even if payment is not made but that no claims need be paid under that coverage until payment for the coverage is made. The commenter pointed out that this would a pose a problem for employers and employee organizations maintaining insured plans in that they would have to pay the insurer premiums for the coverage even if payment for the coverage was never made (whereas the insurer would never have to pay any claim under the coverage). These final regulations clarify this rule by explicitly providing that in the case of indemnity plans and reimbursement arrangements that allow retroactive reinstatement of coverage, coverage can be terminated and later reinstated when the election (and, if applicable, payment for the coverage) is made. Thus, under these final regulations, the rules for when coverage must be reinstated and when claims must be paid are the same.

Maximum Coverage Period

The 1999 proposed regulations relating to the maximum coverage period are adopted as final regulations with a minor change to a cross-reference.

Insignificant Underpayments

The 1999 final regulations prescribe how plans are to treat payments for COBRA continuation coverage that are short by an amount that is not significant. They require the plan to treat the payment as full payment unless the plan notifies the qualified beneficiary of the amount of the deficiency and grants a reasonable period for payment of the deficiency. The regulations provide as a safe harbor that a period of 30 days after the notice is provided is a reasonable period for this purpose.

Many commenters requested that the regulations specify what is considered a significant amount. These final regulations provide that a shortfall is not significant if it is no greater than the lesser of $50 (or another amount specified by the Commissioner in guidance of general applicability) or 10 percent of the required amount.

Several commenters also requested that the regulations specify a period shorter than 30 days for payment of the deficiency to be considered timely, but these final regulations do not adopt this suggestion. The regulations require only that a plan grant a reasonable period for payment of the deficiency. In some circumstances, a period shorter than 30 days may be reasonable. However, in other circumstances, a shorter period might not be reasonable. The IRS and Treasury believe it is useful to provide the certainty of a safe harbor, but they do not believe that a period shorter than 30 days is sufficiently long in all cases.

Business Reorganizations

The 1999 proposed regulations relating to business reorganizations are adopted as final regulations with two clarifications. The proposed regulations provide that, in an asset sale (which is defined as the sale of substantial assets such as a plant or division or substantially all the assets of a trade or business), a purchaser of assets is considered a successor employer if the seller ceases to provide any group health plan to any employee in connection with the sale and if the buyer continues the business operations associated with those assets without substantial change or interruption. Several inquiries raised the question whether this rule applies if the assets are purchased as part of a bankruptcy proceeding. The final regulations clarify this rule for assets purchased in bankruptcy by providing that a buying group does not fail to be a successor employer in connection with an asset sale merely because the sale takes place in connection with a bankruptcy proceeding. Thus, the general rule for determining whether a buyer is a successor employer applies in bankruptcy the same way that it does outside of bankruptcy.

These final regulations also clarify that asset sale includes not only sales but other transfers as well.

Comments were received about other aspects of the proposed rules for business reorganizations. Several commenters requested additional guidance on the amount of assets that would constitute ''substantial assets'' for purposes of the asset sale rules. The final regulations retain the definition in the proposed regulations. This definition is intended to be flexible enough to apply reasonably to the myriad situations in which this issue arises. The asset sale rules, including the definition of asset sale, are similar to the various formulations of successor employer rules that have been fashioned by the courts for various labor law purposes, adapted to the peculiar circumstances that the COBRA continuation coverage requirements create. In those cases, as in the final rule, a case-by-case approach is favored. See, for example, *Golden State Bottling Co.* v. *NLRB,* 414 U.S. 168 (1973); *Howard Johnson Co.* v. *Detroit Local Joint Executive Board, Hotel & Restaurant Employees & Bartenders International Union,* 417 U.S. 249 (1974); *John Wiley & Sons, Inc.* v. *Livingston,* 376 U.S. 543 (1964); *NLRB* v. *Burns International Security Services, Inc.,* 406 U.S. 272 (1972); *Fall River Dyeing & Finishing Corp.* v. *NLRB,* 482 U.S. 27 (1987); *EEOC* v. *MacMillan Bloedel Containers, Inc.,* 503 F.2d 1086 (6th Cir. 1974); *In re National Airlines, Inc.,* 700 F.2d 695 (11th Cir. 1983); *Upholsterers' International Union Pension Fund* v. *Artistic Furniture of Pontiac,* 920 F.2d 1323 (7th Cir. 1990); *Central States, Southeast & Southwest Areas Pension Fund* v. *PYA/Monarch of Texas, Inc.,* 851 F.2d 780 (5th Cir. 1988).

One commenter requested clarification that the cessation of a plan shortly before an asset sale is in connection with the sale (and thus that the buying group would be responsible for making COBRA continuation coverage available to M&A qualified beneficiaries in connection with the sale if the buying group is a successor employer). The regulations have not been modified for this request. In many circumstances, cessation of a plan shortly before an asset sale would be considered to be in connection with the sale. However, there may be cases in which the plan was being terminated for an unrelated reason. The application of this rule in any particular case depends on all the relevant facts and circumstances.

The preamble to the 1999 proposed regulations included a description of a potential rule that the IRS and Treasury were considering adopting and solicited comments on that potential rule. The rule would have provided that no loss of coverage occurs, and thus no qualifying event occurs, if a purchaser of assets maintains substantially the same plan for continuing employees for what would otherwise be the maximum coverage period (generally 18 months). The IRS and Treasury also acknowledged in the 1999 preamble concerns about protecting the rights of qualified beneficiaries in this situation. After consideration of the comments, the IRS and Treasury have determined not to adopt such a special rule. Thus, under these final regulations, in an asset sale, employees who terminate employment with the seller and who no longer get health coverage from the seller experience a qualifying event with respect to the seller's plan even though

they are employed by the buyer at the same jobs they had with the seller and have the same health coverage through the buyer.

Like the 1999 proposed regulations, these final regulations do not address how the obligation to make COBRA continuation coverage available is affected by the transfer of an ownership interest in a noncorporate entity. However, it is intended that, in general, the principles reflected in the rules in the final regulations for transfers of ownership interests in corporate entities should apply in a similar fashion in analogous cases involving the transfer of ownership interests in noncorporate entities.

Employer Withdrawals From Multiemployer Plans

The 1999 proposed regulations relating to employer withdrawals from a multiemployer plan are adopted with two changes and two additional examples to illustrate the rules as changed. The general approach of the 1999 proposed regulations is retained. However, the proposed rule renders an employer who stops contributing to a multiemployer plan responsible for making COBRA continuation coverage available to qualified beneficiaries associated with that employer only if the employer establishes a new plan to cover active employees formerly covered under the multiemployer plan. Several commenters suggested that the employer should also be responsible for COBRA if the coverage provided to employees formerly covered under the multiemployer plan comes from an existing plan of the employer (rather than from a new plan). The final rules have been revised to apply the general approach to existing plans as well as to new plans.

The 1999 proposed regulations also place a threshold condition on the obligation of an employer or subsequent multiemployer plan to make COBRA coverage available to existing qualified beneficiaries associated with the withdrawing employer. That threshold is that the employer or subsequent multiemployer plan must cover a significant number of the employer's employees formerly covered under the multiemployer plan. Several commenters requested further guidance on what a significant number was in this context. Some of them also wanted to know what purpose this threshold condition serves. The intent in imposing this threshold condition in the proposed regulations was to leave responsibility for COBRA compliance with the existing multiemployer plan in a case where, for example, only one or two of the employees formerly covered under the multiemployer plan were transferred into management and became covered under a plan of the employer for which union employees were not eligible. The final rule has been revised to more clearly accomplish this intent. This threshold condition has been revised so that the employer plan or subsequent multiemployer plan has responsibility for COBRA compliance once coverage under the plan is available to a class of employees formerly covered under the multiemployer plan. New examples illustrate the application of this standard.

Several commenters expressed concern that the proposed regulations would require multiemployer plans to begin investigating why an employer stops contributing to the multiemployer plan and to determine whether the withdrawing employer subsequently covered union (or former union) employees under a single employer plan. Concern was also expressed that the proposed regulations would require the multiemployer plan to keep employer-by-employer data for qualified beneficiaries receiving COBRA continuation coverage. The IRS and Treasury recognized when they proposed these rules that in many industries it is impracticable for multiemployer plans to determine whether an employer that stops contributing to a multiemployer plan covers union employees under its own plan and that it is impracticable to maintain employer-specific data on employees and qualified beneficiaries. If a multiemployer plan finds it easier to make COBRA coverage available for the maximum coverage period, these final regulations do not require the plan to start gathering information that is difficult to assemble. Such a plan can comply with the COBRA continuation coverage requirements by making COBRA continuation coverage available to existing qualified beneficiaries in accordance with the general rules for the duration of COBRA continuation coverage (in § 54.4980B–7).

One commenter requested clarification of the proposed rules if an employer establishes a plan for employees formerly covered under the multiemployer plan but applies a waiting period before the employees are eligible for coverage under that plan. These final regulations clarify that the employer's obligation does not arise until the employer makes coverage available. Thus, the multiemployer plan would be responsible for COBRA coverage until the waiting period under the employer's plan had expired for a class of employees formerly covered under the multiemployer plan.

Several commenters submitted substantially similar comments requesting that the rules be revised so that a multiemployer plan no longer receiving contributions from a certain employer would not be required to make COBRA continuation coverage available to any qualified beneficiaries affiliated with that employer. Such an approach, however, would not resolve the problem of qualified beneficiaries not having access to COBRA coverage, and the statutory basis for such a position is questionable in situations in which none of the statutory reasons for ending a plan's obligation to make COBRA coverage available to a particular qualified beneficiary is present. The final regulations do not adopt this suggestion.

The IRS and Treasury received an inquiry about who has the obligation to make COBRA continuation coverage available to existing qualified beneficiaries in a situation that reverses the situation addressed in the proposed rules, one in which employees cease to be covered under a plan maintained by their employer and commence to be covered under a multiemployer plan. In such a situation, the existing qualified beneficiaries should get the same coverage that similarly situated nonCOBRA beneficiaries are receiving, that is, the coverage under the multiemployer plan. The 1999 final regulations suggest this result in describing what COBRA continuation coverage is. However, the language used in the 1999 final regulations can be read to suggest that this is the result only when coverage is under the same plan: ''If coverage *under the plan* is modified for similarly situated nonCOBRA beneficiaries, then the coverage made available to qualified beneficiaries is modified in the same way.'' (Q&A–1(a) of § 54.4980B–5; emphasis added.) These final regulations delete the phrase ''under the plan'' from the quoted language to make clear that if coverage for the similarly situated nonCOBRA beneficiaries is modified by switching from one plan to another, then coverage for the qualified beneficiaries is modified by switching to the other plan too. Although this amendment is being made due to an inquiry about a switch from a single-employer plan to a multiemployer plan, it applies in any situation in which coverage for nonCOBRA beneficiaries is terminated under one plan and commences under another, including those situations in which a single employer maintains both plans.

COBRA and FMLA

The 1999 proposed regulations relating to how COBRA applies in connection with leave taken under the Family and Medical Leave Act of 1993 (FMLA) are adopted as final regulations with one minor addition. One commenter observed that the 1999 proposed regulations suggest by way of cross reference in an example that the Labor regulations in 29 CFR part 825, not the COBRA regulations, determine when FMLA leave ends. This commenter requested that this suggestion in an example be made express in the text of the rules. The final regulations add in the text of the rules (preceding the examples) that the end of FMLA leave is not determined under these regulations but under the regulations in 29 CFR part 825.

Effective Date

This Treasury decision applies with respect to qualifying events occurring on or after January 1, 2002, except as provided in the following paragraphs.

Paragraphs (d), (e), and (f) in Q&A–5 of § 54.4980B–2 (relating to the counting of employees for purposes of the small employer plan exception) are applicable beginning January 1, 2002 for determinations made with reference to the number of employees in calendar year 2001 or later.

Q&A–4 of § 54.4980B–7 (describing the maximum coverage period) is applicable with respect to individuals who are qualified beneficiaries on or after January 1, 2002. (See Q&A–1(f) of § 54.4980B–3, under which an individual ceases to be a qualified beneficiary once the plan's obligation to provide COBRA continuation coverage to the individual has ended.)

Q&A–1 through Q&A–8 of § 54.4980B–9 (containing rules for business reorganizations) are applicable with respect to business reorganizations that take effect on or after January 1, 2002.

Q&A–9 and Q&A–10 of § 54.4980B–9 (containing rules for employer withdrawals from a multiemployer plan) are applicable with respect to cessations of contributions that occur on or after January 1, 2002. For this purpose, a cessation of contributions occurs on or after January 1, 2002 if the employer's last contribution to the plan is made on or after January 1, 2002.

Section 54.4980B–10 (relating to the interaction of COBRA and FMLA leave) is applicable with respect to FMLA leave that begins on or after January 1, 2002.

Special Analyses

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

Drafting Information

The principal author of these regulations is Russ Weinheimer, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended in part by adding entries in numerical order to read as follows:

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

Section 54.4980B–9 also issued under 26 U.S.C. 4980B.

Section 54.4980B–10 also issued under 26 U.S.C. 4980B.

* * * * *

Par. 2. Section 54.4980B–0 is amended by:

1. Revising the introductory text.
2. Adding entries for §§ 54.4980B–9 and 54.4980B–10 at the end of the ''List of Sections''.
3. Revising the entry for Q–2 of § 54.4980B–1 in the ''List of Questions''.
4. Revising the entries for Q–3 and Q–6 of § 54.4980B–2 in the ''List of Questions''.
5. Revising the entry for Q–4 of § 54.4980B–7 in the ''List of Questions''.
6. Adding entries for the section headings for §§ 54.4980B–9 and 54.4980B–10 in the ''List of Questions''.

The additions and revisions read as follows:

§ 54.4980B–0 Table of contents.

This section contains first a list of the section headings and then a list of the questions in each section in §§ 54.4980B–1 through 54.4980B–10.

List of Sections

* * * * *

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

§ 54.4980B–10 Interaction of FMLA and COBRA.

List of Questions

§ 54.4980B–1 COBRA in general.

* * * * *

Q–2: What standard applies for topics not addressed in §§ 54.4980B–1 through 54.4980B–10?

* * * * *

§ 54.4980B–2 Plans that must comply.

* * * * *

Q–3: What is a multiemployer plan?

* * * * *

Q–6: How is the number of group health plans that an employer or employee organization maintains determined?

* * * * *

§ 54.4980B–7 Duration of COBRA continuation coverage.

* * * * *

Q–4: When does the maximum coverage period end?

* * * * *

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

Q–1: For purposes of this section, what are a business reorganization, a stock sale, and an asset sale?

Q–2: In the case of a stock sale, what are the selling group, the acquired organization, and the buying group?

Q–3: In the case of an asset sale, what are the selling group and the buying group?

Q–4: Who is an M&A qualified beneficiary?

Q–5: In the case of a stock sale, is the sale a qualifying event with respect to a covered employee who is employed by the acquired organization before the sale and who continues to be employed by the acquired organization after the sale, or with respect to the spouse or dependent children of such a covered employee?

Q–6: In the case of an asset sale, is the sale a qualifying event with respect to

a covered employee whose employment immediately before the sale was associated with the purchased assets, or with respect to the spouse or dependent children of such a covered employee who are covered under a group health plan of the selling group immediately before the sale?

Q–7: In a business reorganization, are the buying group and the selling group permitted to allocate by contract the responsibility to make COBRA continuation coverage available to M&A qualified beneficiaries?

Q–8: Which group health plan has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries in a business reorganization?

Q–9: Can the cessation of contributions by an employer to a multiemployer group health plan be a qualifying event?

Q–10: If an employer stops contributing to a multiemployer group health plan, does the multiemployer plan have the obligation to make COBRA continuation coverage available to a qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer that has stopped contributing to the multiemployer plan?

§ 54.4980B–10 Interaction of FMLA and COBRA.

Q–1: In what circumstances does a qualifying event occur if an employee does not return from leave taken under FMLA?

Q–2: If a qualifying event described in Q&A–1 of this section occurs, when does it occur, and how is the maximum coverage period measured?

Q–3: If an employee fails to pay the employee portion of premiums for coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave?

Par. 3. Section 54.4980B–1 is amended by:

1. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the last sentence of paragraph (a) in A–1.
2. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the third sentence and the last sentence of paragraph (b) in A–1.
3. Removing the last sentence of paragraph (c) in A–1 and adding two sentences in its place.
4. Revising Q&A–2.

The addition and revision read as follows:

§ 54.4980B–1 COBRA in general.

* * * * *

A–1: * * *

(c) * * * Section 54.4980B–9 contains special rules for how COBRA applies in connection with business reorganizations and employer withdrawals from a multiemployer plan, and § 54.4980B–10 addresses how COBRA applies for individuals who take leave under the Family and Medical Leave Act of 1993. Unless the context indicates otherwise, any reference in §§ 54.4980B–1 through 54.4980B–10 to COBRA refers to section 4980B (as amended) and to the parallel provisions of ERISA.

Q–2: What standard applies for topics not addressed in §§ 54.4980B–1 through 54.4980B-10?

A–2: For purposes of section 4980B, for topics relating to the COBRA continuation coverage requirements of section 4980B that are not addressed in §§ 54.4980B–1 through 54.4980B–10 (such as methods for calculating the applicable premium), plans and employers must operate in good faith compliance with a reasonable interpretation of the statutory requirements in section 4980B.

Par. 4. Section 54.4980B–2 is amended by:

1. Revising paragraph (a) in A–1.
2. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the first sentence of paragraph (b) in A–1.
3. Revising A–2.
4. Adding Q&A–3.
5. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the last sentence of paragraph (a) in A–4.
6. Adding a sentence immediately before the last sentence of the introductory text of paragraph (a) in A–5.
7. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the last sentence of the introductory text of paragraph (c) in A–5.
8. Adding paragraphs (d), (e), and (f) in A–5.
9. Adding Q&A–6.
10. Revising A–8.
11. Revising paragraph (a) in A–10.

The additions and revisions read as follows:

§ 54.4980B–2 Plans that must comply.

* * * * *

A–1: (a) For purposes of section 4980B, a group health plan is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to their families. Individuals who have an employment-related connection to the employer or employee organization consist of employees, former employees, the employer, and others associated or formerly associated with the employer or employee organization in a business relationship (including members of a union who are not currently employees). Health care is provided under a plan whether provided directly or through insurance, reimbursement, or otherwise, and whether or not provided through an on-site facility (except as set forth in paragraph (d) of this Q&A–1), or through a cafeteria plan (as defined in section 125) or other flexible benefit arrangement. (See paragraphs (b) through (e) in Q&A–8 of this section for rules regarding the application of the COBRA continuation coverage requirements to certain health flexible spending arrangements.) For purposes of this Q&A–1, insurance includes not only group insurance policies but also one or more individual insurance policies in any arrangement that involves the provision of health care to two or more employees. A plan maintained by an employer or employee organization is any plan of, or contributed to (directly or indirectly) by, an employer or employee organization. Thus, a group health plan is maintained by an employer or employee organization even if the employer or employee organization does not contribute to it if coverage under the plan would not be available at the same cost to an individual but for the individual's employment-related connection to the employer or employee organization. These rules are further explained in paragraphs (b) through (d) of this Q&A–1. An exception for qualified long-term care services is set forth in paragraph (e) of this Q&A–1, and for medical savings accounts in paragraph (f) of this Q&A–1. See Q&A–6 of this section for rules to determine the number of group health plans that an employer or employee organization maintains.

* * * * *

A–2: (a) For purposes of section 4980B, employer refers to—

(1) A person for whom services are performed;

(2) Any other person that is a member of a group described in section 414(b), (c), (m), or (o) that includes a person described in paragraph (a)(1) of this Q&A–2; and

(3) Any successor of a person described in paragraph (a)(1) or (2) of this Q&A–2.

(b) An employer is a successor employer if it results from a consolidation, merger, or similar restructuring of the employer or if it is a mere continuation of the employer. See paragraph (c) in Q&A–8 of § 54.4980B–9 for rules describing the circumstances in which a purchaser of substantial assets is a successor employer to the employer selling the assets.

Q–3: What is a multiemployer plan?

A–3: For purposes of §§ 54.4980B–1 through 54.4980B–10, a multiemployer plan is a plan to which more than one employer is required to contribute, that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and that satisfies such other requirements as the Secretary of Labor may prescribe by regulation. Whenever reference is made in §§ 54.4980B–1 through 54.4980B–10 to a plan of or maintained by an employer or employee organization, the reference includes a multiemployer plan.

* * * * *

A–5: (a) * * * See Q&A–6 of this section for rules to determine the number of plans that an employer or employee organization maintains. * * *

* * * * *

(d) In determining the number of the employees of an employer, each full-time employee is counted as one employee and each part-time employee is counted as a fraction of an employee, determined in accordance with paragraph (e) of this Q&A–5.

(e) An employer may determine the number of its employees on a daily basis or a pay period basis. The basis used by the employer must be used with respect to all employees of the employer and must be used for the entire year for which the number of employees is being determined. If an employer determines the number of its employees on a daily basis, it must determine the actual number of full-time employees on each typical business day and the actual number of part-time employees and the hours worked by each of those part-time employees on each typical business day. Each full-time employee counts as one employee on each typical business day and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee and the denominator equal to the number of hours that must be worked on a typical business day in order to be considered a full-time employee. If an employer determines the number of its employees on a pay period basis, it must determine the actual number of full-time employees employed during that pay period and the actual number of part-time employees employed and the hours worked by each of those part-time employees during the pay period. For each day of that pay period, each full-time employee counts as one employee and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee during that pay period and the denominator equal to the number of hours that must be worked during that pay period in order to be considered a full-time employee. The determination of the number of hours required to be considered a full-time employee is based upon the employer's employment practices, except that in no event may the hours required to be considered a full-time employee exceed eight hours for any day or 40 hours for any week.

(f) In the case of a multiemployer plan, the determination of whether the plan is a small-employer plan on any particular date depends on which employers are contributing to the plan on that date and on the workforce of those employers during the preceding calendar year. If a plan that is otherwise subject to COBRA ceases to be a small-employer plan because of the addition during a calendar year of an employer that did not normally employ fewer than 20 employees on a typical business day during the preceding calendar year, the plan ceases to be excepted from COBRA immediately upon the addition of the new employer. In contrast, if the plan ceases to be a small-employer plan by reason of an increase during a calendar year in the workforce of an employer contributing to the plan, the plan ceases to be excepted from COBRA on the January 1 immediately following the calendar year in which the employer's workforce increased.

* * * * *

Q–6: How is the number of group health plans that an employer or employee organization maintains determined?

A–6: (a) The rules of this Q&A–6 apply in determining the number of group health plans that an employer or employee organization maintains. All references elsewhere in §§ 54.4980B–1 through 54.4980B–10 to a group health plan are references to a group health plan as determined under Q&A–1 of this section and this Q&A–6. Except as provided in paragraph (b) or (c) of this Q&A–6, all health care benefits, other than benefits for qualified long-term care services (as defined in section 7702B(c)), provided by a corporation, partnership, or other entity or trade or business, or by an employee organization, constitute one group health plan, unless—

(1) It is clear from the instruments governing an arrangement or arrangements to provide health care benefits that the benefits are being provided under separate plans; and

(2) The arrangement or arrangements are operated pursuant to such instruments as separate plans.

(b) A multiemployer plan and a nonmultiemployer plan are always separate plans.

(c) If a principal purpose of establishing separate plans is to evade any requirement of law, then the separate plans will be considered a single plan to the extent necessary to prevent the evasion.

(d) The significance of treating an arrangement as two or more separate group health plans is illustrated by the following examples:

Example 1. (i) Employer X maintains a single group health plan, which provides major medical and prescription drug benefits. Employer Y maintains two group health plans; one provides major medical benefits and the other provides prescription drug benefits.

(ii) *X*'s plan could comply with the COBRA continuation coverage requirements by giving a qualified beneficiary experiencing a qualifying event with respect to X's plan the choice of either electing both major medical and prescription drug benefits or not receiving any COBRA continuation coverage under X's plan. By contrast, for Y's plans to comply with the COBRA continuation coverage requirements, a qualified beneficiary experiencing a qualifying event with respect to each of Y's plans must be given the choice of electing COBRA continuation coverage under either the major medical plan or the prescription drug plan or both.

Example 2. If a joint board of trustees administers one multiemployer plan, that plan will fail to qualify for the small-employer plan exception if any one of the employers whose employees are covered under the plan normally employed 20 or more employees during the preceding calendar year. However, if the joint board of trustees maintains two or more multiemployer plans, then the exception would be available with respect to each of those plans in which each of the employers

whose employees are covered under the plan normally employed fewer than 20 employees during the preceding calendar year.

* * * * *

A–8: (a)(1) The provision of health care benefits does not fail to be a group health plan merely because those benefits are offered under a cafeteria plan (as defined in section 125) or under any other arrangement under which an employee is offered a choice between health care benefits and other taxable or nontaxable benefits. However, the COBRA continuation coverage requirements apply only to the type and level of coverage under the cafeteria plan or other flexible benefit arrangement that a qualified beneficiary is actually receiving on the day before the qualifying event. See paragraphs (b) through (e) of this Q&A–8 for rules limiting the obligations of certain health flexible spending arrangements.

(2) The rules of this paragraph (a) are illustrated by the following example:

Example: (i) Under the terms of a cafeteria plan, employees can choose among life insurance coverage, membership in a health maintenance organization (HMO), coverage for medical expenses under an indemnity arrangement, and cash compensation. Of these available choices, the HMO and the indemnity arrangement are the arrangements providing health care. The instruments governing the HMO and indemnity arrangements indicate that they are separate group health plans. These group health plans are subject to COBRA. The employer does not provide any group health plan outside of the cafeteria plan. *B* and *C* are unmarried employees. *B* has chosen the life insurance coverage, and *C* has chosen the indemnity arrangement.

(ii) *B* does not have to be offered COBRA continuation coverage upon terminating employment, nor is a subsequent open enrollment period for active employees required to be made available to *B*. However, if *C* terminates employment and the termination constitutes a qualifying event, *C* must be offered an opportunity to elect COBRA continuation coverage under the indemnity arrangement. If *C* makes such an election and an open enrollment period for active employees occurs while *C* is still receiving the COBRA continuation coverage, *C* must be offered the opportunity to switch from the indemnity arrangement to the HMO (but not to the life insurance coverage because that does not constitute coverage provided under a group health plan).

(b) If a health flexible spending arrangement (health FSA), within the meaning of section 106(c)(2), satisfies the two conditions in paragraph (c) of this Q&A–8 for a plan year, the obligation of the health FSA to make COBRA continuation coverage available to a qualified beneficiary who experiences a qualifying event in that plan year is limited in accordance with paragraphs (d) and (e) of this Q&A–8, as illustrated by an example in paragraph (f) of this Q&A–8. To the extent that a health FSA is obligated to make COBRA continuation coverage available to a qualified beneficiary, the health FSA must comply with all the applicable rules of §§ 54.4980B–1 through 54.4980B–10, including the rules of Q&A–3 in § 54.4980B–5 (relating to limits).

(c) The conditions of this paragraph (c) are satisfied if—

(1) Benefits provided under the health FSA are excepted benefits within the meaning of sections 9831 and 9832; and

(2) The maximum amount that the health FSA can require to be paid for a year of COBRA continuation coverage under Q&A–1 of § 54.4980B–8 equals or exceeds the maximum benefit available under the health FSA for the year.

(d) If the conditions in paragraph (c) of this Q&A–8 are satisfied for a plan year, then the health FSA is not obligated to make COBRA continuation coverage available for any subsequent plan year to any qualified beneficiary who experiences a qualifying event during that plan year.

(e) If the conditions in paragraph (c) of this Q&A–8 are satisfied for a plan year, the health FSA is not obligated to make COBRA continuation coverage available for that plan year to any qualified beneficiary who experiences a qualifying event during that plan year unless, as of the date of the qualifying event, the qualified beneficiary can become entitled to receive during the remainder of the plan year a benefit that exceeds the maximum amount that the health FSA is permitted to require to be paid for COBRA continuation coverage for the remainder of the plan year. In determining the amount of the benefit that a qualified beneficiary can become entitled to receive during the remainder of the plan year, the health FSA may deduct from the maximum benefit available to that qualified beneficiary for the year (based on the election made under the health FSA for that qualified beneficiary before the date of the qualifying event) any reimbursable claims submitted to the health FSA for that plan year before the date of the qualifying event.

(f) The rules of paragraphs (b), (c), (d), and (e) of this Q&A–8 are illustrated by the following example:

Example. (i) An employer maintains a group health plan providing major medical benefits and a group health plan that is a health FSA, and the plan year for each plan is the calendar year. Both the plan providing major medical benefits and the health FSA are subject to COBRA. Under the health FSA, during an open season before the beginning of each calendar year, employees can elect to reduce their compensation during the upcoming year by up to $1200 per year and have that same amount contributed to a health flexible spending account. The employer contributes an additional amount to the account equal to the employee's salary reduction election for the year. Thus, the maximum amount available to an employee under the health FSA for a year is two times the amount of the employee's salary reduction election for the year. This amount may be paid to the employee during the year as reimbursement for health expenses not covered by the employer's major medical plan (such as deductibles, copayments, prescription drugs, or eyeglasses). The employer determined, in accordance with section 4980B(f)(4), that a reasonable estimate of the cost of providing coverage for similarly situated nonCOBRA beneficiaries for 2002 under this health FSA is equal to two times their salary reduction election for 2002 and, thus, that two times the salary reduction election is the applicable premium for 2002.

(ii) Because the employer provides major medical benefits under another group health plan, and because the maximum benefit that any employee can receive under the health FSA is not greater than two times the employee's salary reduction election for the plan year, benefits under this health FSA are excepted benefits within the meaning of sections 9831 and 9832. Thus, the first condition of paragraph (c) of this Q&A–8 is satisfied for the year. The maximum amount that a plan can require to be paid for coverage (outside of coverage required to be made available due to a disability extension) under Q&A–1 of § 54.4980B–8 is 102 percent of the applicable premium. Thus, the maximum amount that the health FSA can require to be paid for coverage for the 2002 plan year is 2.04 times the employee's salary reduction election for the plan year. Because the maximum benefit available under the health FSA is 2.0 times the employee's salary reduction election for the year, the maximum benefit available under the health FSA for the year is less than the maximum amount that the health FSA can require to be paid for coverage for the year. Thus, the second condition in paragraph (c) of this Q&A–8 is also satisfied for the 2002 plan year. Because both conditions in paragraph (c) of this Q&A–8 are satisfied for 2002, with respect to any qualifying event occurring in 2002, the health FSA is not obligated to make COBRA continuation coverage available for any year after 2002.

(iii) Whether the health FSA is obligated to make COBRA continuation coverage available in 2002 to a qualified beneficiary with respect to a qualifying event that occurs in 2002 depends upon the maximum benefit that would be available to the qualified beneficiary under COBRA continuation coverage for that plan year. *Case 1:* Employee *B* has elected to reduce *B*'s salary by $1200 for 2002. Thus, the maximum benefit that *B* can become entitled to receive under the health FSA during the entire year is $2400. *B* experiences a qualifying event that is the termination of *B*'s employment on May 31, 2002. As of that date, *B* had submitted $300 of reimbursable expenses under the health

FSA. Thus, the maximum benefit that *B* could become entitled to receive for the remainder of 2002 is $2100. The maximum amount that the health FSA can require to be paid for COBRA continuation coverage for the remainder of 2002 is 102 percent times 1/12 of the applicable premium for 2002 times the number of months remaining in 2002 after the date of the qualifying event. In *B*'s case, the maximum amount that the health FSA can require to be paid for COBRA continuation coverage for 2002 is 2.04 times $1200, or $2448. One-twelfth of $2448 is $204. Because seven months remain in the plan year, the maximum amount that the health FSA can require to be paid for *B*'s coverage for the remainder of the year is seven times $204, or $1428. Because $1428 is less than the maximum benefit that *B* could become entitled to receive for the remainder of the year ($2100), the health FSA is required to make COBRA continuation coverage available to *B* for the remainder of 2002 (but not for any subsequent year).

(iv) *Case 2:* The facts are the same as in *Case 1* except that *B* had submitted $1000 of reimbursable expenses as of the date of the qualifying event. In that case, the maximum benefit available to *B* for the remainder of the year would be $1400 instead of $2100. Because the maximum amount that the health FSA can require to be paid for *B*'s coverage is $1428, and because the $1400 maximum benefit for the remainder of the year does not exceed $1428, the health FSA is not obligated to make COBRA continuation coverage available to *B* in 2002 (or any later year). (Of course, the administrator of the health FSA is permitted to make COBRA continuation coverage available to every qualified beneficiary in the year that the qualified beneficiary's qualifying event occurs in order to avoid having to determine the maximum benefit available for each qualified beneficiary for the remainder of the plan year.)

* * * * *

A–10: (a) In general, the excise tax is imposed on the employer maintaining the plan, except that in the case of a multiemployer plan (see Q&A–3 of this section for a definition of multiemployer plan) the excise tax is imposed on the plan.

* * * * *

§ 54.4980B–3 [Amended]

Par. 5. Section 54.4980B–3 is amended by:

1. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the last sentence of paragraph (a)(3) in A–1.
2. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the first sentence of paragraph (g) in A–1.
3. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the first and second sentences of paragraph (a)(1) in A–2.
4. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the first sentence of paragraph (a)(2) in A–2.
5. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the first and last sentences in paragraph (b) in A–2.
6. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in A–3.
7. Removing the language ''section 9801(f)(2), and § 54.9801–6T(b)'' and adding ''and section 9801(f)(2)'' in its place in the last sentence of paragraph (b) in A–1.
8. Removing the language ''and § 54.9801–6T(b)'' in the second sentence of paragraph (i) in *Example 1* of paragraph (h) of A–1.

Par. 6. Section 54.4980B–4 is amended by:

1. Adding a sentence at the end of paragraph (a) in A–1.
2. Removing the language ''Q&A–1'' and adding ''Q&A–4'' in its place in the fifth sentence of paragraph (c) of A–1.
3. Revising the third sentence in paragraph (e) of A–1.
4. Removing the language ''section 9801(f)(2), and § 54.9801–6T(b)'' and adding ''and section 9801(f)(2)'' in its place in paragraph (i) in *Example 4* of paragraph (g) in A–1.

The addition and revision read as follows:

§ 54.4980B–4 Qualifying events.

* * * * *

A–1: (a) * * * See Q&A–1 through Q&A–3 of § 54.4980B–10 for special rules in the case of leave taken under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601–2619).

* * * * *

(e) * * * For example, an absence from work due to disability, a temporary layoff, or any other reason (other than due to leave that is FMLA leave; see § 54.4980B–10) is a reduction of hours of a covered employee's employment if there is not an immediate termination of employment. * * *

* * * * *

Par. 7. Section 54.4980B–5 is amended by:

1. Revising paragraph (a) of A–1.
2. Revising paragraph (b) in A–4.
3. Removing the language ''and § 54.9801–6T'' in the second sentence of paragraph (a) in A–5.

The revisions read as follows:

§ 54.4980B–5 COBRA continuation coverage.

* * * * *

A–1: (a) If a qualifying event occurs, each qualified beneficiary (other than a qualified beneficiary for whom the qualifying event will not result in any immediate or deferred loss of coverage) must be offered an opportunity to elect to receive the group health plan coverage that is provided to similarly situated nonCOBRA beneficiaries (ordinarily, the same coverage that the qualified beneficiary had on the day before the qualifying event). See Q&A–3 of § 54.4980B–3 for the definition of similarly situated nonCOBRA beneficiaries. This coverage is COBRA continuation coverage. If coverage is modified for similarly situated nonCOBRA beneficiaries, then the coverage made available to qualified beneficiaries is modified in the same way. If the continuation coverage offered differs in any way from the coverage made available to similarly situated nonCOBRA beneficiaries, the coverage offered does not constitute COBRA continuation coverage and the group health plan is not in compliance with COBRA unless other coverage that does constitute COBRA continuation coverage is also offered. Any elimination or reduction of coverage in anticipation of an event described in paragraph (b) of Q&A–1 of § 54.4980B–4 is disregarded for purposes of this Q&A–1 and for purposes of any other reference in §§ 54.4980B–1 through 54.4980B–10 to coverage in effect immediately before (or on the day before) a qualifying event. COBRA continuation coverage must not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

* * * * *

A–4: * * *

(b) If a qualified beneficiary participates in a region-specific benefit package (such as an HMO or an on-site clinic) that will not service her or his health needs in the area to which she or he is relocating (regardless of the reason for the relocation), the qualified beneficiary must be given, within a reasonable period after requesting other coverage, an opportunity to elect alternative coverage that the employer or employee organization makes available to active employees. If the employer or employee organization makes group health plan coverage available to similarly situated nonCOBRA beneficiaries that can be extended in the area to which the qualified beneficiary is relocating, then that coverage is the alternative coverage that must be made available to the relocating qualified beneficiary. If the employer or employee organization does not make group health plan coverage available to similarly situated nonCOBRA beneficiaries that can be extended in the area to which the

qualified beneficiary is relocating but makes coverage available to other employees that can be extended in that area, then the coverage made available to those other employees must be made available to the relocating qualified beneficiary. The effective date of the alternative coverage must be not later than the date of the qualified beneficiary's relocation, or, if later, the first day of the month following the month in which the qualified beneficiary requests the alternative coverage. However, the employer or employee organization is not required to make any other coverage available to the relocating qualified beneficiary if the only coverage the employer or employee organization makes available to active employees is not available in the area to which the qualified beneficiary relocates (because all such coverage is region-specific and does not service individuals in that area).

* * * * *

Par. 8. Section 54.4980B–6 is amended by:

1. Revising the *Example* in paragraph (c) of A–1.
2. Revising the first sentence in paragraph (b) of A–3.

The revisions read as follows:

§ 54.4980B–6 Electing COBRA continuation coverage.

* * * * *

A–1: * * *

(c) * * *

Example. (i) An unmarried employee without children who is receiving employer-paid coverage under a group health plan voluntarily terminates employment on June 1, 2001. The employee is not disabled at the time of the termination of employment nor at any time thereafter, and the plan does not provide for the extension of the required periods (as is permitted under paragraph (b) of Q&A–4 of § 54.4980B–7).

(ii) *Case 1:* If the plan provides that the employer-paid coverage ends immediately upon the termination of employment, the election period must begin not later than June 1, 2001, and must not end earlier than July 31, 2001. If notice of the right to elect COBRA continuation coverage is not provided to the employee until June 15, 2001, the election period must not end earlier than August 14, 2001.

(iii) *Case 2:* If the plan provides that the employer-paid coverage does not end until 6 months after the termination of employment, the employee does not lose coverage until December 1, 2001. The election period can therefore begin as late as December 1, 2001, and must not end before January 30, 2002.

(iv) *Case 3:* If employer-paid coverage for 6 months after the termination of employment is offered only to those qualified beneficiaries who waive COBRA continuation coverage, the employee loses coverage on June 1, 2001, so the election period is the same as in Case 1. The difference between Case 2 and Case 3 is that in Case 2 the employee can receive 6 months of employer-paid coverage and then elect to pay for up to an additional 12 months of COBRA continuation coverage, while in Case 3 the employee must choose between 6 months of employer-paid coverage and paying for up to 18 months of COBRA continuation coverage. In all three cases, COBRA continuation coverage need not be provided for more than 18 months after the termination of employment (see Q&A–4 of § 54.4980B–7), and in certain circumstances might be provided for a shorter period (see Q&A–1 of § 54.4980B–7).

* * * * *

A–3: * * *

(b) In the case of an indemnity or reimbursement arrangement, the employer or employee organization can provide for plan coverage during the election period or, if the plan allows retroactive reinstatement, the employer or employee organization can terminate the coverage of the qualified beneficiary and reinstate her or him when the election (and, if applicable, payment for the coverage) is made. * * *

* * * * *

Par. 9. Section 54.4980B–7 is amended by:

1. Revising paragraph (a) of A–1.
2. Adding Q&A–4.
3. Revising the second sentence in paragraph (c) of A–5.
4. Revising paragraph (b) of Q&A–6.
5. Removing the language ''Q&A–1'' and adding ''Q&A–4'' in its place in paragraph (a) of A–7.

The addition and revisions read as follows:

§ 54.4980B–7 Duration of COBRA continuation coverage.

* * * * *

A–1: (a) Except for an interruption of coverage in connection with a waiver, as described in Q&A–4 of § 54.4980B–6, COBRA continuation coverage that has been elected for a qualified beneficiary must extend for at least the period beginning on the date of the qualifying event and ending not before the earliest of the following dates —

(1) The last day of the maximum coverage period (see Q&A–4 of this section);

(2) The first day for which timely payment is not made to the plan with respect to the qualified beneficiary (see Q&A–5 in § 54.4980B–8);

(3) The date upon which the employer or employee organization ceases to provide any group health plan (including successor plans) to any employee;

(4) The date, after the date of the election, upon which the qualified beneficiary first becomes covered under any other group health plan, as described in Q&A–2 of this section;

(5) The date, after the date of the election, upon which the qualified beneficiary first becomes entitled to Medicare benefits, as described in Q&A–3 of this section; and

(6) In the case of a qualified beneficiary entitled to a disability extension (see Q&A–5 of this section), the later of —

(i) Either 29 months after the date of the qualifying event, or the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act (42 U.S.C. 401–433 or 1381–1385) that the disabled qualified beneficiary whose disability resulted in the qualified beneficiary's being entitled to the disability extension is no longer disabled, whichever is earlier; or

(ii) The end of the maximum coverage period that applies to the qualified beneficiary without regard to the disability extension.

* * * * *

Q–4: When does the maximum coverage period end?

A–4: (a) Except as otherwise provided in this Q&A–4, the maximum coverage period ends 36 months after the qualifying event. The maximum coverage period for a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is the maximum coverage period for the qualifying event giving rise to the period of COBRA continuation coverage during which the child was born or placed for adoption. Paragraph (b) of this Q&A–4 describes the starting point from which the end of the maximum coverage period is measured. The date that the maximum coverage period ends is described in paragraph (c) of this Q&A–4 in a case where the qualifying event is a termination of employment or reduction of hours of employment, in paragraph (d) of this Q&A–4 in a case where a covered employee becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) before experiencing a qualifying event that is a termination of employment or reduction of hours of employment, and in paragraph (e) of this Q&A–4 in the case of a qualifying event that is the bankruptcy of the employer. See Q&A–8 of § 54.4980B–2 for limitations that apply to certain health flexible spending arrangements. See also Q&A–6 of this section in the case of multiple qualifying events. Nothing in §§ 54.4980B–1 through 54.4980B–10 prohibits a group health plan from providing coverage that continues beyond the end of the maximum coverage period.

(b)(1) The end of the maximum coverage period is measured from the date of the qualifying event even if the qualifying event does not result in a loss of coverage under the plan until a later date. If, however, coverage under the plan is lost at a later date and the plan provides for the extension of the required periods, then the maximum coverage period is measured from the date when coverage is lost. A plan provides for the extension of the required periods if it provides both—

(i) That the 30-day notice period (during which the employer is required to notify the plan administrator of the occurrence of certain qualifying events such as the death of the covered employee or the termination of employment or reduction of hours of employment of the covered employee) begins on the date of the loss of coverage rather than on the date of the qualifying event; and

(ii) That the end of the maximum coverage period is measured from the date of the loss of coverage rather than from the date of the qualifying event.

(2) In the case of a plan that provides for the extension of the required periods, whenever the rules of §§ 54.4980B–1 through 54.4980B–10 refer to the measurement of a period from the date of the qualifying event, those rules apply in such a case by measuring the period instead from the date of the loss of coverage.

(c) In the case of a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the qualifying event if there is no disability extension, and 29 months after the qualifying event if there is a disability extension. See Q&A–5 of this section for rules to determine if there is a disability extension. If there is a disability extension and the disabled qualified beneficiary is later determined to no longer be disabled, then a plan may terminate the COBRA continuation coverage of an affected qualified beneficiary before the end of the disability extension; see paragraph (a)(6) in Q&A–1 of this section.

(d)(1) If a covered employee becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) before experiencing a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period for qualified beneficiaries other than the covered employee ends on the later of—

(i) 36 months after the date the covered employee became entitled to Medicare benefits; or

(ii) 18 months (or 29 months, if there is a disability extension) after the date of the covered employee's termination of employment or reduction of hours of employment.

(2) See paragraph (b) of Q&A–3 of this section regarding the determination of when a covered employee becomes entitled to Medicare benefits.

(e) In the case of a qualifying event that is the bankruptcy of the employer, the maximum coverage period for a qualified beneficiary who is the retired covered employee ends on the date of the retired covered employee's death. The maximum coverage period for a qualified beneficiary who is the spouse, surviving spouse, or dependent child of the retired covered employee ends on the earlier of—

(1) The date of the qualified beneficiary's death; or

(2) The date that is 36 months after the death of the retired covered employee.

* * * * *

A–5: * * *

(c) * * * For this purpose, the period of the first 60 days of COBRA continuation coverage is measured from the date of the qualifying event described in paragraph (b) of this Q&A–5 (except that if a loss of coverage would occur at a later date in the absence of an election for COBRA continuation coverage and if the plan provides for the extension of the required periods (as described in paragraph (b) of Q&A–4 of this section) then the period of the first 60 days of COBRA continuation coverage is measured from the date on which the coverage would be lost).

* * *

* * * * *

A–6: * * *

(b) The requirements of this paragraph (b) are satisfied if a qualifying event that gives rise to an 18-month maximum coverage period (or a 29-month maximum coverage period in the case of a disability extension) is followed, within that 18-month period (or within that 29-month period, in the case of a disability extension), by a second qualifying event (for example, a death or a divorce) that gives rise to a 36-month maximum coverage period. (Thus, a termination of employment following a qualifying event that is a reduction of hours of employment cannot be a second qualifying event that expands the maximum coverage period; the bankruptcy of an employer also cannot be a second qualifying event that expands the maximum coverage period.) In such a case, the original 18-month period (or 29-month period, in the case of a disability extension) is expanded to 36 months, but only for those individuals who were qualified beneficiaries under the group health plan in connection with the first qualifying event and who are still qualified beneficiaries at the time of the second qualifying event. No qualifying event (other than a qualifying event that is the bankruptcy of the employer) can give rise to a maximum coverage period that ends more than 36 months after the date of the first qualifying event (or more than 36 months after the date of the loss of coverage, in the case of a plan that provides for the extension of the required periods; see paragraph (b) in Q&A–4 of this section). For example, if an employee covered by a group health plan that is subject to COBRA terminates employment (for reasons other than gross misconduct) on December 31, 2000, the termination is a qualifying event giving rise to a maximum coverage period that extends for 18 months to June 30, 2002. If the employee dies after the employee and the employee's spouse and dependent children have elected COBRA continuation coverage and on or before June 30, 2002, the spouse and dependent children (except anyone among them whose COBRA continuation coverage had already ended for some other reason) will be able to receive COBRA continuation coverage through December 31, 2003. See Q&A–8(b) of § 54.4980B–2 for a special rule that applies to certain health flexible spending arrangements.

* * * * *

Par. 10. Section 54.4980B–8 is amended by:

1. Revising paragraph (c) in A–1.
2. Adding a new sentence at the end of paragraph (d) and paragraphs (d)(1) and (2) in A–5.

The revision and addition read as follows:

§ 54.4980B–8 Paying for COBRA continuation coverage.

* * * * *

A–1: * * *

* * * * *

(c) A group health plan does not fail to comply with section 9802(b) (which generally prohibits an individual from being charged, on the basis of health status, a higher premium than that charged for similarly situated individuals enrolled in the plan) with respect to a qualified beneficiary entitled to the disability extension merely because the plan requires payment of an amount permitted under paragraph (b) of this Q&A–1.

* * * * *

A–5: * * *

(d) * * * An amount is not significantly less than the amount the plan requires to be paid for a period of coverage if and only if the shortfall is no greater than the lesser of the following two amounts:

(1) Fifty dollars (or such other amount as the Commissioner may provide in a revenue ruling, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter)); or

(2) 10 percent of the amount the plan requires to be paid.

* * * * *

Par. 11. Sections 54.4980B–9 and 54.4980B–10 are added to read as follows:

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

The following questions-and-answers address who has the obligation to make COBRA continuation coverage available to affected qualified beneficiaries in the context of business reorganizations and employer withdrawals from multiemployer plans:

Q–1: For purposes of this section, what are a business reorganization, a stock sale, and an asset sale?

A–1: For purposes of this section:

(a) A *business reorganization* is a stock sale or an asset sale.

(b) A *stock sale* is a transfer of stock in a corporation that causes the corporation to become a different employer or a member of a different employer. (See Q&A–2 of § 54.4980B–2, which defines *employer* to include all members of a controlled group of corporations.) Thus, for example, a sale or distribution of stock in a corporation that causes the corporation to cease to be a member of one controlled group of corporations, whether or not it becomes a member of another controlled group of corporations, is a stock sale.

(c) An *asset sale* is a transfer of substantial assets, such as a plant or division or substantially all the assets of a trade or business.

(d) The rules of § 1.414(b)–1 of this chapter apply in determining what constitutes a controlled group of corporations, and the rules of §§ 1.414(c)–1 through 1.414(c)–5 of this chapter apply in determining what constitutes a group of trades or businesses under common control.

Q–2: In the case of a stock sale, what are the selling group, the acquired organization, and the buying group?

A–2: In the case of a stock sale—

(a) The *selling group* is the controlled group of corporations, or the group of trades or businesses under common control, of which a corporation ceases to be a member as a result of the stock sale;

(b) The *acquired organization* is the corporation that ceases to be a member of the selling group as a result of the stock sale; and

(c) The *buying group* is the controlled group of corporations, or the group of trades or businesses under common control, of which the acquired organization becomes a member as a result of the stock sale. If the acquired organization does not become a member of such a group, the *buying group* is the acquired organization.

Q–3: In the case of an asset sale, what are the selling group and the buying group?

A–3: In the case of an asset sale—

(a) The *selling group* is the controlled group of corporations or the group of trades or businesses under common control that includes the corporation or other trade or business that is selling the assets; and

(b) The *buying group* is the controlled group of corporations or the group of trades or businesses under common control that includes the corporation or other trade or business that is buying the assets.

Q–4: Who is an M&A qualified beneficiary?

A–4: (a) Asset sales: In the case of an asset sale, an individual is an M&A qualified beneficiary if the individual is a qualified beneficiary whose qualifying event occurred prior to or in connection with the sale and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was associated with the assets being sold.

(b) Stock sales: In the case of a stock sale, an individual is an M&A qualified beneficiary if the individual is a qualified beneficiary whose qualifying event occurred prior to or in connection with the sale and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the acquired organization.

(c) In the case of a qualified beneficiary who has experienced more than one qualifying event with respect to her or his current right to COBRA continuation coverage, the qualifying event referred to in paragraphs (a) and (b) of this Q&A–4 is the first qualifying event.

Q–5: In the case of a stock sale, is the sale a qualifying event with respect to a covered employee who is employed by the acquired organization before the sale and who continues to be employed by the acquired organization after the sale, or with respect to the spouse or dependent children of such a covered employee?

A–5: No. A covered employee who continues to be employed by the acquired organization after the sale does not experience a termination of employment as a result of the sale. Accordingly, the sale is not a qualifying event with respect to the covered employee, or with respect to the covered employee's spouse or dependent children, regardless of whether they are provided with group health coverage after the sale, and neither the covered employee, nor the covered employee's spouse or dependent children, become qualified beneficiaries as a result of the sale.

Q–6: In the case of an asset sale, is the sale a qualifying event with respect to a covered employee whose employment immediately before the sale was associated with the purchased assets, or with respect to the spouse or dependent children of such a covered employee who are covered under a group health plan of the selling group immediately before the sale?

A–6: (a) Yes, unless—

(1) The buying group is a successor employer under paragraph (c) of Q&A–8 of this section or Q&A–2 of § 54.4980B–2, and the covered employee is employed by the buying group immediately after the sale; or

(2) The covered employee (or the spouse or any dependent child of the covered employee) does not lose coverage (within the meaning of paragraph (c) in Q&A–1 of § 54.4980B-4) under a group health plan of the selling group after the sale.

(b) Unless the conditions in paragraph (a)(1) or (2) of this Q&A–6 are satisfied, such a covered employee experiences a termination of employment with the selling group as a result of the asset sale, regardless of whether the covered employee is employed by the buying group or whether the covered employee's employment is associated with the purchased assets after the sale. Accordingly, the covered employee, and the spouse and dependent children of the covered employee who lose coverage under a plan of the selling group in connection with the sale, are M&A qualified beneficiaries in connection with the sale.

Q–7: In a business reorganization, are the buying group and the selling group permitted to allocate by contract the responsibility to make COBRA continuation coverage available to M&A qualified beneficiaries?

A–7: Yes. Nothing in this section prohibits a selling group and a buying group from allocating to one or the other

of the parties in a purchase agreement the responsibility to provide the coverage required under §§ 54.4980B–1 through 54.4980B–10. However, if and to the extent that the party assigned this responsibility under the terms of the contract fails to perform, the party who has the obligation under Q&A–8 of this section to make COBRA continuation coverage available to M&A qualified beneficiaries continues to have that obligation.

Q–8: Which group health plan has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries in a business reorganization?

A–8: (a) In the case of a business reorganization (whether a stock sale or an asset sale), so long as the selling group maintains a group health plan after the sale, a group health plan maintained by the selling group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that sale. This Q&A–8 prescribes rules for cases in which the selling group ceases to provide any group health plan to any employee in connection with the sale. Paragraph (b) of this Q&A–8 contains these rules for stock sales, and paragraph (c) of this Q&A–8 contains these rules for asset sales. Neither a stock sale nor an asset sale has any effect on the COBRA continuation coverage requirements applicable to any group health plan for any period before the sale.

(b)(1) In the case of a stock sale, if the selling group ceases to provide any group health plan to any employee in connection with the sale, a group health plan maintained by the buying group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that stock sale. A group health plan of the buying group has this obligation beginning on the later of the following two dates and continuing as long as the buying group continues to maintain a group health plan (but subject to the rules in § 54.4980B–7, relating to the duration of COBRA continuation coverage)—

(i) The date the selling group ceases to provide any group health plan to any employee; or

(ii) The date of the stock sale.

(2) The determination of whether the selling group's cessation of providing any group health plan to any employee is in connection with the stock sale is based on all of the relevant facts and circumstances. A group health plan of the buying group does not, as a result of the stock sale, have an obligation to make COBRA continuation coverage available to those qualified beneficiaries of the selling group who are not M&A qualified beneficiaries with respect to that sale.

(c)(1) In the case of an asset sale, if the selling group ceases to provide any group health plan to any employee in connection with the sale and if the buying group continues the business operations associated with the assets purchased from the selling group without interruption or substantial change, then the buying group is a successor employer to the selling group in connection with that asset sale. A buying group does not fail to be a successor employer in connection with an asset sale merely because the asset sale takes place in connection with a proceeding in bankruptcy under Title 11 of the United States Code. If the buying group is a successor employer, a group health plan maintained by the buying group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that asset sale. A group health plan of the buying group has this obligation beginning on the later of the following two dates and continuing as long as the buying group continues to maintain a group health plan (but subject to the rules in § 54.4980B–7, relating to the duration of COBRA continuation coverage)—

(i) The date the selling group ceases to provide any group health plan to any employee; or

(ii) The date of the asset sale.

(2) The determination of whether the selling group's cessation of providing any group health plan to any employee is in connection with the asset sale is based on all of the relevant facts and circumstances. A group health plan of the buying group does not, as a result of the asset sale, have an obligation to make COBRA continuation coverage available to those qualified beneficiaries of the selling group who are not M&A qualified beneficiaries with respect to that sale.

(d) The rules of Q&A–1 through Q&A–7 of this section and this Q&A–8 are illustrated by the following examples; in each example, each group health plan is subject to COBRA:

Stock Sale Examples

Example 1. (i) Selling Group *S* consists of three corporations, *A, B,* and *C.* Buying Group *P* consists of two corporations, *D* and *E. P* enters into a contract to purchase all the stock of *C* from *S* effective July 1, 2002. Before the sale of *C, S* maintains a single group health plan for the employees of *A, B,* and *C* (and their families). *P* maintains a single group health plan for the employees of *D* and *E* (and their families). Effective July 1, 2002, the employees of *C* (and their families) become covered under *P*'s plan. On June 30, 2002, there are 48 qualified beneficiaries receiving COBRA continuation coverage under *S*'s plan, 15 of whom are M&A qualified beneficiaries with respect to the sale of *C.* (The other 33 qualified beneficiaries had qualifying events in connection with a covered employee whose last employment before the qualifying event was with either *A* or *B.*)

(ii) Under these facts, *S*'s plan continues to have the obligation to make COBRA continuation coverage available to the 15 M&A qualified beneficiaries under *S*'s plan after the sale of *C* to *P.* The employees who continue in employment with *C* do not experience a qualifying event by virtue of *P*'s acquisition of *C.* If they experience a qualifying event after the sale, then the group health plan of *P* has the obligation to make COBRA continuation coverage available to them.

Example 2. (i) Selling Group *S* consists of three corporations, *A, B,* and *C.* Each of *A, B,* and *C* maintains a group health plan for its employees (and their families). Buying Group *P* consists of two corporations, *D* and *E. P* enters into a contract to purchase all of the stock of *C* from *S* effective July 1, 2002. As of June 30, 2002, there are 14 qualified beneficiaries receiving COBRA continuation coverage under *C*'s plan. *C* continues to employ all of its employees and continues to maintain its group health plan after being acquired by *P* on July 1, 2002.

(ii) Under these facts, *C* is an acquired organization and the 14 qualified beneficiaries under *C*'s plan are M&A qualified beneficiaries. A group health plan of *S* (that is, either the plan maintained by *A* or the plan maintained by *B*) has the obligation to make COBRA continuation coverage available to the 14 M&A qualified beneficiaries. *S* and *P* could negotiate to have *C*'s plan continue to make COBRA continuation coverage available to the 14 M&A qualified beneficiaries. In such a case, neither *A*'s plan nor *B*'s plan would make COBRA continuation coverage available to the 14 M&A qualified beneficiaries unless *C*'s plan failed to fulfill its contractual responsibility to make COBRA continuation coverage available to the M&A qualified beneficiaries. *C*'s employees (and their spouses and dependent children) do not experience a qualifying event in connection with *P*'s acquisition of *C,* and consequently no plan maintained by either *P* or *S* has any obligation to make COBRA continuation coverage available to *C*'s employees (or their spouses or dependent children) in connection with the transfer of stock in *C* from *S* to *P.*

Example 3. (i) The facts are the same as in *Example 2,* except that *C* ceases to employ two employees on June 30, 2002, and those two employees never become covered under *P*'s plan.

(ii) Under these facts, the two employees experience a qualifying event on June 30, 2002 because their termination of employment causes a loss of group health coverage. A group health plan of *S* (that is, either the plan maintained by *A* or the plan maintained by *B*) has the obligation to make COBRA continuation coverage available to

the two employees (and to any spouse or dependent child of the two employees who loses coverage under *C*'s plan in connection with the termination of employment of the two employees) because they are M&A qualified beneficiaries with respect to the sale of *C*.

Example 4. (i) Selling Group *S* consists of three corporations, *A, B,* and *C.* Buying Group *P* consists of two corporations, *D* and *E. P* enters into a contract to purchase all of the stock of *C* from *S* effective July 1, 2002. Before the sale of *C, S* maintains a single group health plan for the employees of *A, B,* and *C* (and their families). *P* maintains a single group health plan for the employees of *D* and *E* (and their families). Effective July 1, 2002, the employees of *C* (and their families) become covered under *P*'s plan. On June 30, 2002, there are 25 qualified beneficiaries receiving COBRA continuation coverage under *S*'s plan, 20 of whom are M&A qualified beneficiaries with respect to the sale of *C*. (The other five qualified beneficiaries had qualifying events in connection with a covered employee whose last employment before the qualifying event was with either *A* or *B*.) S terminates its group health plan effective June 30, 2002 and begins to liquidate the assets of *A* and *B* and to lay off the employees of *A* and *B*.

(ii) Under these facts, *S* ceases to provide a group health plan to any employee in connection with the sale of *C* to *P*. Thus, beginning July 1, 2002 *P*'s plan has the obligation to make COBRA continuation coverage available to the 20 M&A qualified beneficiaries, but *P* is not obligated to make COBRA continuation coverage available to the other 5 qualified beneficiaries with respect to *S*'s plan as of June 30, 2002 or to any of the employees of *A* or *B* whose employment is terminated by *S* (or to any of those employees' spouses or dependent children).

Asset Sale Examples

Example 5. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells the assets of one of its divisions to Buying Group *P*. Under the terms of the group health plan covering the employees at the division being sold, their coverage will end on the date of the sale. *P* hires all but one of those employees, gives them the same positions that they had with *S* before the sale, and provides them with coverage under a group health plan. Immediately before the sale, there are two qualified beneficiaries receiving COBRA continuation coverage under a group health plan of *S* whose qualifying events occurred in connection with a covered employee whose last employment prior to the qualifying event was associated with the assets sold to *P*.

(ii) These two qualified beneficiaries are M&A qualified beneficiaries with respect to the asset sale to *P*. Under these facts, a group health plan of *S* retains the obligation to make COBRA continuation coverage available to these two M&A qualified beneficiaries. In addition, the one employee *P* does not hire as well as all of the employees *P* hires (and the spouses and dependent children of these employees) who were covered under a group health plan of *S* on the day before the sale are M&A qualified beneficiaries with respect to the sale. A group health plan of *S* also has the obligation to make COBRA continuation coverage available to these M&A qualified beneficiaries.

Example 6. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells substantially all of the assets of all of its divisions to Buying Group *P*, and *S* ceases to provide any group health plan to any employee on the date of the sale. *P* hires all but one of *S*'s employees on the date of the asset sale by *S*, gives those employees the same positions that they had with *S* before the sale, and continues the business operations of those divisions without substantial change or interruption. *P* provides these employees with coverage under a group health plan. Immediately before the sale, there are 10 qualified beneficiaries receiving COBRA continuation coverage under a group health plan of *S* whose qualifying events occurred in connection with a covered employee whose last employment prior to the qualifying event was associated with the assets sold to *P*.

(ii) These 10 qualified beneficiaries are M&A qualified beneficiaries with respect to the asset sale to *P*. Under these facts, *P* is a successor employer described in paragraph (c) of this Q&A–8. Thus, a group health plan of *P* has the obligation to make COBRA continuation coverage available to these 10 M&A qualified beneficiaries.

(iii) The one employee that *P* does not hire and the family members of that employee are also M&A qualified beneficiaries with respect to the sale. A group health plan of *P* also has the obligation to make COBRA continuation coverage available to these M&A qualified beneficiaries.

(iv) The employees who continue in employment in connection with the asset sale (and their family members) and who were covered under a group health plan of *S* on the day before the sale are not M&A qualified beneficiaries because *P* is a successor employer to *S* in connection with the asset sale. Thus, no group health plan of *P* has any obligation to make COBRA continuation coverage available to these continuing employees with respect to the qualifying event that resulted from their losing coverage under *S*'s plan in connection with the asset sale.

Example 7. (i) Selling Group *S* provides group health plan coverage to employees at each of its two operating divisions. *S* sells the assets of one of its divisions to Buying Group *P1*. Under the terms of the group health plan covering the employees at the division being sold, their coverage will end on the date of the sale. *P1* hires all but one of those employees, gives them the same positions that they had with *S* before the sale, and provides them with coverage under a group health plan.

(ii) Under these facts, a group health plan of *S* has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the sale to *P1*. (If an M&A qualified beneficiary first became covered under *P1*'s plan after electing COBRA continuation coverage under *S*'s plan, then *S*'s plan could terminate the COBRA continuation coverage once the M&A qualified beneficiary became covered under *P1*'s plan, provided that the remaining conditions of Q&A–2 of § 54.4980B–7 were satisfied.)

(iii) Several months after the sale to *P1*, *S* sells the assets of its remaining division to Buying Group *P2*, and *S* ceases to provide any group health plan to any employee on the date of that sale. Thus, under Q&A–1 of § 54.4980B–7, *S* ceases to have an obligation to make COBRA continuation coverage available to any qualified beneficiary on the date of the sale to *P2*. *P1* and *P2* are unrelated organizations.

(iv) Even if it was foreseeable that *S* would sell its remaining division to an unrelated third party after the sale to *P1*, under these facts the cessation of *S* to provide any group health plan to any employee on the date of the sale to *P2* is not in connection with the asset sale to *P1*. Thus, even after the date *S* ceases to provide any group health plan to any employee, no group health plan of *P1* has any obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1* by *S*. If *P2* is a successor employer under the rules of paragraph (c) of this Q&A–8 and maintains one or more group health plans after the sale, then a group health plan of *P2* would have an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P2* by *S* (but in such a case employees of *S* before the sale who continued working for *P2* after the sale would not be M&A qualified beneficiaries). However, even in such a case, no group health plan of *P2* would have an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1* by *S*. Thus, under these facts, after *S* has ceased to provide any group health plan to any employee, no plan has an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1*.

Example 8. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells substantially all of the assets of all of its divisions to Buying Group *P. P* hires most of *S*'s employees on the date of the purchase of *S*'s assets, retains those employees in the same positions that they had with *S* before the purchase, and continues the business operations of those divisions without substantial change or interruption. *P* provides these employees with coverage under a group health plan. *S* continues to employ a few employees for the principal purpose of winding up the affairs of *S* in preparation for liquidation. *S* continues to provide coverage under a group health plan to these few remaining employees for several weeks after the date of the sale and then ceases to provide any group health plan to any employee.

(ii) Under these facts, the cessation by *S* to provide any group health plan to any employee is in connection with the asset sale to *P*. Because of this, and because *P*

continued the business operations associated with those assets without substantial change or interruption, *P* is a successor employer to *S* with respect to the asset sale. Thus, a group health plan of *P* has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the sale beginning on the date that *S* ceases to provide any group health plan to any employee. (A group health plan of *S* retains this obligation for the several weeks after the date of the sale until *S* ceases to provide any group health plan to any employee.)

Q–9: Can the cessation of contributions by an employer to a multiemployer group health plan be a qualifying event?

A–9: The cessation of contributions by an employer to a multiemployer group health plan is not itself a qualifying event, even though the cessation of contributions may cause current employees (and their spouses and dependent children) to lose coverage under the multiemployer plan. An event coinciding with the employer's cessation of contributions (such as a reduction of hours of employment in the case of striking employees) will constitute a qualifying event if it otherwise satisfies the requirements of Q&A–1 of § 54.4980B–4.

Q–10: If an employer stops contributing to a multiemployer group health plan, does the multiemployer plan have the obligation to make COBRA continuation coverage available to a qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer that has stopped contributing to the multiemployer plan?

A–10: (a) In general, yes. (See Q&A–3 of § 54.4980B–2 for a definition of *multiemployer plan*.) If, however, the employer that stops contributing to the multiemployer plan makes group health plan coverage available to (or starts contributing to another multiemployer plan that is a group health plan with respect to) a class of the employer's employees formerly covered under the multiemployer plan, the plan maintained by the employer (or the other multiemployer plan), from that date forward, has the obligation to make COBRA continuation coverage available to any qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer.

(b) The rules of Q&A–9 of this section and this Q&A–10 are illustrated by the following examples; in each example, each group health plan is subject to COBRA:

Example 1. (i) Employer *Z* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *Z* has been making contributions to *M*. *Z* experiences financial difficulties and stops making contributions to *M* but continues to employ all of the employees covered by the collective bargaining agreement. *Z*'s cessation of contributions to *M* causes those employees (and their spouses and dependent children) to lose coverage under *M*. *Z* does not make group health plan coverage available to any of the employees covered by the collective bargaining agreement.

(ii) After *Z* stops contributing to *M*, *M* continues to have the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *Z*. The loss of coverage under *M* for those employees of *Z* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

Example 2. (i) The facts are the same as in *Example 1* except that *B*, one of the employees covered under *M* before *Z* stops contributing to *M*, is transferred into management. *Z* maintains a group health plan for managers and *B* becomes eligible for coverage under the plan on the day of *B*'s transfer.

(ii) Under these facts, *Z* does not make group health plan coverage available to a class of employees formerly covered under *M* after *B* becomes eligible under *Z*'s group health plan for managers. Accordingly, *M* continues to have the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *Z*.

Example 3. (i) Employer *Y* employs two classes of employees skilled and unskilled laborers covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *Y* has been making contributions to *M*. *Y* stops making contributions to *M* but continues to employ all the employees covered by the collective bargaining agreement. *Y*'s cessation of contributions to *M* causes those employees (and their spouses and dependent children) to lose coverage under *M*. *Y* makes group health plan coverage available to the skilled laborers immediately after their coverage ceases under *M*, but *Y* does not make group health plan coverage available to any of the unskilled laborers.

(ii) Under these facts, because *Y* makes group health plan coverage available to a class of employees previously covered under *M* immediately after both classes of employees lose coverage under *M*, *Y* alone has the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *Y*, regardless of whether the employment affiliation was as a skilled or unskilled laborer. However, the loss of coverage under *M* for those employees of *Y* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

Example 4. (i) Employer *X* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *X* has been making contributions to *M*. *X* experiences financial difficulties and is forced into bankruptcy by its creditors. *X* continues to employ all of the employees covered by the collective bargaining agreement. *X* also continues to make contributions to *M* until the current collective bargaining agreement expires, on June 30, 2001, and then *X* stops making contributions to *M*. *X*'s employees (and their spouses and dependent children) lose coverage under *M* effective July 1, 2001. *X* does not enter into another collective bargaining agreement covering the class of employees covered by the expired collective bargaining agreement. Effective September 1, 2001, *X* establishes a group health plan covering the class of employees formerly covered by the collective bargaining agreement. The group health plan also covers their spouses and dependent children.

(ii) Under these facts, *M* has the obligation to make COBRA continuation coverage available from July 1, 2001 until August 31, 2001, and the group health plan established by *X* has the obligation to make COBRA continuation coverage available from September 1, 2001 until the obligation ends (see Q&A–1 of § 54.4980B–7) to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *X*. The loss of coverage under *M* for those employees of *X* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

Example 5. (i) Employer *W* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *W* has been making contributions to *M*. The employees covered by the collective bargaining agreement vote to decertify their current employee

representative effective January 1, 2002 and vote to certify a new employee representative effective the same date. As a consequence, on January 1, 2002 they cease to be covered under *M* and commence to be covered under multiemployer group health plan *N*.

(ii) Effective January 1, 2002, *N* has the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with W. The loss of coverage under *M* for those employees of W who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

§ 54.4980B–10 Interaction of FMLA and COBRA.

The following questions-and-answers address how the taking of leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601–2619) affects the COBRA continuation coverage requirements:

Q–1: In what circumstances does a qualifying event occur if an employee does not return from leave taken under FMLA?

A–1: (a) The taking of leave under FMLA does not constitute a qualifying event. A qualifying event under Q&A–1 of § 54.4980B–4 occurs, however, if—

(1) An employee (or the spouse or a dependent child of the employee) is covered on the day before the first day of FMLA leave (or becomes covered during the FMLA leave) under a group health plan of the employee's employer;

(2) The employee does not return to employment with the employer at the end of the FMLA leave; and

(3) The employee (or the spouse or a dependent child of the employee) would, in the absence of COBRA continuation coverage, lose coverage under the group health plan before the end of the maximum coverage period.

(b) However, the satisfaction of the three conditions in paragraph (a) of this Q&A–1 does not constitute a qualifying event if the employer eliminates, on or before the last day of the employee's FMLA leave, coverage under a group health plan for the class of employees (while continuing to employ that class of employees) to which the employee would have belonged if the employee had not taken FMLA leave.

Q–2: If a qualifying event described in Q&A–1 of this section occurs, when does it occur, and how is the maximum coverage period measured?

A–2: A qualifying event described in Q&A–1 of this section occurs on the last day of FMLA leave. (The determination of when FMLA leave ends is not made under the rules of this section. See the FMLA regulations, 29 CFR Part 825 (§§ 825.100–825.800).) The maximum coverage period (see Q&A–4 of § 54.4980B–7) is measured from the date of the qualifying event (that is, the last day of FMLA leave). If, however, coverage under the group health plan is lost at a later date and the plan provides for the extension of the required periods (see paragraph (b) of Q&A–4 of § 54.4980B–7), then the maximum coverage period is measured from the date when coverage is lost. The rules of this Q&A–2 are illustrated by the following examples:

Example 1. (i) Employee *B* is covered under the group health plan of Employer *X* on January 31, 2001. *B* takes FMLA leave beginning February 1, 2001. *B*'s last day of FMLA leave is 12 weeks later, on April 25, 2001, and *B* does not return to work with *X* at the end of the FMLA leave. If *B* does not elect COBRA continuation coverage, *B* will not be covered under the group health plan of *X* as of April 26, 2001.

(ii) *B* experiences a qualifying event on April 25, 2001, and the maximum coverage period is measured from that date. (This is the case even if, for part or all of the FMLA leave, *B* fails to pay the employee portion of premiums for coverage under the group health plan of *X* and is not covered under *X*'s plan. See Q&A–3 of this section.)

Example 2. (i) Employee *C* and *C*'s spouse are covered under the group health plan of Employer *Y* on August 15, 2001. *C* takes FMLA leave beginning August 16, 2001. *C* informs *Y* less than 12 weeks later, on September 28, 2001, that *C* will not be returning to work. Under the FMLA regulations, 29 CFR Part 825 (§§ 825.100–825.800), *C*'s last day of FMLA leave is September 28, 2001. *C* does not return to work with *Y* at the end of the FMLA leave. If *C* and *C*'s spouse do not elect COBRA continuation coverage, they will not be covered under the group health plan of *Y* as of September 29, 2001.

(ii) *C* and *C*'s spouse experience a qualifying event on September 28, 2001, and the maximum coverage period (generally 18 months) is measured from that date. (This is the case even if, for part or all of the FMLA leave, *C* fails to pay the employee portion of premiums for coverage under the group health plan of *Y* and *C* or *C*'s spouse is not covered under *Y*'s plan. See Q&A–3 of this section.)

Q–3: If an employee fails to pay the employee portion of premiums for coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

A–3: No. Any lapse of coverage under a group health plan during FMLA leave is irrelevant in determining whether a set of circumstances constitutes a qualifying event under Q&A–1 of this section or when such a qualifying event occurs under Q&A–2 of this section.

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

A–4: No. Any state or local law that requires coverage under a group health plan to be maintained during a leave of absence for a period longer than that required under FMLA (for example, for 16 weeks of leave rather than for the 12 weeks required under FMLA) is disregarded for purposes of determining when a qualifying event occurs under Q&A–1 through Q&A–3 of this section.

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave?

A–5: No. The U.S. Department of Labor has published rules describing the circumstances in which an employer may recover premiums it pays to maintain coverage, including family coverage, under a group health plan during FMLA leave from an employee who fails to return from leave. See 29 CFR 825.213. Even if recovery of premiums is permitted under 29 CFR 825.213, the right to COBRA continuation coverage cannot be conditioned upon the employee's reimbursement of the employer for premiums the employer paid to maintain coverage under a group health plan during FMLA leave.

Approved: December 18, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 01–5 Filed 1–9–01; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 95 and 177

[USCG–1998–4593]

RIN 2115–AF72

Revision to Federal Blood Alcohol Concentration (BAC) Standard for Recreational Vessel Operators

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the Federal Blood Alcohol Concentration (BAC) standard under which a recreational vessel operator

would be considered operating while ''intoxicated.'' For recreational vessel operators, the final rule lowers the current Federal BAC threshold from .10 BAC to .08 BAC. This change is appropriate because boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths and because we support a trend in State recreational boating laws toward the .08 BAC standard. Further, the revised Federal BAC standard does not supercede or preempt any enacted State BAC standard. Additionally, the final rule replaces the term ''intoxicated'' with the phrase ''under the influence of alcohol or a dangerous drug.'' This change brings the regulations into conformance with current statutory language. The final rule is expected to reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

DATES: This final rule is effective March 12, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–4593 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may obtain a copy of this rule by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety at *http://www.uscgboating.org,* or the Internet Site for the Docket Management Facility at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Carlton Perry, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil.* If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On December 14, 1987, we published a final rule in the **Federal Register** (52 FR 47526), in which we set a Federal standard for intoxication applicable to recreational vessel operators using a .10 BAC. The rule adopted any enacted State BAC standard of intoxication as the Federal BAC standard, and applied the State BAC standard to recreational vessel operators within that State. If a State did not have an enacted BAC standard for ''intoxication,'' a provision allowed us to adopt a State BAC standard for ''under the influence'' or ''while impaired,'' instead of ''intoxicated.'' In that final rule, we noted that we would consider revising the Federal BAC standard if the States developed a trend toward adopting the .08 BAC standard for operating a vessel on the water.

We began this rulemaking project in response to recommendations from the National Boating Safety Advisory Council (NBSAC), to update the existing regulations, and to ensure that terminology in our regulations conforms with current statutory authorities.

Although the number of boating deaths dropped from 1100 in 1986 to 734 in 1999, the number of fatal incidents where alcohol was reported as a causal factor remains stable at about 120. A review of statistics on recreational boating accidents during 1999 showed that there was evidence, or a reasonable likelihood, that alcohol involvement in reported accidents accounted for 26 percent of all boating fatalities.

The Oil Pollution Act of 1990 revised 46 U.S.C. 2302(c) by substituting the term ''under the influence of alcohol, or a dangerous drug in violation of a law of the United States'' for the term ''intoxicated.'' As a result, the terms ''intoxication'' and ''intoxicated,'' used in 33 CFR parts 95 and 177, no longer conform to the statutory authority. This rule revises them accordingly.

After studying recreational boating safety regulations in October 1997, NBSAC recommended that the Coast Guard track State BAC levels. They suggested that if we found a trend toward revising State standards to .08 BAC, then we should support that effort by revising the Federal standard, found in 33 CFR 95.020, to .08 BAC as well.

In 1987 only 21 States had enacted statutes using a BAC to define ''intoxication'' or ''under the influence'' for recreational vessel operation. Nineteen States used a .10 BAC and two States used a .08 BAC. Today 54 State jurisdictions, as defined in 46 U.S.C. 2101(36), have a BAC standard. Thirty-four use .10 BAC, nineteen use .08 BAC, and one uses .08 BAC only when there has been an injury. Also, eleven of the original twenty-one States and three additional States that initially set a .10 BAC standard have revised their standard from .10 BAC to .08 BAC. We acknowledge that the trend among States is toward using a .08 BAC standard, and we are revising the Federal BAC standard accordingly. We will continue to adopt a State's BAC standard for waters under the State's jurisdiction.

In a memorandum dated March 3, 1998, the President directed the Secretary of Transportation to develop an Action Plan to promote adoption of the .08 BAC standard for operating a vehicle on ''Federal property, including areas in national parks, and on Department of Defense installations, and ensuring strong enforcement and publicity of this standard.'' The Secretary's Action Plan included the proposed revision of the Federal BAC standard for operator's of recreational vessels, providing support for the DOT effort on water as well as on land. The Federal BAC standard for operators of vessels that are inspected, or subject to inspection under Chapter 33 of Title 46, United States Code, will remain at .04 BAC.

Regulatory History

On March 16, 2000, we published a notice of proposed rulemaking entitled Revision to Federal Blood Alcohol Concentration (BAC) Standard for Recreational Vessel Operators in the **Federal Register** (*65 FR 14223*). We received 20 letters commenting on the proposed rule. No public hearing was requested and none was held.

Discussion of Comments and Changes

We received a total of 20 comments on the proposed revisions to the regulations during the comment period. Two of the comments were from State Boating Law Administrators and an additional comment was submitted by the National Association of State Boating Law Administrators (NASBLA). Two other comments were submitted by the National Boating Federation (NBF) and the Boaters Against Drunk Driving (BADD).

Twelve of the comments, including the comments from the Missouri and the California Boating Law Administrators, NASBLA, NBF and BADD, generally supported revising the Federal BAC standard from .10 BAC to .08 BAC.

One comment supporting the BAC revision suggested that in addition to lowering the BAC standard, the Coast Guard needs to increase its detection and arrest of intoxicated operators; enforcement cannot be borne solely by the States.

Eight of the comments generally opposed revising the Federal BAC standard from .10 BAC to .08 BAC, several suggesting that the change would do little or nothing to reduce the number of drunk boaters.

One comment stated that there is not enough funding to enforce the new .08 BAC level.

Several other comments stated that we needed something else instead of new laws, either more education, more boater awareness, more enforcement, or more life saving.

Another comment suggested that not many accidents actually involved individuals with a BAC between .10 and .08.

One comment stated that machines testing BAC are inaccurate compared to blood tests, are polluted by previous tests administered, that individual health condition, fat to muscle ratio, and age determines the effect of alcohol on the individual, and suggested that behavior is a better indicator than BAC level.

One comment expressed concern that the change would send the wrong message to law enforcement officers and adversely affect the wrong people, the dinner crowd.

Another comment asserted that most arrests for BUI are made in harbors to people in dinghies or powerboats exceeding the 6 knot speed limit and that most accidents occur outside of harbors where speed, adherence to rules of the road and sheer stupidity are not monitored.

When setting the initial standard at .10 BAC, we decided against .08 BAC because the majority of States then used a .10 BAC. However, in view of the Presidential initiative to establish a .08 BAC standard on the land and the increasing number of States setting a .08 BAC standard on the water, we've decided it is now appropriate to revise the Federal standard on the water to .08 BAC. The revised standard is not an attempt at zero tolerance policy and will neither increase the cost of enforcement nor change the effectiveness of the BAC testing equipment currently in use.

This rulemaking would impose no costs for the boating public or even to the Government, since the Coast Guard Boarding Officer personnel already enforce the .08 BAC or other BAC level in those States with such a BAC level. Boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths, and we support the trend in State boating laws toward the .08 BAC standard. The rule should reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

The Coast Guard will continue its efforts to make boaters more aware of the effects of alcohol on operation of a recreational vessel and to work with State law enforcement officers to ensure appropriate levels of enforcement on the water. We will continue to enforce all appropriate laws and regulations, including negligent operation of a vessel and the navigation rules. Comments suggesting changes related to increasing State funding and revising the BAC standard for commercial vessel operators are beyond the scope of this rulemaking.

After considering all of the above comments, the Coast Guard has decided to adopt the revision to the BAC standard and make other technical changes as proposed.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 (OMB) 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).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

1. Cost of Rule

This rulemaking would impose no costs for the boating public. Costs to the government would be non-existent as well because the Coast Guard already trains its Boarding Officer personnel on use of the .08 BAC level to properly prepare them for working in those States with such a BAC level.

2. Benefit of Rule

This rule is appropriate because boating accident statistics show that alcohol use remains a significant cause of recreational boating deaths and because we support a trend in State boating laws toward the .08 BAC standard. The rule is expected to reduce the number of recreational boating deaths and injuries resulting from accidents caused by operators under the influence of alcohol or a dangerous drug.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect 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.

This revision of the Federal BAC standard applies to operators of recreational vessels on waters subject to the jurisdiction of the United States, as defined in 33 CFR 2.05–30. This revision of the Federal BAC standard will continue to apply to recreational vessels owned in the United States, while operating on the high seas, as defined in 33 CFR 2.05–1. Further, since this rule would continue to adopt State enacted BAC standards, recreational vessel operators in States with enacted BAC standards would not be subject to a new BAC standard unless a State changes its own enacted BAC standard. Only those recreational vessel operators in States without enacted BAC standards and on navigable waters of the U.S. outside of the States would be subject to a new BAC standard.

Because the provisions of the Regulatory Flexibility Act do not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

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 can better evaluate its effect on them and participate in the rulemaking. We provided the name, telephone number and e-mail address of a contact for small entities if they felt that the rule would affect their small business, organization, or governmental jurisdiction and if they had questions concerning its provisions or options for compliance. 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, Federalism, and have determined that, because the Federal BAC standard will not supercede or preempt any enacted State BAC standard, 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) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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 considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The rule makes a minor revision to the Federal BAC standard for the level at which an operator of a recreational vessel is deemed to be impaired. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 95

Alcohol and alcoholic beverages, Drugs, Marine safety, Vessels.

33 CFR Part 177

Alcohol and alcoholic beverages, Drugs, Marine safety, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 95 and 177 as follows:

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

1. The authority citation for part 95 continues to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; 49 CFR 1.46.

2. Revise the part heading to read as shown above.

§ 95.001 [Amended]

3. In § 95.001(a), remove the words ''intoxication.'' and ''intoxicated'' and add, in their place, the words ''under the influence of alcohol or a dangerous drug.''

4. Amend § 95.010 by adding the following definitions in alphabetical order to read as follows:

§ 95.010 Definition of terms as used in this part.

* * * * *

Blood alcohol concentration level means a certain percentage of alcohol in the blood.

* * * * *

State means a State or Territory of the United States of America including but not limited to a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

* * * * *

Under the influence means impaired or intoxicated by a drug or alcohol as a matter of law.

* * * * *

5. Amend § 95.020 by revising the section heading, the introductory text, and paragraph (a) to read as follows:

§ 95.020 Standard for under the influence of alcohol or a dangerous drug.

An individual is under the influence of alcohol or a dangerous drug when:

(a) The individual is operating a recreational vessel and has a Blood Alcohol Concentration (BAC) level of .08 percent or more, by weight, in their blood;

* * * * *

6. Amend § 95.025 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 95.025 Adoption of State blood alcohol concentration levels.

(a) This section applies to operators of recreational vessels on waters within the geographical boundaries of any State that has established by statute a blood alcohol concentration level for purposes of determining whether a person is operating a vessel under the influence of alcohol.

(b) If the applicable State statute establishes a blood alcohol concentration level at which a person is considered or presumed to be under the influence of alcohol, then that level applies within the geographical boundaries of that State instead of the level provided in § 95.020(a) of this part.

* * * * *

§ 95.030 [Amended]

7. Amend § 95.030 by revising the section heading and the introductory text to read as follows:

§ 95.030 Evidence of under the influence of alcohol or a dangerous drug.

Acceptable evidence of when a vessel operator is under the influence of alcohol or a dangerous drug includes, but is not limited to:

* * * * *

§ 95.040 [Amended]

8. In § 95.040, paragraph (a), remove the word ''intoxicated'' and add, in its place, the words ''under the influence of alcohol or a dangerous drug.''

PART 177—[AMENDED]

9. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 4302, 4311; 49 CFR 1.45 and 1.46.

§ 177.07 [Amended]

10. In § 177.07(b), remove the word ''intoxicated'' and add, in its place, the words ''under the influence of alcohol or a dangerous drug.''

Dated: December 27, 2000.

Terry M. Cross,

Rear Admiral, Coast Guard, Assistant Commandant for Operations.

[FR Doc. 01–551 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–090]

RIN 2115–AE47

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Norfolk and Western Railroad drawbridge across the Eastern Branch of the Elizabeth River, mile 2.7, at Norfolk, Virginia. This change will require on-signal openings from 6 a.m. to 10 p.m. using a half-cycle draw operation and will reduce the advance notice required at other times from 3 hours to 2 hours. This change will provide for the reasonable needs of navigation.

DATES: This rule is effective February 9, 2001.

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 docket (CGD05–98–090) and are available for inspection or copying at Commander (Aowb), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 2, 1998, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations, Elizabeth River, Eastern Branch, Norfolk, VA'' in the **Federal Register** (63 FR 58676). We also distributed local notice of the **Federal Register** publication. We received 652 comments on the proposed rule. Most of the comments were on ''form letters'', signatures on a petition, and letters that although individually drafted contained the same language. These and other comments opposed the proposed changes and favored maintaining the current regulations or slightly increasing the hours of on-signal openings on weekend and holiday nights. Other suggestions included requiring the bridge to remain in the open position unless actually being used for train traffic, automating the operation of the bridge, and requiring the bridge to open on-signal at all times. On May 15, 2000, we published a supplemental notice of proposed rulemaking (SNPRM) entitled ''Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA'' in the **Federal Register** (65 FR 30938). We also distributed local notice of the **Federal Register** publication. We received seven (7) comments on the supplemental proposed rule. No public hearing was requested, and none was held.

Background and Purpose

33 CFR 117.1007(a) currently requires the Norfolk Southern Railroad Bridge (formerly called the Norfolk and Western Railroad Bridge), mile 2.7, across the Eastern Branch of the Elizabeth River, to open on signal from 6 a.m. to 10 p.m., seven days a week, year round. At all other times, the bridge only opens with at least a three-hour advance notice.

Norfolk Southern Corporation (NSC) initially requested in 1998 a change to the regulations that would have reduced the hours during the day and times of the year when on-signal openings are required. NSC based their request on data from the 1996 and 1997 drawlogs. We reviewed the drawlogs and made recommendations to NSC changing their request to reflect more closely with the data obtained from the drawlogs. On November 2, 1998, a notice of proposed rulemaking (NPRM) was published in the **Federal Register** (63 FR 58676) proposing on-signal openings from April 15 to November 30, Monday through Thursday, from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times the bridge would only have to open for vessel traffic after three hours advance notice. As a result of this proposal, 652 comments were received all objecting to the proposed changes. We facilitated a meeting on April 20, 1999 during which NSC, local government representatives, and other interested attendees discussed the proposed rule. A written summary of the meeting is available for public review in the public docket. Based on all information received, we revised our original proposal to keep the original hours as in the current regulations using a ''half-cycle operation'', reducing the number of openings during the on-signal hours and reducing the current advance notice requirement from three hours to two hours during the 10 p.m. to 6 a.m. period. The Coast Guard's goal is to provide practical and feasible scheduled opening times for drawbridges during seasons of the year, and during times of the day, when scheduled openings would benefit users and owners of the bridge as well as users of the waterway.

Discussion of Comment and Changes

We received seven (7) comments to the supplemental notice of proposed rulemaking. Six (6) responded in favor of the proposed change to the operating schedule of the Norfolk and Western Railroad Bridge. One (1) comment opposed the proposed change referring to it as being a more restricted schedule. This supplemental proposal is more lenient that the current schedule since it will provide ''half cycle'' operation, that is, the bridge goes from the closed position to the open position or vice versa, but does not complete the ''cycle'' to its original position. This provides boaters freer access of the river. Reducing the advance notification from three (3) to two (2) hours will allow waterway users greater flexibility in planning their transit of the bridge while not burdening the bridge owner with extended hours of on-signal operation unnecessarily. Based on this and the comments received since the publication of the SNPRM, we are amending 33 CFR 117.1007(a) which governs the Norfolk and Western Railroad Bridge, across the Elizabeth River, Eastern Branch, mile 2.7, at Norfolk, Virginia.

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 reached this conclusion based on the fact that the proposed changes will not impede maritime traffic but actually serve to increase the ease of use by waterway users, while still providing for the needs of the bridge owner.

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 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 final rule would affect the following entities, some of which might be small entities: The owners and operators of vessels that desire to transit the waterway and homeowners associations representing property owners upstream of the drawbridge. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will increase the amount of time the drawbridge is open during peak waterway usage and decreases the notification requirement for off-peak opening of the drawbridge.

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. This was accomplished through the solicitation of comments from local waterway users during a Coast Guard field study, and through publication of the NPRM and SNPRM in the **Federal Register** in which comments were solicited.

Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act (44 U.S.C. 3510–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice

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 (32)(e) of Commandant Instruction M16475.1C this rule is categorically excluded from further environmental documentation. This rule involves the operating schedule of an existing drawbridge and will have no impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.1007(a) is revised as to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

(a) The draw of the Norfolk and Western Railroad bridge, mile 2.7 at Norfolk, shall open as follows:

(1) From 6 a.m. to 10 p.m., the draw shall open on signal if it is in the closed to navigation position and remain open until a train crossing requires that it be returned to the closed position.

(2) From 10 p.m. to 6 a.m., the draw shall open on signal if at least two hours notice is given.

* * * * *

Dated: December 21, 2000.

John E. Shkor,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 01–761 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Review of Decisions To Amend or Revise Plans

AGENCY: Forest Service, USDA.

ACTION: Interpretive rule.

SUMMARY: The Department is adopting this interpretive rule to make explicit its intent regarding the procedure(s) that citizens and entities may use to appeal or object to plan revisions or amendments subsequent to the recent revision of the planning regulations at 36 CFR part 219 and the corollary rescission of the appeal regulations at 36 CFR part 217.

EFFECTIVE DATE: This interpretive rule is effective January 10, 2001.

ADDRESSES: Written inquiries about this interpretive rule may be sent to the Director, Ecosystem Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Steve Segovia, Assistant Director for Appeals and Litigation, Forest Service; Telephone (202) 205–1066; Fax (202) 205–1012.

SUPPLEMENTARY INFORMATION: On November 9, 2000, the Secretary of Agriculture adopted a final rule which revised the land and resource management planning rules at 36 CFR part 219 and removed the administrative appeal of plan decisions at 36 CFR part 217 (65 FR 67514). The revised rule at 36 CFR part 219 establishes requirements for the implementation, monitoring, evaluation, amendment, and revision of land and resource management plans, and affirms sustainability as the overall goal for National Forest System planning and management. The intended effects of the rule are to simplify, clarify, and otherwise improve the planning process. To help achieve these intended effects, § 219.32 of the recently revised planning rule establishes an objection process to replace the appeals process embodied in part 217. Section 219.35 of the recently revised rule provides

direction to govern the transition from the previous planning process.

Questions have arisen regarding interpretation and application of administrative appeal and review processes in the context of the transitional language provided in § 219.35. As a consequence, the Department is issuing this interpretive rule which adds a note to appear as an appendix to § 219.35 to explain how these provisions operate together. A description of the matters addressed in this interpretive rule follows.

Terminology. Paragraph (b) of § 219.35 uses the term ''initiated'' in the context of plan revisions or amendments under way prior to November 9, 2000. The Department is clarifying the term ''initiated'' to avert misinterpretation of the Department's intended application of the rule. This interpretive rule clarifies that ''initiated'' refers to the published public notification of a proposed plan amendment or revision.

Options. Paragraph (b) of § 219.35 grants an option to proceed at the responsible official's discretion either under the 1982 regulations in effect prior to November 9, 2000, or under the revised regulations. This interpretive rule makes clear that paragraph (b) specificially includes the option to select either the administrative appeal and review procedures of 36 CFR part 217 in effect prior to November 9, 2000, or the new objection procedures to complete a plan amendment or revision process initiated under the 1982 regulations.

This rulemaking consists of an interpretive rule and is issued by the agency to advise the public of the agency's preexisting construction of one of the rules it administers—that is, 36 CFR 219.35, in the context of National Forest System land and resource management planning. *See, e.g., Shalala, Secretary of Health and Human Services* v. *Guernsey Memorial Hosp.,* 514 U.S. 87, 99 (1995). Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the **Federal Register**.

Regulatory Impact

It has been determined that this is not a significant rule. This interpretive rule will not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This rulemaking will not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, this rulemaking will not alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rulemaking is not subject to Office of Management and Budget (OMB) review under Executive Order 12866. Moreover, this rulemaking has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is therefore certified that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Act. This rule will not impose recordkeeping requirements; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.

Environmental Impact

This rulemaking has no direct or indirect effect on the environment, but merely clarifies the relationship of certain planning actions to their respective appeal procedures. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations or policies to establish Service-wide administrative procedures, program processes, or instructions. Based on the nature and scope of this rulemaking, the agency has determined that the interpretive rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that this rule will not pose the risk of a taking of private property, as the interpretive rule is limited to clarification of the transition procedures in the new planning rule.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule (1) does not preempt State and local laws and regulations that conflict with or impede its full implementation; (2) has no retroactive effect; and (3) will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this rule on State, local and tribal governments and the private sector. This rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in Part 219

Administrative practice and procedure, Environmental impact statements, Forest and forest products, Indians, Intergovernmental relations, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is amended as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

2. Add an appendix at the end of § 219.35 to read as follows:

§ 219.35 Transition.

* * * * *

Appendix A to § 219.35

Interpretive Rule Related to Paragraph 219.35(b)

The Department is making explicit its preexisting understanding of paragraph (b) of this section with regard to the appeal or objection procedures that may be applied to amendments or revisions of land and resource management plans during the transition from the appeal procedures of 36 CFR part 217 in effect prior to November 9, 2000 (See CFR 36 parts 200 to 299, Revised as of July 1, 2000), to the objection procedures of § 219.32 as follows:

1. The option to proceed under the 1982 regulations or under the provisions of this subpart specifically includes the option to select either the administrative appeal and review procedures of 36 CFR part 217 in effect prior to November 9, 2000, or the objection procedures of 36 CFR 219.32.

2. The Department interprets the term ''initiated,'' as used in paragraph (b) of this section, to indicate that the agency has issued a Notice of Intent or other public notification announcing the commencement of a plan revision or amendment as provided for in the Council on Environmental Quality regulations at 40 CFR 1501.7 or in Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, section 11.

* * * * *

Dated: January 4, 2001.

Dan Glickman,

Secretary.

[FR Doc. 01–615 Filed 1–5–01; 1:38 pm]

BILLING CODE 3410–11–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD104–3060; FRL–6920–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Reduction and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland on April 27, 2000. This revision was submitted to satisfy EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' This revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, and reductions for cement kilns and stationary industrial combustion engines, beginning in 2003. The intended effect of this action has two purposes. EPA is approving the Maryland's NO_X Reduction and Trading Program because it meets the requirements of the NO_X SIP Call that will significantly reduce ozone transport in the eastern United States. In addition, EPA is approving Maryland's NO_X Reduction and Trading Program because it supports the one-hour attainment demonstration plans for the Baltimore, Metropolitan Washington, D.C. and Philadelphia-Wilmington-Trenton ozone nonattainment areas.

EFFECTIVE DATE: This final rule is effective on February 9, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178 or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 2000, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to meet the requirements of the NO_X SIP Call. The revision consists of the adoption of two new chapters COMAR 26.111.29—NO_X Reduction and Trading Program and COMAR 26.11.30—Policies and Procedure Relating to Maryland's NO_X Reduction and Trading Program.

On October 19, 2000 (65 FR 62671), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland proposing to approve the April 27, 2000 SIP revision. That NPR provided for a public comment period ending on November 9, 2000. On November 9, 2000 (65 FR 67319), EPA published a notice extending the comment period to November 20, 2000. A detailed description of this SIP revision and EPA's rationale for approving it was provided in the October 19, 2000 NPR and will not be restated here. One letter of comment was submitted on EPA's proposal. A summary of the comments expressed in that letter and EPA's response is provided in section II, below.

II. Public Comments and EPA Response

Comment: A letter of comment was submitted expressing concerns over the impact an expansion of the Baltimore/Washington International (BWI) Airport expansion would have on Maryland's ability to limit both emissions of NO_X and volatile organic compounds (VOCs) sufficiently to meet the National Ambient Air Quality Standard for ozone. The commenter states his overarching concern that planned ''growth'' in the Baltimore and Washington, DC areas from such projects as the expansion of BWI airport and the Ann Arundel Mills Mall is occurring at a rate such that compliance with the Maryland's program to satisfy the NO_X SIP call could be jeopardized. The commenter expresses concerns that although Maryland is ''required'' to abide by a regional cap and trade program that is intended to significantly reduce NO_X emissions generated within the Ozone Transport Region, that effort will fail unless the impact of the BWI airport is properly documented to include the cumulative impact of the airport's NO_X emissions, due to cars, buses, transport vehicles, maintenance facilities, rental cars, and aircraft.

Response: The commenter is correct that VOC and NO_X emissions resulting from growth in the Baltimore and Washington DC areas from projects such as BWI airport and the Ann Arundel Mills Mall must be considered by the State of Maryland in meeting its requirements under the Clean Air Act for attainment and maintenance of the NAAQS for ozone. Increases in both NO_X and VOC emissions from such projects must be demonstrated to conform to plans and provisions of the Maryland SIP established to accommodate such ''growth.'' Approval of Maryland's regulations and requirements to satisfy the NO_X SIP call in no way relieves the State from the applicable requirements and obligations under the Clean Air Act's transportation and general conformity provisions. In determining the appropriate control levels, the NO_X SIP Call rulemaking assumed certain amounts of growth from all source categories. The comment seems to imply that EPA was not cognizant of growth, any such implication is incorrect. Moreover, the requirements of the NO_X SIP Call and Maryland's SIP will be satisfied if the sources subject to controls implement those controls, and if the emissions cap applicable to electric generating units (EGUs) is adhered to. Under the federal NO_X SIP Call, states were allowed the flexibility to decide what sources of emissions to control to achieve the required reductions in NO_X. EPA did provide information that those reductions could be achieved in the most cost effective manner by controlling large stationary sources. EPA finds that Maryland's NO_X Reduction and Trading Program meets the requirements of the NO_X SIP Call. However, neither the federal NO_X SIP Call rule nor Maryland's Program to satisfy that rule alters either of the mandated conformity programs' requirements. Moreover, while the NO_X SIP Call rule specifically establishes

requirements to reduce NO_X emissions, the transportation and general conformity provisions of the Clean Act require that both NO_X and VOC emissions increases be accounted for and conform with a state's plan(s) to attain and maintain the NAAQS for ozone. For these reasons, EPA believes that approval of Maryland's regulations and requirements to satisfy the NO_X SIP call strengthens the SIP and does not alter or make less stringent the State's obligation to meet the conformity requirements of the Clean Air Act and its SIP.

II. Final Action

EPA is approving the Maryland's SIP revision consisting of its NO_X Reduction and Trading Program, which was submitted on April 27, 2000. EPA finds that Maryland's submittal is fully approvable because it meets the requirements of the NO_X SIP Call. In addition, EPA is approving Maryland's NO_X Reduction and Trading Program because it supports the one-hour attainment demonstration plans for the Baltimore, Metropolitan Washington, DC and Philadelphia-Wilmington-Trenton ozone nonattainment areas.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Publ. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2001. 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 to approve Maryland's NO_X Reduction and Trading Program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(154) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(154) Revisions to the Maryland Regulations pertaining to the Nitrogen Oxides (NO_X) Reduction and Trading Program submitted on April 27, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 27, 2000 from the Maryland Department of the Environment transmitting additions to the Maryland State Implementation Plan pertaining to the NO_X Reduction and Trading Program.

(B) Revisions to COMAR 26.11.29, NO_X Reduction and Trading Program and COMAR 26.11.30, Policies and Procedures Relating to Maryland's NO_X Reduction and Trading Program, effective May 1, 2000.

(*1*) Addition of COMAR 26.11.29.01 through COMAR 26.11.29.15.

(*2*) Addition of COMAR 26.11.30.01 through COMAR 26.11.30.09.

(ii) *Additional material.* Remainder of April 27, 2000 submittal pertaining to the NO_X Reduction and Trading Program.

[FR Doc. 01–568 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH036–7136A; A–1–FRL–6928–7]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Vehicle Inspection and Maintenance Program; Restructuring OTR Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a Clean Air Act State Implementation Plan (SIP) revision submitted by the State of New Hampshire. On December 17, 1998 (63 FR 69589), EPA proposed to approve a revision to the New Hampshire SIP for vehicle inspection and maintenance (I/M). This SIP revision request was submitted on September 4, 1998. The State supplemented it by a letter dated November 20, 1998 which provided additional information about the New Hampshire I/M program, and requested further flexibility from requirements applicable to areas in the Ozone Transport Region (OTR) in light of the air quality status of New Hampshire's ozone nonattainment areas. EPA proposed approval of New Hampshire's I/M program under the concept of OTR ''restructuring'' on December 17, 1998 and received no comments. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule will become effective on February 9, 2001.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

I. What SIP revision was submitted by the State of New Hampshire?
II. What are the relevant Clean Air Act requirements?
III. What action did EPA propose for the New Hampshire I/M SIP?
IV. What action did EPA take to defer the offset sanction in New Hampshire?
V. What is EPA's basis for restructuring the Ozone Transport Region requirements?
VI. Have any circumstances changed since the original proposal?
VII. What action is EPA taking on New Hampshire's I/M program?
VIII. EPA Action
IX. Administrative Requirements

I. What SIP revision was submitted by the State of New Hampshire?

The New Hampshire Department of Environmental Services (DES) submitted a revision to the New Hampshire SIP on September 4, 1998 and November 20, 1998 for a vehicle I/M program. The submittal requested further flexibility from requirements applicable to areas in the OTR in light of the air quality status of the ozone nonattainment areas in New Hampshire. The SIP revision includes New Hampshire Code of Administrative Rules, Part Saf-C 3220 ''Official Motor Vehicle Inspection Requirements'' and Part Saf-C 5800 ''Roadside Diesel Opacity Inspection'' and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented.

II. What are the relevant Clean Air Act requirements?

Section 184(b)(1)(A) of the Act requires areas with a population of at least 100,000 in a metropolitan statistical area in the OTR to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. EPA's I/M rule was established on November 5, 1992 (57 FR 52950). EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). Under EPA's I/M rule, enhanced I/M programs would be required in the Portsmouth-Dover-Rochester, New Hampshire area, and the New Hampshire portion of the Boston-Worcester-Lawrence area[1]. This program was initially submitted to fulfill the State's obligations to implement I/M pursuant to these requirements. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States subject to the I/M requirement to submit an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

III. What action did EPA propose for the New Hampshire I/M SIP?

EPA proposed approval of New Hampshire's I/M program under the concept of OTR ''restructuring'' on December 17, 1998 (63 FR 69589). EPA stated that the New Hampshire areas and all nearby areas had met the one-hour national ambient air quality standard (NAAQS) for ozone. Because of this, and because of the technical demonstration made by the State, EPA made a determination that emission reductions from I/M under section 184 would not significantly contribute to the attainment of the one-hour standard anywhere in the OTR, and the I/M requirement could be ''restructured.'' EPA then proposed approval of the I/M SIP as a SIP strengthening measure under section 110 of the Clean Air Act. EPA received no comments on its proposal.

IV. What action did EPA take to defer the offset sanction in New Hampshire?

Due to the disapproval of an earlier I/M SIP submitted by the State of New Hampshire, the Clean Air Act's offset sanction was applicable in New Hampshire beginning December 6, 1998. Based on the December 17, 1998 proposed approval (63 FR 69589) on that same day, EPA published an interim final rule in the **Federal Register** which stayed that sanction and deferred the imposition of the highway funding sanction in New Hampshire (63 FR 69557). In that action EPA said that the stay and deferral would remain in effect until EPA took final action on the New Hampshire I/M SIP proposed on that same day or retracted its proposed approval.

Today EPA is issuing a final, full approval of New Hampshire's submitted I/M program SIP revision, and a final determination that the CAA requirement for an enhanced I/M program for areas in the OTR does not apply for New Hampshire. Accordingly, all sanctions and FIP clocks started based on EPA's earlier disapproval of New Hampshire's

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[1] These areas are MSAs with populations greater than 100,000, and are subject to enhanced I/M under the OTR provisions of the Act. Further, because the one-hour standard was recently reinstated as of July 20, 2000, certain areas in New Hampshire if they had sufficient ''urbanized area'' populations, would be subject to the enhanced I/M requirements applicable in serious ozone nonattainment areas. The urbanized area populations of these areas, however, do not trigger the I/M requirements of section 182 as codified in EPA's I/M rule.

I/M program are terminated upon the effective date of today's action.

V. What is EPA's basis for restructuring the Ozone Transport Region requirements?

Section 176A of the Clean Air Act is entitled ''Interstate Transport Commissions,'' and discusses the criteria used to add or remove areas from transport regions. Section 176A(a)(2) states that the ''Administrator * * * may remove any State * * * from the [OTR] whenever the Administrator has reason to believe that control of emissions in that State * * * pursuant to [the Act's requirements for the OTR] will not significantly contribute to attainment of the standard in the region.'' Implicit in EPA's authority to remove a State from the OTR entirely is the authority to eliminate or ''restructure'' specific control requirements for States that remain in the OTR, provided the State demonstrates that the control of emissions from such requirement will not significantly contribute to attainment of the one-hour ozone standard anywhere in the OTR.

VI. Have any circumstances changed since the original proposal?

In the December 1998 notice proposing to approve New Hampshire's I/M SIP, we noted that this program is designed to get the emission reductions required by EPA's I/M regulation for enhanced I/M programs in the OTR. Nevertheless, the program did not meet these enhanced I/M requirements primarily due to the Act's requirement for a registration-based enforcement program. We proposed that since New Hampshire had demonstrated that it did not affect any other one-hour ozone nonattainment areas in the OTR that were violating that standard, this area could have ''opted-out'' of the OTR under section 176A. New Hampshire is also attaining the 1-hour ozone standard. But since New Hampshire did not want to ''opt-out'' of the OTR, and merely wanted flexibility on enhanced I/M, we proposed to accept the I/M program that New Hampshire had submitted as a SIP strengthening measure under section 110. The proposal was also based on air quality data that demonstrated that all of the remaining nearby ozone nonattainment areas in Massachusetts, Maine, and Rhode Island had achieved the 1-hour standard. EPA had proposed to revoke the 1-hour standard based on these air quality data. That proposal to revoke the one-hour ozone standard in each of these areas was finalized on June 9, 1999 (64 FR 30911).

However, due to uncertainty regarding the status of implementing EPA's 8-hour ozone standard, on October 25, 1999 (64 FR 57424), EPA proposed that the one-hour standard should apply again in all areas where it was previously revoked. That action was finalized on July 20, 2000 (65 FR 45182). Many of these areas that were previously designated nonattainment have air quality which meets the one-hour ozone NAAQS, including all the areas noted in EPA's December, 1998 proposed action. It should be noted that air quality monitoring data averaged over the years 1997 through 1999 showed that the Portland, Maine area (consisting of York, Cumberland and Sagadahoc Counties) a downwind area, had a design value of 0.125 ppm. During this period, this area was exceeding the one-hour ozone standard, albeit by a small margin. But more recent data based on 1998 through 2000 monitoring data, and earlier data which was the basis for our proposal (1996 through 1998 monitoring data), shows that the Portland area is attaining the one-hour ozone standard. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the Portland area has attained the one-hour ozone NAAQS, as recorded in EPA's Aerometric Information Retrieval System (AIRS). All other areas in Maine, New Hampshire, eastern Massachusetts and Vermont have continued to measure air quality that meets the one-hour ozone standard. Therefore, EPA has concluded that its earlier finding under section 176A is still valid and we are finalizing approval of the December 1998 proposed action.

VII. What action is EPA taking on New Hampshire's I/M program?

EPA is approving New Hampshire's I/M submittal. EPA has reviewed the State submittal against the requirements of the Act and EPA's final I/M rule. The SIP submission does not meet all of the requirements of EPA's final rule for enhanced I/M. The program does, however, contribute to air quality improvement. Therefore, EPA is approving New Hampshire's I/M program because it is a SIP strengthening measure under section 110. The EPA is also determining that an enhanced I/M program in New Hampshire would not significantly contribute to attainment in any other State in the OTR.

VIII. EPA Action

EPA is approving the SIP revision New Hampshire submitted on September 4, 1998, and November 20, 1998 as a revision to the New Hampshire SIP for I/M. EPA is approving the New Hampshire I/M program as strengthening the State's SIP under section 110 of the Act. EPA is also taking final action removing the detailed CAA requirements for an enhanced I/M program in the OTR for New Hampshire. Accordingly, all sanctions and FIP clocks related to approval of New Hampshire's I/M program are terminated upon the effective date of today's action.

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

IX. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

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

State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

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

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

D. Executive Order 13084

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

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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

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

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2001.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 27, 2000.

Carol Browner,

Administrator.

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

PART 52—[AMENDED]

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

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

Subpart EE—New Hampshire

2. Section 52.1519 is revised by removing paragraphs (a)(2) and (c)(3).

3. Section 52.1520 is amended by adding paragraph (c)(59) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(59) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on September 4, 1998 and November 20, 1998.

(i) Incorporation by reference.

(A) New Hampshire Code of Administrative Rules, Part Saf-C 3221A ''Emission Amendments to Official Motor Vehicle Inspection Requirements'' as adopted on November 17, 1998; and Part Saf-C 5800 ''Roadside Diesel Opacity Inspection Program Rules'' as adopted on November 17, 1998.

(ii) Additional material.

(A) Document entitled ''Alternative New Hampshire Motor Vehicle Inspection/Maintenance State Implementation Plan Revision'' dated September 4, 1998.

(B) Letters from the New Hampshire Air Resources Division dated September 4, 1998 and November 20, 1998 submitting a revision to the New Hampshire State Implementation Plan.

* * * * *

4. In § 52.1525, Table 52.1525 is amended by revising footnote 1 and by adding new entries to existing state citations for a motor vehicle inspection and maintenance program to read as follows:

§ 52.1525 EPA—approved New Hampshire state regulations.

* * * * *

TABLE 52.1525—EPA—APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter [2]	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Explanation
*	*	*	*	*	*	*
Emission Amendments to Official Motor Vehicle Inspection Req.	NHCAR, Part Saf-C 3221A.	11/17/98	1/10/01	66 FR 1871	(c)(59)	Part Saf-C 3221A ''Emission Amendments to Official Motor Vehicle Inspection Requirements'' adopted on November 17, 1998;
Roadside Diesel Opacity Inspection Program Rules.	NHCAR, Part Saf-C 5800.	11/17/98	1/10/01	66 FR 1871	(c)(59)	Part Saf-C 5800 ''Roadside Diesel Opacity Inspection Program Rules'' adopted on November 17, 1998.
*	*	*	*	*	*	*

[1] These regulations are applicable statewide unless otherwise noted in the Explanation section.

[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

[FR Doc. 01–571 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME059–7008A; A–1–FRL–6928–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Vehicle Inspection and Maintenance Program; Restructuring OTR Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a Clean Air Act State Implementation Plan (SIP) revision submitted by the State of Maine. On December 17, 1998 (63 FR 69594), EPA proposed to approve a revision to the Maine SIP. This SIP revision request was submitted to EPA for approval on November 19, 1998 by the Maine Department of Environmental Protection (DEP) for vehicle inspection and maintenance (I/M). That submittal requested further flexibility from I/M requirements applicable to the Ozone Transport Region (OTR) in light of the air quality status of the area. EPA proposed approval of the State's I/M program under the concept of OTR ''restructuring.'' EPA received no comments on the December 17, 1998 proposal. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule will become effective on February 9, 2001.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and the

Bureau of Air Quality Control, Department of Environmental Protection, State House-Station No. 17, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

I. What SIP revision was submitted by the State of Maine?
II. What are the relevant Clean Air Act requirements?
III. What action did EPA propose for the Maine I/M SIP?
IV. What action did EPA take to defer the offset sanction in Maine?
V. What is EPA's basis for restructuring the Ozone Transport Region requirements?
VI. Have any circumstances changed since the original proposal?
VII. What action is EPA taking on Maine's I/M program?
VIII. EPA Action
IX. Administrative Requirements

I. What SIP Revision Was Submitted by the State of Maine?

Maine DEP submitted a revision to the Maine SIP on November 19, 1998 for a vehicle I/M program. This submittal requested further flexibility from requirements applicable to states in the OTR in light of the air quality status of the area at that time. The SIP revision includes sections of the ''Maine Safety Inspection Manual,'' and additional supporting material including detailed authorizing legislation (L.D. 2223, ''An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act''), administrative items, and a description of the program being implemented.

II. What Are the Relevant Clean Air Act Requirements?

Section 184(b)(1)(A) of the Act requires areas with a population of at least 100,000 in a metropolitan statistical area in the OTR to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. EPA's I/M rule was established on November 5, 1992 (57 FR 52950). EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). Maine is subject to the requirements of the Act for an I/M program in the Portland, Maine area. Maine's program was initially submitted to fulfill the State's obligations to implement I/M pursuant to these requirements. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States subject to the I/M requirement to submit an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

III. What Action Did EPA Propose for the Maine I/M SIP?

EPA proposed approval of Maine's I/M program under the concept of OTR ''restructuring'' on December 17, 1998 (63 FR 69594). EPA stated that the Portland, Maine area and all nearby areas had met the one-hour national ambient air quality standard (NAAQS) for ozone. Because of this, and because of the technical demonstration made by the State, EPA made a determination that emission reductions from I/M under section 184 would not significantly contribute to the attainment of the one-hour ozone standard anywhere in the OTR, and the I/M requirement could be ''restructured.'' EPA then proposed approval of the I/M SIP as a SIP strengthening measure under section 110 of the Clean Air Act. EPA received no comments on its proposal.

IV. What Action Did EPA Take To Defer the Offset Sanction in Maine?

Due to the disapproval of an earlier I/M SIP submitted by the State of Maine, the Clean Air Act's offset sanction was applicable in Maine beginning December 6, 1998. Based on the December 17, 1998 proposed approval (63 FR 69594) on that same day, EPA published an interim final rule in the **Federal Register** which stayed that sanction and deferred the imposition of the highway funding sanction in Maine (63 FR 69559). In that action EPA said that the stay and deferral would remain in effect until EPA took final action on the Maine I/M SIP proposed on that same day or retracted its proposed approval.

Today EPA is issuing a final, full approval of Maine's submitted I/M program SIP revision, and a final determination that the CAA requirement for an enhanced I/M program for areas in the OTR does not apply for Maine. Accordingly, all sanctions and FIP clocks started based on EPA's earlier disapproval of Maine's I/M program are terminated upon the effective date of today's action.

V. What Is EPA's Basis for ''Restructuring'' Ozone Transport Region Requirements?

Section 176A of the Clean Air Act is entitled ''Interstate Transport Commissions,'' and discusses the criteria used to add or remove areas from transport regions. Section 176A(a)(2) states that the ''Administrator . . . may remove any State . . . from the [OTR] whenever the Administrator has reason to believe that control of emissions in that State . . . pursuant to [the Act's requirements for the OTR] will not significantly contribute to attainment of the standard in the region.'' Implicit in EPA's authority to remove a State from the OTR entirely is the authority to eliminate or ''restructure'' specific control requirements for States that remain in the OTR, provided the State demonstrates that the control of emissions from such requirement will not significantly contribute to attainment of the one-hour ozone standard anywhere in the OTR.

VI. Have Any Circumstances Changed Since the Original Proposal?

In the December 17, 1998 notice proposing to approve Maine's I/M SIP, we noted that this program is designed to get the emission reductions required by EPA's I/M regulation for enhanced I/M programs mandated solely pursuant to OTR requirements in section 184(b)(1)(A). Nevertheless, the program did not meet these enhanced I/M requirements primarily due to the Act's requirement for a registration-based enforcement program. We proposed that since Maine had demonstrated that it did not affect any other one-hour ozone nonattainment areas in the OTR that were violating that standard, this area could have ''opted-out'' of the OTR under section 176A. Maine is also attaining the 1-hour ozone standard. But since Maine did not want to ''opt-out'' of the OTR, and merely wanted flexibility on enhanced I/M, we proposed to accept the I/M program that Maine had submitted as a SIP strengthening measure under section 110. The proposal was also based on air quality data that demonstrated that all of the remaining nearby ozone nonattainment areas in Massachusetts, New Hampshire, and Rhode Island had achieved the 1-hour standard. EPA had proposed to revoke the 1-hour standard based on these air quality data. That proposal to revoke the one-hour ozone standard in each of these areas was finalized on June 9, 1999 (64 FR 30911).

However, due to uncertainty regarding the status of implementing EPA's 8-hour ozone standard, on October 25, 1999 (64 FR 57424), EPA proposed that the one-hour standard should apply again in all areas where it was previously revoked. That action was finalized on July 20, 2000 (65 FR 45182). Many of these areas that were previously designated nonattainment have air quality which meets the one-hour ozone NAAQS, including all the areas noted in EPA's December, 1998 proposed action. It should be noted that

air quality monitoring data averaged over the years 1997 through 1999 showed that the Portland, Maine area (consisting of York, Cumberland and Sagadahoc Counties) had a design value of 0.125 ppm. During this period, this area was exceeding the one-hour ozone standard, albeit by a small margin. But more recent data based on 1998 through 2000 monitoring data, and earlier data which was the basis for our proposal (1996 through 1998 monitoring data), shows that the Portland area is attaining the one-hour ozone standard. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the Portland area has attained the one-hour ozone NAAQS, as recorded in EPA's Aerometric Information Retrieval System (AIRS). All other areas in Maine, New Hampshire, eastern Massachusetts and Vermont continue to measure air quality that meets the one-hour ozone standard. Therefore, EPA has concluded that its earlier finding under section 176A is still valid and we are finalizing approval of the December 1998 proposed action.

VII. What Action Is EPA Taking With Maine's I/M program and OTR "Restructuring"?

EPA is approving Maine's I/M submittal. EPA has reviewed the State submittal against the requirements of the Act and EPA's final I/M rule. The SIP submission does not meet all of the requirements of EPA's final rule for enhanced I/M. The program does, however, contribute to air quality improvement. Therefore, EPA is approving Maine's I/M program because it is a SIP strengthening measure under section 110. The EPA is also determining that an enhanced I/M program in Maine would not significantly contribute to attainment in any other State in the OTR.

VIII. EPA Action

EPA is approving the SIP revision Maine submitted on November 19, 1998 as a revision to the Maine SIP for I/M. EPA is approving the Maine I/M program as strengthening the State's SIP under section 110 of the Act. EPA is also taking final action removing the detailed CAA requirements for an enhanced I/M program in the OTR for Maine. Accordingly, all sanctions and FIP clocks related to approval of Maine's I/M program are terminated upon the effective date of today's action.

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

IX. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

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

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

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

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

D. Executive Order 13084

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

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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

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

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 27, 2000.

Carol Browner,

Administrator.

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

PART 52—[AMENDED]

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

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

Subpart U—Maine

2. Section 52.1019 is removed.

3. Section 52.1020 is amended by adding paragraph (c)(48) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on November 19, 1998.

(i) Incorporation by reference.

(A) ''Maine Motor Vehicle Inspection Manual,'' as revised in 1998, pages 1–12 through 1–14, and page 2–14, D.1.g.

(B) Authorizing legislation effective July 9, 1998 and entitled H.P. 1594—L.D. 2223, ''An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act.''

(ii) Additional material.

(A) Document entitled ''State of Maine Implementation Plan for Inspection/Maintenance'' dated November 11, 1998.

(B) Letter from the Maine Department of Environmental Protection dated November 19, 1998 submitting a revision to the Maine State Implementation Plan.

4. In § 52.1031, the Table is amended by adding a new citation for vehicle inspection and maintenance at the end of the table to read as follows:

§ 52.1031—EPA—approved Maine regulations.

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
''Vehicle I/M''	Vehicle Inspection and Maintenance.	7/9/98	1/10/01	66 FR 1875	(c)(48)	Maine Motor Vehicle Inspection Manual,'' revised in 1998, pages 1–12 through 1–14, and page 2–14, D.1.g. Also, Authorizing legislation effective July 9, 1998 and entitled L.D. 2223, ''An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act.''

[FR Doc. 01–570 Filed 1–9–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301091; FRL–6760–3]

RIN 2070–AB78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA.

ACTION: Final rule.

SUMMARY: This regulation establishes time–limited tolerances for residues of tebufenozide in or on the legume vegetable group, foliage of legume vegetable group, sunflowers, garden beet roots and garden beet tops. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on legume vegetables, sunflowers, and table beets. This regulation establishes maximum permissible levels for residues of tebufenozide in these food commodities. The tolerances will expire and are revoked on December 31, 2002.

DATES: This regulation is effective January 10, 2001. Objections and requests for hearings, identified by docket control number OPP–309091, must be received by EPA on or before March 12, 2001.

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 VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–309091 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division, 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367 and e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially 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 thisdocument, 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 the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–309091. 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 documentsthat 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, 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

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide tebufenozide benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl-2-(4-ethylbenzoylhydrazide in or on vegetable, legume, group at 2.0 parts per million (ppm); vegetable, foliage of legume, group at 7.0 ppm; sunflower at 1.5 ppm; beet, garden, root at 0.3 ppm; and beet, garden, tops at 9.0 ppm. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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. . . .''

Section 18 of the FIFRA, authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Tebufenozide on Legume Vegetables, Sunflowers, and Table Beets and FFDCA Tolerances

The state of California requested the use of tebufenozide on table beets to control beet armyworms and the state of Texas requested the use of tebufenozide on legume vegetables and sunflowers to control beet armyworms. EPA has authorized under FIFRA section 18 the use of tebufenozide on legume vegetables and sunflowers in Texas and table beets in California for control of the beet armyworm. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of tebufenozide in or on legume vegetables, sunflowers and table beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non–routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the legume vegetable group, foliage of legume vegetable group, sunflowers, garden beet roots and garden beet tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether tebufenozide meets EPA's registration requirements for use on legume vegetables, sunflowers or table beets or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than California and Texas to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebufenozide, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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 November 26, 1997 (62 FR 62961) (FRL–5754–7).

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 tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of tebufenozide in or on vegetable, legume, group at 2.0 ppm; vegetable, foliage of legume, group at 7.0 ppm; sunflower at 1.5 ppm; beet, garden, root at 0.3 ppm; and beet, garden, tops at 9.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no observed adverse effects (NOAEL) are from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (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 (RfD) acute 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 level of concern (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 x10^{-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. A summary of the toxicological endpoints for tebufenozide used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TEBUFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age	N/A	N/A	No systemic or neurological effects in rats at 2,000 milligrams/kilograms/day (mg/kg/day) highest dose tested, (HDT). No maternal or developmental effects in rats or rabbits at 1,000 mg/kg/day HDT. An acute risk assessment is not required.
Acute dietary general population including infants and children	N/A	N/A	No systemic or neurological effects in rats at 2,000 mg/kg/day HDT. No maternal or developmental effects in rats or rabbits at 1,000 mg/kg/day HDT. An acute risk assessment is not required.
Chronic dietary all populations	NOAEL= 1.8 mg/kg/day UF = 100 Chronic RfD = 0.018 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD FQPA SF =0.018 mg/kg/day	NOAEL = 1.8 mg/kg/day from hematologogical effects in a chronic dog feeding study.LOAEL = 8.7 mg/kg/day based on growth retardation,alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver
Short-term dermal (1 to 7 days (Residential)	N/A	N/A	No dermal or systemic toxicity seen in rats administered 15 dermal applications at 1,000 mg/kg/day (limit dose over 21 days) with either technical material or 23% formulation. No developmental endpoints of concern.
Intermediate-term dermal (1 week to several months) (Residential)	N/A	N/A	No dermal or systemic toxicity seen in rats administered 15 dermal applications at 1,000 mg/kg/day (limit dose over 21 days with either technical material or 23% formulation. No developmental endpoints of concern.
Long-term dermal (several months to lifetime) (Residential)	N/A	N/A	Use pattern indicates chronic dermal exposure not anticipated. In addition, no dermal or systemic toxicity observed in 21–day dermal studies with either technical material or 23% formulation.
Short-term inhalation (1 to 7 days) (Residential)	N/A	N/A	Toxicity Category IV for this route lethal concentration $(LC)_{50}$ 4.5 mg/L.
Intermediate-term inhalation (1 week to several months) (Residential)	N/A	N/A	Toxicity Category IV for this route LC_{50} 4.5 mg/L.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TEBUFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Long-term inhalation (several months to lifetime) (Residential)	N/A	N/A	Toxicity Category IV for this route LC_{50} 4.5 mg/L.
Cancer (oral, dermal, inhalation	N/A	N/A	Classified Group E -No evidence of carcinogenicity in humans

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established 40 CFR 180.482 for the residues of tebufenozide, in or on a variety of raw agricultural commodities (RAC). Currently, established tolerances for residues of tebufenozide are listed under 40 CFR 180.482 and include permanent tolerances for residues in/on pecans 0.01 ppm and walnuts 0.1 ppm, tolerances for residues in/on imported apples 1.0 ppm and wine grapes 0.5 ppm, and time-limited tolerances for residues in/on various plant and animal commodities. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide 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 exposure risk assessment is not required because the Agency did not identify an acute dietary endpoint that was applicable to females (13+ years) or to the general population, including infants and children.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM^{tm}) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1991 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: For the chronic analysis, tolerance level residues and some percent crop treated (%CT) and some market share assumptions were used. Where market share information was available, it was used in preference over %CT data since it is the larger, more conservative number and therefore, more protective of human health. The highest chronic dietary exposure was for non-nursing infants <1 year at 0.015071 mg/kg/day, 84% of the cPAD. The chronic dietary assessment should be viewed as conservative. Further refinement, using anticipated residue levels and additional CT data, would result in lower exposure rates. Water modeling data were used to calculate residues (EECs) to compare to the drinking water levels of comparison (DWLOC) for chronic exposures.

iii. *Cancer.* Because tebufenozide has been classified as a ''Group E'' carcinogen, a cancer risk assessment is not required.

iv. *Anticipated residue and %CT information.* Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings:

Condition a. that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue. *Condition b.* that the exposure estimate does not underestimate exposure for any significant subpopulation group; and, *Condition c,* if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT information as follows:

Crop	Average	Maximum
Almonds	1%	1%
Apples	1%	2%
Beans/Peas, dry	0%	1%
Cabbage, fresh	2%	3%
Cole crops	1%	2%
Cotton	1%	4%
Pears	5%	5%
Spinach, fresh	2%	3%
Spinach, Processed	20%	29%
Sugarcane	3%	5%
Walnuts	10%	16%

The Agency believes that the three conditions listed above have been met. With respect to Condition (1), PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses

a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions (2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebufenozide may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for tebufenozide 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 tebufenozide.

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/ EXAMSincorporate 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 PC 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 tebufenozide they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of tebufenozide for chronic exposures are estimated to be 16.5 parts per billion (ppb) for surface water and 1.04 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.

The Agency determined that there are potential short-term non-occupational/ residential postapplication exposures (incidental non-dietary ingestion) to toddlers for the use of tebufenozide on ornamentals. However, since acute dietary endpoints were not selected, the short-term postapplication exposure/ risk assessment is not required. Intermediate-term and chronic incidental non-dietary exposures are not expected for ornamental uses. Risk assessments for residential applications are not needed due to the absence of dermal and inhalation endpoints.

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 tebufenozide 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, tebufenozide 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 tebufenozide 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 November 26, 1997 (62 FR 62961).

C. 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 pre-natal and post-natal 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 MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In prenatal developmental toxicity studies in rats and rabbits, there was no evidence of maternal or developmental toxicity; the maternal and developmental NOAELS were 1,000 milligrams/kilograms/day (mg/kg/day) highest dose tested (HDT).

3. *Reproductive toxicity study*. In 2-generation reproduction studies in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals.

4. *Prenatal and postnatal sensitivity*. The data provided no indication of increased sensitivity of rats or rabbits to; *in utero* and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

5. *Conclusion*. There is a complete toxicity data base for tebufenozide and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. Based on this, EPA concludes that reliable data support the use of the standard 100-fold UF, and that the 10X safety factor to protect infants and children should be removed.

D. 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 + chronic non-dietary, non-occupational 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 tebufenozide 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 tebufenozide on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. No toxicological endpoint was identified for acute toxicity. Therefore, no acute aggregate risk assessment is needed.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to tebufenozide from food will utilize 25% of the cPAD for the U.S. population, 83% of the cPAD for non-nursing infants < 1 year old and 61% of the cPAD for children 1–6 years old. Based on the use pattern, chronic residential exposure to residues of tebufenozide is not expected. In addition, despite the potential for chronic dietary exposure to tebufenozide in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of tebufenozide in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TEBUFENOZIDE

Population subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water (ppb)	Ground-Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.018	25	17	1	49
Non-nursing infants < 1 year old	0.018	83	17	1	30
Females 13+/nursing	0.018	29	17	1	390

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 tebufenozide, notoxicological effects have been identified for short-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of tebufenozide, 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 were previously addressed.0

5. *Aggregate cancer risk for U.S. population*. Tebufenozide is classified as Group E (no evidence of carcinogenicity in humans, and therefore, no cancer risk assessment is required.

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 tebufenozide residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW,

Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for tebufenozide in or on legume vegetables, sunflowers, and garden beets. International harmonization is not a concern for these actions.

C. Conditions

Rotational crop restrictions. The following restrictions are required for these proposed uses. Crops which the label allows to be treated directly can be planted at anytime. All other crops can be planted 30– days after application. The previous 12 month plantback interval for cereal grains, grasses and non-grass animal feeds is no longer necessary with the establishment of rotational crop tolerances.

VI. Conclusion

Therefore, the tolerances are established for residues of tebufenozide, in or on the following: vegetable, legume, group at 2.0 ppm; vegetable, foliage of legume, group at 7.0 ppm; sunflower at 1.5 ppm; beet, garden, root at 0.3 ppm;, and beet, garden, tops at 9.0 ppm.

VII. 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–309091 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 March 12, 2001.

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 VII.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 the docket control number OPP–30901, 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 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).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* October 4, 1993 (58 FR 51735). 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* May 19, 1998 (63 FR 27655), special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* February 16, 1994 (59 FR 7629), or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* April 23, 1997 (62 FR 19885). 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 FIFRA section 18 exemption under FFDCA section 408, such as the tolerances 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* August 10, 1999 (64 FR 43255). 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).

IX. 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: December 14, 2000.

James Jones,

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), 346(a), and 371.

2. Section 180.482 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * * * *		
Beet, garden, root	0.3	12/31/02
Beet, garden, top	9.0	12/31/02
* * * * * * *		
Sunflower	1.5	12/31/02
* * * * * * *		
Vegetable, foliage of legume, group	7.0	12/31/02
Vegetable, legume, group	2.0	12/31/02

* * * * *

[FR Doc. 01–574 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3108, 3130, and 3160

[WO–310–1310–01–24 1A–PB]

RIN 1004–AC54

Oil and Gas Leasing: Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Rule.

SUMMARY: The final rule will: Clarify the responsibilities of oil and gas lessees and operating rights owners for protecting Federal and Indian oil and gas resources from drainage; specify when the obligations of the lessee or operating rights owner to protect against drainage begin and end; clarify what steps to take to determine if drainage is occurring; and specify the responsibilities of assignors and assignees for reclamation and other lease obligations.

EFFECTIVE DATE: This rule is effective on February 9, 2001.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW, Washington, DC 20240; telephone (202) 452–0382 (Commercial or FTS). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 7 days a week, 24 hours a day, except holidays, for assistance in reaching Mr. Shaw.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Final Rule as Adopted.
III. Responses to Comments.
IV. Procedural Matters.

I. Background

The existing regulations in 43 CFR part 3100 allow for agreements to compensate the Federal Government for drainage of (oil and gas) mineral resources. Those regulations and the regulations at part 3160 require the lessee or operating rights owner to drill and produce wells necessary to prevent drainage or, instead, to pay compensatory royalties. These regulations are based on BLM's authority under the Mineral Leasing Act of 1920 (MLA), as amended and supplemented, and other cited authorities to issue a rule to carry out their purposes. The existing regulations and the standard oil and gas lease terms make express covenants to protect the lessor against drainage that is implicit in the law of all oil and gas producing states. An audit by the Department's Office of the Inspector General and a BLM Internal Control Review in 1990, both recommended we revise our regulations on drainage protection to clarify:

(1) When the obligations of the lessee or operating rights owner begin and end; and

(2) What steps to take to determine if drainage is occurring.

In 1995, BLM's Director appointed the Bureau Performance Review Bonding and Unfunded Liability Team to review a broad range of liability issues. The Team recommended we revise and clarify our regulations on lessee and operating rights owner liability for drainage prevention, compensatory royalty payments, well plugging and abandonment, lease site reclamation and environmental remediation. This final rule enables BLM to fulfill its responsibility to ensure that the public and Indian lessors receive full value for their oil and gas resources.

In addition to addressing drainage issues, the final rule clarifies the current regulations concerning the responsibilities of assignors and assignees of record title or operating rights interests. The current version of 43 CFR 3106.7–2 expressly states that an assignor is fully responsible after the assignment and prior to BLM approval of the assignment, but the current rule is not clear as to the responsibility of the assignor after approval. The final rule makes clear that the assignor continues to be responsible for satisfying those obligations that accrued prior to the approval of the assignment.

The final rule clarifies that assignees have responsibilities for certain plugging and abandonment, reclamation and environmental liabilities that arose prior to their assignment and which were evident to a purchaser exercising due diligence.

The final rule implements a change in the definition of the term ''lessee'' to include the operating rights owner, consistent with the substantive provisions of the proposed rule.

II. Final Rule as Adopted

The final rule reorganizes the order of the questions and answers, renumbers subpart 3162, and locates the sections into a more logical sequence. Some commenters suggested these regulations should also apply to Indian oil and gas leases. The final rule adopts the suggestion to make these regulations apply to both Federal and Indian oil and gas leases. To accomplish this result, the final rule consolidates all drainage provisions in part 3160. The following table lists the section numbers in the proposed and final rule.

Proposed rule section	Final rule section
3100.5	3160.0–5
3100.21	3162.2–2
3100.22	3162.2–3
3100.23	3162.2–4
3100.70	3162.2–5
3100.50	3162.2–6
3100.24	3162.2–7
3100.40 and 3100.45	3162.2–8
3100.51	3162.2–9
3100.52	3162.2–10
3100.60	3162.2–11
3100.61	3162.2–12
3100.71	3162.2–13
3100.80	3162.2–14
3100.55	3162.2–15
3165.3	3165.3
3165.4	3165.4
3106.7–2	3106.7–2
3106.7–6	3106.7–6
3108.1	3108.1
3130.3	3130.3
3160	3160
3162.2	3162.2
3165.3	3165.3
3165.4	3165.4

III. Responses to Comments

On January 13, 1998, (63 FR 1936), BLM published in the **Federal Register** the proposed rule on oil and gas drainage. In a notice published on February 24, 1998, (63 FR 9171), we extended the comment period for 60 days. In response to several requests, we reopened the comment period for 60 days in a notice published on December 3, 1998, (63 FR 66776). We reopened the comment period to consult with Indian Tribes, under Executive Order 13084, on the issue of whether the proposed rule should apply to Tribal and individual Indian oil and gas leases. We extended the reopened comment period by notice published on January 13, 1999 (64 FR 2166), with the comment period ending April 5, 1999, and extended the reopened comment period again in a notice published on April 12, 1999 (64 FR 17598) with the comment period ending on June 4, 1999. Some provisions were proposed for comment in another rule (see 63 FR 66840). We received 40 written comments on the proposed rule from industry, organizations, and individuals.

Specific Comments

A commenter objected to the question and answer format and suggested these regulations were repetitive, poorly organized, and required a reader to look in multiple sections to find related information. The final rule simplifies the question and answer format and utilizes plain language in accordance with the Administration's Reinventing Government Initiative. We believe this format will help everyone find relevant topics more easily. We restructured the final rule to better group topic related sections.

A commenter suggested we should not apply this rule to reinterpret the meaning of terms in existing leases. Except where changes are expressly acknowledged in this preamble, the final rule is consistent with and interprets existing lease provisions and so may lawfully apply to existing leases. In addition, all Federal and Indian oil and gas leases are subject to future regulations except to the extent such regulations are inconsistent with express lease provisions or the rights granted in the lease.

A commenter suggested it was not worthwhile for BLM to adopt a rule that generates $250,000 in revenues while increasing Federal expenditures by $150,000 and driving industry to move to private lands or abroad. The final rule did not adopt this suggestion. Our previous estimates were based on the assumption that no revenues other than additional compensatory royalty assessments would be generated from drainage cases. In addition, the compensatory royalties estimates were understated due to insufficient data. Based on our recent survey of State offices, if the number of potential drainage cases and the success rate of case retirements remain at the 1998 level (1,665 cases and 8.82 percent respectively), we expect additional revenues around $9.2 million from the oil and gas drainage program. These revenues include royalties from protective wells, compensatory royalty assessments, unitization and communitization agreements, or bonus bid payments on previously unleased lands. Besides the additional revenues, lessees benefit from the implementation of this rule because they have a better understanding of when, why, and how to fulfill their obligations to protect Federal and Indian minerals from drainage. By adopting this final rule, the Federal Government benefits because it reduces the time needed to correspond with the lessees regarding procedural matters, and thus leads to greater efficiency in performing technical and economic analyses to determine whether prudent operators need to drill an offset well. Further, it reduces the need for reviews and appeals to the State Director. The estimate of $150,000 is equivalent to 10 percent of the annual expense for the oil and gas drainage program, and a one-time cost for implementing these regulations. These expenses may increase if we postpone the implementation of this rule.

A commenter suggested this rule violates the Administrative Procedure Act because the preamble to the proposed rule was misleading in characterizing the rule as merely a clarification of existing law. The section-by-section analysis of the proposed rule described every modification to the existing rule so that all potentially affected parties were properly advised of its provisions. While the rule does provide greater detail than existing regulations with respect to both drainage and the duties of parties holding various interests in a lease, the substantive obligations remain those established in the lease and existing regulations.

Some commenters suggested we should not cover plugging and abandonment issues in this ''drainage'' rule. The final rule retains the provision for well plugging and abandonment. Nothing precludes us from promulgating rules on several topics in a single rulemaking if we provide adequate notice to the affected public.

Several commenters suggested the rule reverses IBLA interpretations of the lease and current regulations, particularly with respect to who bears the burden of proof of drainage. The final rule preserves IBLA's precedent that BLM bears the burden of proof that drainage exists and the lessee's notice or knowledge of drainage, but the rule shifts the burden of proof after BLM has established a *prima facie* case (*i.e.,* sufficient evidence absent rebuttal by the lessee). This shift of the burden of proof to the lessee is warranted because the lessee, by undertaking the duty to protect, agreed to take the responsibility to monitor activities that could result in drainage of Federal or Indian mineral resources. Moreover, the lessee is in a better position to obtain and interpret relevant geologic and reservoir data.

Some commenters suggested it is uneconomical for lessees who hold leases for speculative purposes, with no intent to drill, to monitor activity on adjacent leases for drainage. The final rule did not adopt this suggestion. The duty to detect drainage and drill to protect the Federal or Indian lessor from drainage is not a new requirement, but is a lease obligation voluntarily entered by lessees. A lessee who cannot protect the Federal or Indian lessor from drainage should not acquire a Federal or Indian lease. To allow anyone to hold a Federal or Indian lease without requiring an agreement to prevent the uncompensated loss of valuable mineral resources is not in the interest of the public or Indian mineral owners.

A commenter suggested that if BLM directs the drilling of a protective well and the well does not return a reasonable profit to the lessee, BLM should pay the cost of drilling, completing and equipping the well. The final rule did not adopt this suggestion. However, we address the issue of uneconomic wells under § 3162.2–5.

Several commenters suggested economic self-interest leads lessees to drill protective wells when it is economic to do so. Therefore, the rule is not necessary. While we agree with the suggestion that economic self-interest motivates an operator to drill protective wells; we cannot permit a reluctant operator to allow the uncompensated loss of mineral resources that belongs to the American public or to an Indian mineral owner. We have the responsibility to issue regulations we feel in the best interest of the public and Indian mineral owners. We also have the responsibility to ensure that lessees drill all necessary wells to protect public and Indian mineral interest owners from drainage at the earliest possible time. This final rule better serves the oil and gas industry by ensuring it has a clearer understanding of obligations to protect its oil and gas leases from drainage.

Several commenters believe that inasmuch as existing regulations provide for BLM to make drainage determinations, additional responsibilities for drainage detection could not be imposed on lessees. The final rule permits us to make drainage determinations and assess compensatory royalty damages against lessees as we have done in the past. Lessees are not excused from their lease obligations to take initiatives to protect the Federal or Indian lessors. This final rule simply provides additional detail on how a lessee should fulfill existing lease obligations.

A commenter suggested we notify adjacent lessees when we approve an Application for Permit to Drill (APD). The final rule did not adopt the suggestion. However, we post APD's for 30 days in State Office public rooms before we approve them. The oil and gas data service industry publishes information on the approval status of APD's on a regular basis. It is the lessees' responsibility to monitor APD

approvals to ensure that they protect Federal and Indian lessors from drainage.

One commenter suggested the arbitrary decisions about what constitutes drainage might be avoided by standardizing drainage parameters at 330 feet from the lease line. The final rule did not adopt the suggestion. The characteristics and performance of the oil and gas reservoir are primary factors which determine the necessary actions to take to protect the lease from drainage. Since each oil and gas reservoir is unique and has different characteristics and performance capabilities, it is inappropriate to adopt a single baseline standard for drainage.

An Alaska environmental group recommended that these regulations state that BLM has the authority to address drainage by prohibiting the removal of its oil and gas. It also wanted these regulations to make clear that BLM is not obliged to lease or permit drilling. The final rule is quite clear that we have discretion when to lease and regulatory authority over drilling. We do not possess the practical ability to prohibit removing oil and gas from beneath Federal surface because fluid minerals follow no political or property boundaries. Where we cannot permit surface disturbance, lessees must pursue other means of protecting the lessor from drainage such as horizontal drilling or through communitization when feasible.

An Alaska environmental group suggested that the authority citations be broadened to include additional sections of the Federal Land Policy and Management Act of 1976 (FLPMA) and the Mineral Leasing Act of 1920 (MLA), as well as the Alaska National Interests Lands Conservation Act, the National Wildlife Refuge Administration Act, and the Naval Petroleum Reserves Production Act of 1976. The final rule uses the appropriate citations to sections that grant relevant rulemaking authority to the Secretary of the Interior. BLM does not administer the Naval Petroleum Reserves. The National Wildlife Refuge Administration Act does not grant regulatory authority with respect to mineral production.

Section-by-Section Analysis

The final rule renumbers many sections. In the following discussion, we reference the section number of the proposed rule and indicate in parentheses where the section appears in the final rule. We also describe the final rule and how, if at all, it differs from the proposed rule. Further, we respond to comments on the section.

Section 3100.5 (3160.0–5)

The final rule amends § 3160.0–5 to alphabetize and add these definitions: ''drainage,'' ''lessee,'' ''operating rights owner,'' ''protective well'' and ''record title holder.'' We modified the definitions of ''lessee'' and ''operating rights owner'' and added new definitions for ''drainage,'' ''protective well,'' and ''record title holder.''

Several commenters suggested that we modify the drainage definition to refer to ''oil or gas'' rather than hydrocarbons, inert gases or associated resources. The final rule did not adopt this suggestion because ''inert gases'' is needed to make clear that the rule applies to drainage of non-petroleum gases such as carbon dioxide.

A commenter suggested that the drainage definition does not allow for the concept of counter drainage and suggested that we include the phrase ''and not offset by counter drainage'' at the end of the definition. The final rule did not adopt this suggestion because the drainage definition already contemplates only the net loss after consideration of counter drainage.

Some commenters suggested that we modify the protective well definition to include the options of well deepening, plugging back an existing well bore, adding laterals to address drainage situations, or recompleting existing wells, and removing the language ''on nearby or adjacent lands'' from the definition. The final rule modifies the ''protective well'' definition to provide for wells drilled ''or modified'' and by dropping the reference to nearby or adjacent lands. We agree with commenters that ways exist to protect the lease from drainage other than drilling new wells.

Section 3100.21 (3162.2–2)

This section indicates the steps BLM will take to ensure the Federal Government and Indian lessors are compensated for drainage of mineral resources. The final rule differs from the proposed rule. We modified the question of this section to make clear that Indian lessees must protect the leased resources from drainage. We changed the language in this section from ''wells draining oil or gas'' to ''wells draining mineral resources'' to clarify the rule applies to other mineral resources. We deleted the phrase ''on adjacent lands'' from the rule text as unnecessary. We modified paragraph (a) to clarify we will consider applicable Federal, State, or Tribal rules, regulations, and spacing orders when determining which drainage protective action to take. We modified paragraph (b) to clarify that the Secretary may enter into agreements with owners of the draining well to compensate for drainage of leased or unleased Federal minerals or (in consultation with the Indian mineral owner and BIA) leased or unleased Indian minerals. We also deleted the reference to ''Federal lands.'' We modified paragraph (c) to clarify we may offer for lease any qualifying unleased mineral resources under part 3120 and deleted the phrase referring to ''offering unleased lands'' from the rule text. We added paragraph (d) to conform to the provisions of § 3181.5.

Some commenters suggested that we apply these regulations to ''Federal minerals'' instead of ''Federal lands.'' The final rule amends this section to clarify that these regulations apply to Federal minerals not Federal surface in a split-estate situation. The lessee of Federal minerals owes the duty of drainage protection and surface ownership is not relevant.

Some commenters questioned whether BLM found owners of an adjacent well willing to enter into a drainage compensation agreement. We have found owners in the past willing to enter into such agreements. This final rule implements the provision of Section 17 of the MLA on agreements to compensate the Federal Government for drainage.

One commenter wanted to know what we reported to Congress about drainage compensatory royalty agreements. We reported annually to Congress as required by statute until the reporting requirement was repealed in 1987.

Some commenters questioned the BLM's authority to communitize an unleased tract. The final rule clarifies if spacing precludes us from authorizing the drilling of a well on our land, as a mineral owner, we have the right to communitize an unleased tract with others in the spacing unit. We recognize that a mineral owner who does not contribute to drilling costs is subject to receiving a smaller share of production than if BLM were able to share in the costs of drilling a well.

A trade association suggested that BLM be required to notify prospective bidders that a sale tract was being drained and questioned the interest in bidding for such a tract. The final rule did not adopt this suggestion. We notify prospective bidders of drainage tracts in the oil and gas lease sale notices. In the past, there have been bidders who bid on such drainage tracts.

Some commenters expressed concern over whether BLM had authority to order operators to drill protective wells or to order the lessees to enter into communitization agreements without

considering State spacing orders. These commenters suggested to BLM to include the following language ''When determining which action to take, the BLM will give consideration to the existing State rules, regulations, and spacing orders.'' The final rule modifies the language to adopt this suggestion. However, spacing determinations for Federal minerals are made by the BLM under 43 CFR 3162.2–2(a).

Section 3100.22 (3162.2–3)

This section clarifies when lessees are responsible for protecting their leases from drainage. The final rule differs from the proposed rule. In response to comments, we modified this section to:

(a) Include Indian leases;
(b) Change lands to minerals; and
(c) Change oil and gas to mineral resources.

We also combined the provisions concerning drainage by wells in other units or communitization agreements.

Section 3100.23 (3162.2–4)

This section provides a list of actions BLM may require a lessee to take to provide drainage protection. The final rule differs from the proposed rule. We modified the question to make clearer what we may require the lessee to do to protect leases from drainage. We modified paragraph (a) to include the language ''drill or modify and produce all wells that are necessary to protect the leased mineral resources from drainage'' and deleted the language ''leased lands from drainage, subject to provisions of § 3100.70'' to clarify that we refer to leased mineral resources not leased lands. We modified paragraph (b) to delete the cross reference to subpart 3105 and part 3180.

A commenter suggested that we give lessees the option of paying compensatory royalty rather than drilling a protective well because BLM is not authorized to require either communitization or the drilling of a protective well. The final rule does not represent a change from the previous regulations that require the BLM's consent to propositions to pay compensatory royalty in lieu of drilling protective wells. We agree that a lessee may have to estimate the compensatory royalties due to compensate Federal or Indian lessors for all drainage that has occurred, is occurring, or will occur; however, there is no guarantee that such compensation is adequate. Requiring payment of royalties on production from an economic protective well is the most effective way of ensuring that the amount of compensation that is due for drainage is accurate. Additionally, certain spacing and mineral ownership scenarios dictate well drilling for correlative right protection. We did not adopt the suggestion.

Some commenters expressed concern over whether lessees are liable for compensatory royalties if drainage involves an area in which BLM will not permit drilling due to a wilderness area, environmental reasons, or a no surface occupancy stipulation. In the final rule, we state a lessee who cannot, as a practical manner, drill a protective well for reasons not specified in the lease itself will not be required to pay compensatory royalties. The lessee will have an obligation to consider the feasibility of the other means of compliance: drilling directional or horizontal wells or entering into agreements with the owner of the well causing the drainage.

Section 3100.24 (3162.2–7)

This section specifies that all record title holders are jointly and severally liable for paying compensatory royalties when more than one person owns record title interest in the same lease. Operating rights owners having an interest in the same lease are jointly and severally liable with one another and with the record title holders for the compensatory royalties attributable to drainage. The final rule is unchanged from the proposed rule.

Several commenters suggested that only operating rights owners with an interest in the mineral resources in the horizon or formation being drained are responsible for drainage protection. The final rule did not adopt the suggestion. Operating rights owners with interest only in other formations are not liable; but a sublease does not exempt any record title holder from liability. The record title holder has an interest in all horizons and formations and the sublease of operating rights does not diminish the record title holder's responsibility for compliance with all lease terms.

Several commenters suggested that the responsibility for drainage protection be imposed only on the operating rights owners and not on the record title holders. They argue that without operating rights, you have no right to drill a protective well. These commenters suggested we should not demand drainage protection from record title holders until we exhaust demands against the operating rights owners. The final rule continues the policy found at 43 CFR 3100.0–5 of the previous regulations which requires the lessee to retain the responsibility for complying with lease obligations when it subleases operating rights to another party. We do demand performance first of the designated operator who represents all parties with interest in the lease. It is the responsibility of the lessee who creates subleases of operating rights to make sure that the sublessee performs all lease obligations.

Some commenters suggested that joint and several liability for compensatory royalties is contrary to 30 U.S.C. 1712(a) as amended by the Royalty Simplification and Fairness Act. These commenters suggested that IBLA has recognized that joint and several liability for drainage protection or compensatory royalty is unfair. We do not know of any IBLA cases on this point. The provisions in 30 U.S.C. 1712(a) address lease obligations to pay money such as rentals and royalties. The duty to protect from drainage is not an obligation to pay money. Rather, it is the nonperformance of an obligation of diligent development for which we may assess compensatory royalties. Compensatory royalties are not true royalties payable on lease production. Rather, they are liquidated damages for nonperformance of the obligation. We measure damages by the royalty value of resources the lessee has allowed to be drained. Each party to a BLM or Indian lease makes the same promise as every other lessee and is responsible for full performance of those obligations, regardless of the inability of its co-lessees to share in the performance. A lessee may choose to pay compensatory royalty instead of drilling a protective well or we may assess compensatory royalties as damages if the lessee does not take direct protective action. However, this action does not make the drainage obligation a monetary one.

Sections 3100.40 and 3100.45 (3162.2–8)

This section specifies the responsibility for drainage protection and compensatory royalties after assignment or transfer of operating rights. The final rule combines two sections of the proposed rule (3100.40 and 3100.45) to form § 3162.2–8. The final rule differs from the proposed rule. We modified the question of these two sections to read ''Does my responsibility for drainage protection end when I assign or transfer my lease interest?'' to specify the responsibility for drainage protection and compensatory royalties after assignment or transfer. We modified the section to address lessee obligations for drainage protection and payment of compensatory royalties after assignment or transfer.

One commenter suggested that it was not clear whether BLM is to assess compensatory royalty against an

assignee for drainage that occurred before acquiring the interest. The final rule clarifies that as an assignee, your liability to pay compensatory royalties begins on the date you acquire the lease interest. We believe this rule makes clear that an assignee is not responsible for drainage that occurred before acquiring the lease interest.

Some commenters suggested that we include the following language in this section: ''Your liability for paying compensatory royalties will begin a reasonable period of time after notice from the BLM or after a reasonably prudent operator knew or should have known that drainage was occurring. If you acquire your lease interest after this time, your liability to pay compensatory royalties begins the date you acquire the lease interest.'' The final rule adopts the language ''If you assign your record title interest in a lease or transfer your operating rights, you are not liable for drainage that occurs after the date we approve the assignment or transfer'' in response to comments.

Some commenters suggested that BLM uses an undefined and arbitrary standard for when a prudent operator should have known when drainage began. These commenters believe that BLM sets an impossible compliance standard in drainage situations. The final rule clarifies when a prudent operator has constructive notice that drainage may be occurring under § 3162.2–6. When a lessee signs a lease, the lessee has agreed to protect the lessor (the United States or an Indian mineral owner) against drainage. Nothing in the lease terms conditions this obligation on BLM notifying lessees of drainage. We believe it is reasonable to expect that a lessee will:

(1) Evaluate the potential for drainage at the earliest time it can receive information about a well drilled on an adjacent lease; and

(2) Immediately consider the economic feasibility of taking protective action.

A commenter suggested that the responsibilities of an assignor for drainage should end the earlier of 30 days after an assignment is properly submitted to BLM or on the approval date. The final rule did not adopt this suggestion because we disagree with the commenter. In section 30a of the MLA, 30 U.S.C. 187a, it is clear that an assignor of a partial interest remains responsible for all lease obligations that accrued before BLM approved the assignment. We believe Congress intended not to release the assignor of accrued obligations upon assigning all record title interest.

Section 3100.50 (3162.2–6)

This section clarifies when we deem a party with interest in a lease to have constructive notice that drainage may be occurring. The final rule is unchanged from the proposed rule except to change the order of the clauses in paragraph (b).

Some commenters suggested that we should not utilize the information in this section as constructive notice to lessees because such information does not reflect drainage occurrence. These commenters believe that lessees need enough time to evaluate production information from the well to determine if drainage is occurring. The final rule did not adopt the suggestion because IBLA has long recognized that a lessee may be on constructive notice of drainage. This final rule clearly defines what constitutes constructive notice of potential drainage (see § 3162.2–6) and allows the lessee to rebut the occurrence of drainage (see § 3162.2–9). It also allows a lessee to state that the information then available is not adequate to make a conclusive determination of drainage; but will continue to monitor the situation and make a further report at a later date (see § 3162.2–9(c)).

Several commenters suggested that a well completion report never gives enough information to determine if a well is capable of draining the minerals covered by the adjacent Federal lease. The commenters also suggested that drainage protection should not be required until sufficient production information is available to show potential drainage, including information adequate to determine the type of reservoir, the drive mechanism, the depletion rate, the permeability and porosity of the formation, and many other factors before you can determine if drainage is occurring. A commenter suggested that impressive initial production may not be sustained and encouraging drill stem results may be disproved by later well performance. Therefore, the rule should not use these items as a basis for constructive notice. The final rule did not adopt these suggestions. Well completion reports and first production reports from a draining well provide sufficient information to alert a prudent operator or lessee that drainage may be occurring. If the lessee does not have an interest in the draining well, the lessee is not required to take action to protect the lease from drainage until information sufficient to determine whether an economic well can be drilled becomes publicly available. Drill stem tests may be one factor used to determine well performance; but the lessee must gather other information as soon as it is available to determine whether to drill an economic well.

Section 3100.51 (3162.2–9)

This section clarifies the duty of lessees and operating rights owners to monitor the drilling of wells in the same or adjacent spacing units and gather sufficient information to determine whether drainage may be occurring. The final rule differs from the proposed rule. We modified paragraph (a) to include the language ''in the same or adjacent spacing units'' and deleted the phrase ''on adjacent lands'' from the rule text to establish clear limits of responsibility on a lessee. We modified this section to change the words ''offending well'' to ''draining well'' to establish a clearer description of a well draining Federal or Indian mineral resources. Commenters suggested we modify paragraph (a)(1) to include the language ''specify the amount of drainage from production of the draining well.'' We modified paragraph (a)(3) to delete the cross reference to § 3100.50. We modified paragraph (b) to change the cross reference from ''§ 3100.50'' to ''§ 3162.2–4'' to clarify that an election of remedies is envisioned, not a detailed plan of action. We modified paragraph (c) to indicate that if you do not have sufficient information to comply, you must indicate when you will provide the information to BLM. We added paragraph (d) to clarify that you must provide BLM with the analysis within 60 days after we request it.

One commenter objected to requirements to monitor wells on adjacent lands and to gather information sufficient to determine whether drainage is occurring. The commenter suggested that such monitoring was impossible and the requirement would lead many to relinquish their Federal or Indian leases because such requirements prevent operators from having sufficient time to pursue exploration and production. As stated above, the final rule adopts a change to specify that you must monitor wells in the same or adjacent spacing units. This change better defines the area which a lessee and operating rights owner must normally protect from drainage. When a lessee undertook the duty to protect against drainage, the lessee agreed to be responsible for, and aware of, activities that might result in drainage of Federal or Indian oil and gas. In addition, the lessee is in a better position to obtain and interpret geologic and reservoir data than the BLM.

A commenter suggested that basing the prudent operator economic analysis on the facts at a time when the lease is

owned by another party is an illegal retroactive application of a new law to events of years past. It is not. The rule only applies to those who acquire an interest hereafter. It will not change the prudent operator standard for those who already hold interests.

A commenter suggested that we should not apply these regulations to prior lessees unless the lessees or operating rights owners had an interest in the draining well or BLM notified them of potential drainage before they assigned their lease interest. The final rule did not adopt this suggestion. The final rule does not change the obligations of those who disposed of their interest before these regulations take effect. Under existing law, constructive notice triggers the obligation to protect against drainage. It is not necessary for BLM to notify the lessee of such drainage.

A commenter suggested that we should not require lessees to develop plans in all instances since the duty to take protective action arises only when drilling an economic well. The commenter also suggested that BLM be more concerned with the lessee taking protective measures rather than filing ''useless'' plans. The final rule did adopt a change in response to the comment. The final rule clarifies that operators need only inform BLM of the form of drainage protection they will provide, not a detailed plan. Further, the lessee must choose a remedy only when drilling a protective well is economic.

Some commenters suggested that the 60-day time period is unrealistic to provide BLM with drainage protection plans. These commenters indicated that much of the required information may be confidential or unavailable within 60 days. The final rule did adopt a change from this suggestion. We added paragraph (c) to this section to allow you to choose an appropriate schedule.

A commenter suggested that we replace ''is'' with the word ''may be'' prior to the word ''occurring'' in the first sentence. The final rule did not adopt this suggestion because the purpose of this section is to determine if you must protect the lease from drainage.

Section 3100.52 (§ 3162.2–10)

This section clarifies when BLM will provide a demand letter to lessees on drainage protection. The final rule is substantively unchanged from the proposed rule. Ordinarily, BLM will serve record title holders, operators, and operating rights owners.

A commenter suggested that the question might mislead operators into thinking that they may wait until they received the demand letter from BLM before taking action. The final rule was not changed in response to this suggestion. We disagree with the comment, because the rule clearly states that the duty of the lessee to take protective measures is not dependent on the BLM sending a demand letter.

Some commenters suggested that we retain the current regulations, which anticipate BLM sending a drainage demand letter. The final rule did not adopt this suggestion. The lessee has the duty to monitor and take protective action. IBLA already recognizes that a lessee may have constructive notice of drainage without a BLM demand letter. Significant Federal and Indian oil and gas resources may already be drained before the lessee receives BLM's demand letter. The lessee is in a better position than BLM to know whether drainage is occurring.

Some commenters expressed concern with BLM's demand letter time frame and the assessing of compensatory royalty damages. The lessee or operating rights owner is allowed a reasonable time from when the draining well establishes production to take protective action. Since there is no average reasonable time for every drainage situation, we will determine what is a reasonable time on a case-by-case basis.

Section 3100.55 (§ 3162.2–15)

This section clarifies the burden of proof in a drainage contest. BLM has the burden in a drainage contest of establishing a *prima facie* case that drainage is occurring. The burden then shifts to the lessee and operator to refute the existence of drainage, to prove the lessee could not have known of drainage or to prove that a protective well is not economic. The final rule is substantively unchanged from the proposed rule.

Some commenters expressed concern that lessees are at a distinct disadvantage in their ability to refute BLM's *prima facie* case that drainage is occurring. These commenters oppose shifting the burden of proof for drainage to the lessees. The final rule did not adopt this comment. Once we establish the existence of drainage and constructive notice, the lessee and operating rights owner under current precedent have the burden of proving that drainage has not occurred or that they could not have known of drainage. Under current precedent, the lessee and operating rights owner have the burden of proving that a protective well would not be economic.

BLM is also confident that we and IBLA will continue to fairly consider all geological and engineering data that the operator furnishes on the existence of drainage and will not hold lessees to an impossible standard of proof.

Section 3100.60 (§ 3162.2–11)

This section clarifies what is a reasonable time to take protective action after a draining well begins to produce oil or gas resources with the actual time determined on a case-by-case basis. The final rule differs from the proposed rule. We modified this section to delete these words ''earliest,'' ''oil or gas,'' ''offending wells,'' and ''lands adjacent or nearby'' to establish a clearer understanding of this section as commenters suggested. We changed the format and the leading sentences to the answer to form paragraph (a). We added paragraph (b) to clarify some of the factors we consider when determining whether the lessee took protective action within a reasonable time. We added paragraph (c) to clarify that if you take protective action but do not do so in a timely fashion, you are responsible for compensatory royalty for the period of the delay as provided in § 3162.2–12. In response to comments, we modified paragraph (d) to change the word ''assessments'' to ''analysis,'' which is a more accurate term.

A commenter suggested that we add ''split estate'' to the list of factors we consider in determining what might be a reasonable time to take protective action. The final rule did not adopt this suggestion. It is not practical to attempt to list all of the relevant data on cost and revenue in the regulation. Depending on the circumstances of each case, it may or may not require a different amount of time to take protective action where there is separate surface estate ownership.

A commenter suggested that it is impractical to interrupt an ongoing drilling schedule to drill an offset well. The final rule did not change in response to this comment. The lessee is obligated by its lease terms to take protective action. If the lessee does not want to interrupt its drilling schedule, it can request BLM's approval to pay compensatory royalty or communitize the lease with the tract containing the draining well.

Some commenters suggested that the title question of this section should read: ''How soon must I take protective action?'' The commenters also suggested that we delete the first sentence of the section. The final rule adopted the language to change the question to read ''How soon after I know of the likelihood of drainage must I take protective action?'' We adopted the suggestion to delete the first sentence of this section. We reformatted this section

and formed new paragraphs (a) and (b). The lessee or operating rights owner is responsible for initiating action at a reasonable time after constructive notice that drainage is occurring.

Some commenters suggested that we establish a time frame for protection instead of the ''earliest reasonable time.'' These commenters also suggested that BLM provide specific guidelines or criteria for determining what is the ''earliest reasonable time.'' The final rule did not adopt the suggestion to establish a specific time frame. We deleted the word ''earliest'' because all reasonable time requirements vary greatly for each situation. We must determine the reasonable time on a case-by-case basis.

A commenter suggested that we include ''time required for acquisition and evaluation of geological and/or geophysical data'' in paragraph (b). The final rule adopted the language time required to evaluate the characteristics and performance of the draining well'' for paragraph (b)(1), but did not include the geological/geophysical data.

Section 3100.61 (3162.2–12)

This section describes the period of time for which the Department will assess compensatory royalties against a lessee or operating rights owner who does not drill and produce from a protective well or enter into a unitization or communitization agreement to protect the lease from drainage. The final rule differs from the proposed rule. We deleted the word ''earliest'' to establish a clearer time frame for which the Department will assess compensatory royalties against a lessee or operating rights owner. We deleted the cross reference to § 3100.60. In response to comments, we modified paragraph (a) to include the word ''economic.'' In response to comments, we modified paragraph (b) to change the language ''the lands being drained'' to ''the mineral resources being drained'' to clarify that we refer to mineral resources not lands. In response to comments, we modified paragraph (c) to change the phrase ''ceases production'' to ''stops producing.'' In response to comments, we modified paragraph (d) to change the language ''the oil and gas lease interests in spacing units, lots, or aliquot parts of the Federal lands being drained'' to ''your interest in the Federal or Indian lease.''

A commenter suggested that we change the language to add ''economic'' before ''protective'' in paragraph (a) and add ''until drainage ceases in the offending well'' to paragraph (c). The final rule adopted a change to paragraph (a) to add the word ''economic,'' but not to paragraph (c). We did not change paragraph (c) because the duty to pay compensatory royalty stops when the draining well stops producing. The level of compensation required is based on determining the percentage of the draining well's overall production attributed to the lease with mineral resources being drained.

A commenter suggested that the obligation to pay compensatory royalty ends when the drilling of a protective well demonstrates insufficient production to recover drilling and operating costs. The final rule did not adopt this suggestion because it was unnecessary. No compensatory royalty is to be paid because drilling a protective well satisfies the obligation to protect against drainage. In the lease, the lessee has promised to protect the Federal or Indian lessor from drainage.

A commenter suggested that we change paragraph (d) to read ''You relinquish the oil and gas lease interests in spacing units, lots, or aliquot parts in the geological horizon(s) of the Federal land being drained.'' We do not recognize the division of record title by geological horizon(s). Therefore, we did not adopt that comment.

Section 3100.70 (3162.2–5)

This section, as in the proposed rule, states that you do not have to take action under § 3162.2–4 if you can demonstrate that it is not possible to do so and get a reasonable profit above the cost of drilling, completing, and operating the protective well. The final rule differs from the proposed rule. We modified the question of this section to read ''Must I take protective action when a protective well is uneconomic?'' We modified the first sentence to change the language ''will not assess you compensatory royalty'' to ''you are not required to take any of the actions listed in § 3162.2–4'' to establish a clearer understanding of when a lessee does not take action for drainage protection.

Section 3100.71 (3162.2–13)

This section informs an assignee or transferee that if they acquire a lease being drained, they will be assessed compensatory royalty for all drainage obligations accruing on and after the approval date of the assignment of record title or transfer of operating rights. The final rule is substantively unchanged from the proposed rule with the exception of including the word ''Indian'' to clarify that this section applies to Indian assignees or transferees.

A commenter suggested that we notify an assignee or transferee of a lease interest that is subject to drainage and the obligation to pay compensatory royalty or drill a protective well. The final rule did not adopt this suggestion because a prudent purchaser of a lease interest should examine the lease file prior to purchase. After BLM approves an assignment of record title or transfer of operating rights, the assignee or transferee assumes all lease obligations including the obligation to protect the lease from drainage.

Section 3100–80 (3162.2–14)

This section indicates that a lessee or operating rights owner may request BLM State Director review as outlined in 43 CFR 3165.3, and appeal to IBLA as outlined in 43 CFR Parts 4 and 1840, a BLM decision to require drainage protective measures. The final rule includes language that a lessee or operating rights owner may request for a BLM State Director review. This language was omitted in the proposed rule in anticipation of a new appeals rule.

Section 3106.7–2

This section specifies that an assignor or transferor remains responsible for all obligations accruing prior to the approval of the assignment or transfer, including the payment of compensatory royalties for drainage and the plugging and abandonment of any unplugged wells drilled or used prior to the effective of the transfer. The final rule differs from the proposed rule. We modified this section to change the question to read ''If I transfer my lease, what is my continuing obligation?'' to better reflect that the purpose of the section is to inform the lessee of its continuing obligations. Also, we reformatted the section to make it easier to understand.

A commenter suggested that we recognize the terms of assignment agreements that specify which responsibilities are assigned or transferred. The final rule did not adopt this suggestion because we cannot be bound by agreements to which we are not a party.

A commenter suggested that we clarify that the assignee merely assumes reclamation responsibilities and not all wells must immediately be plugged when we approve the assignment. The final rule did not adopt this suggestion. We do not believe that the rule implies otherwise. If additional beneficial uses for the wells exist, you do not need to plug the wells immediately.

Some commenters suggested that the original lessee or operator should not be responsible for plugging and abandoning when control and all

obligations have been conveyed to other parties. The final rule did not adopt this suggestion. While we first look to the current lessee for lease compliance, we believe it prudent to reserve our rights against all parties who had the potential to benefit from the well's existence.

Section 3106.7–6

This section informs a transferee of its obligations to comply with the original lease terms, including plugging and abandonment of unplugged wells, reclaiming the lease site, remediating environmental problems in existence which should have been known at the time of assignment, as well as maintaining an adequate bond to ensure performance of those responsibilities. The final rule differs from the proposed rule. We modified this section to add paragraphs (a) and (b) to differentiate between record title holders and operating rights owners.

Section 3108.1

This section adds a requirement that where more than one party holds record title interest in the same lease, all such parties must sign the relinquishment form. In addition, all parties relinquishing the lease are still responsible for settling all outstanding lease obligations, including placement of all wells on the lease in proper condition for suspension or abandonment, and for reclaiming leased land in accordance with an approved plan. The final rule is substantially unchanged from the proposed rule. In response to comments, we deleted the phrase ''leased land'' in the rule text.

Section 3130.3

This section amends the cross reference of these provisions. The final rule amends the cite to read ''§ 3162.2.''

Section 3162.2

This section adds ''lessees'' to the persons who must satisfy the requirement of drilling and producing operations related to drainage. The final rule differs from the proposed rule. We modified this section to consolidate the previous drainage requirements of Part 3100 with those of Part 3160. We also modified this section to remove paragraph (a) and to redesignate current paragraphs (b) and (c) as paragraphs (a) and (b).

A commenter suggested that we should not require the lessees to have the same development responsibilities as the operating rights owners if they are not the same entity. The final rule did not adopt this suggestion because we must ensure that if either party is negligent in its responsibilities, we have a recourse by holding the other party responsible for fulfilling the lease obligations. A sublease does not relieve the lessee of the responsibility for lease performance.

Section 3165.3

This section adds ''lessee'' to the list of parties notified by BLM in the case of an alleged violation of the lease or regulations pertaining to operations on an oil and gas lease. The final rule differs from the proposed rule. We modified this section to add the phrase ''and the lessee(s)'' after ''appropriate party'' in the first sentence of paragraph (a) to clarify that we will notify lessees of alleged violations of the lease or regulations.

Section 3165.4

This section adds a provision specifying that an appeal of BLM's determination of drainage does not stay the determination and that compensatory royalties and interest will accrue during the appeal. The final rule is substantively unchanged from the proposed rule.

IV. Procedural Matters

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Since fiscal year 1996, the drainage protection program has generated an average of about $16.1 million to the U.S. Treasury per year, with about 10 percent of these revenues attributed to compensatory assessments. These revenues are from payments by lessees and operating rights owners obligated to pay royalties and compensatory royalties under the drainage protection program. The adoption of this final rule could result in the generation of additional revenues from compensatory royalty assessments, royalties from the drilling of new protective wells, and royalties from entering unitization or communitization agreements totaling about $2 million. This is far below the $100 million threshold set out in the Executive Order.

(b) This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the drainage protection program with other agencies' actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This final rule clarifies ambiguities in the existing regulations and does not add new requirements to protect the lessor from drainage to those in the lease itself or impose new obligations on lessees and operating rights owners. Since the final rule merely clarifies how a lessee meets the terms in the lease that created their property interest, and imposes no limits on the use of the property, there will be no rights or obligations impaired as a result.

(d) This rule will not raise novel legal or policy issues.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601–612), to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis and a Small Entity Compliance Guide are not required. This final rule does not produce an impact of $100 million or more on the economy. Its initial annual impact is estimated at $20.2 million or about one-third of one percent of revenues generated by oil and gas leases. Our estimate on the drainage liabilities is based on the average yearly amount of revenues recovered by BLM from successfully retired drainage cases. These revenues include royalties on protective wells, compensatory royalty assessments, royalties generated through protective agreements, or bonus bid payments on unleased lands.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This final rule would not affect costs or prices for consumers that are associated with the actions of this rulemaking.

The Department has determined that this final rule is not a major rule under

5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule is not a major rule because annual total royalty revenues we anticipate receiving through drainage protections, including any increases as a result of these regulations, barely exceed $25 million.

Unfunded Mandates Reform Act

We have determined that in accordance with the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501, *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The final rule would not change the relationship between BLM and small governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This final rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The final rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Government-to-Government Relationship With Tribes

We have considered the impact of this rule on the interests of Tribal governments under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and Department of the Interior Manual (512 DM 2). BLM did consult with Indian Tribes, under Executive Order 13084, on the issue of whether these regulations should apply to Tribal and individual Indian oil and gas leases. This complies with Executive Order 13175 which takes effect on January 6, 2001. However, we have determined the government-to-government relationship will not be affected as a result of the consultation on the applicability of these regulations. This rule will enhance the protection of Indian oil and gas resource owners.

Executive Order 12630

In accordance with Executive Order 12630, the final rule does not represent a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required. The Department has determined that the final rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order. Since the final rule merely clarifies how a lessee meets the terms in the lease that created their property interest, and imposes no limits on the use of the property, there will be no private property rights impaired as a result.

Executive Order 13132

We have considered the effect of the final rule in accordance with Executive Order 13132 and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The final rule does 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 various levels of government.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This final rule clarifies the drainage obligations of lessees and operating rights owners and ambiguities in the existing regulations.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection required by these regulations has been approved by the Office of Management and Budget under Approval No. 1004–0185 which expires May 31, 2002.

National Environmental Policy Act

BLM has determined that this final rule is not subject to the review process established by the National Environmental Policy Act (NEPA) of 1969, since it is categorically excluded under 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and 516 DM, Chapter 2, Appendix 2. We also determined that the final rule does not meet any of the ten criteria for exceptions to categorical exclusion listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusion'' means a category of actions that have been found not individually or cumulatively to have a significant effect on the human environment and in procedures adopted by a Federal agency for which neither an environmental assessment nor an environmental impact statement is required.

The environmental effects of this rule are too speculative or conjectural to lend themselves to meaningful analysis. Although this rulemaking requires that Federal lessees and operating rights owners protect their leases from drainage of oil and gas resources by producing wells on adjacent lands, there are several steps that must be taken before it is determined that an operator will take actions subject to NEPA review. The lessee must monitor well activities on adjacent lands, and then conduct an analysis of information available to determine if the adjacent well is too far away to be capable of draining the Federal lease. Even if draining the Federal lease, the lessee might be able to exercise options such as forming a unitization or communitization agreement with the owners of the draining well or paying compensatory royalties. These two options are exercised in more than 80 percent of the cases where there is economic drainage and a NEPA analysis is not required.

In about 10 percent of all drainage cases identified, it might be determined that drilling a protective well is the only option for protecting the lease from drainage. However, the lessee might prove that even if it drilled a protective well, it might not be economic. This is perhaps true in 75 percent of the cases where drilling a protective well is considered. If the lessee determines it can drill an economic protective well, then obtaining approval to drill the well is subject to a review under procedures established by BLM to comply with NEPA.

Authors: The principal author of this rule making is Donnie Shaw, Fluid Minerals Group, assisted by Shirlean Beshir, Regulatory Affairs Group.

List of Subjects

43 CFR Part 3100

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and record keeping requirements, Surety bonds.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and record keeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Hydrocarbons, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and record keeping requirements.

Dated: January 2, 2001.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

Accordingly, under the authorities cited below, BLM adopts as final the amendments to Parts 3100, 3106, 3108, 3130, and 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

1. Remove the heading and the note following Group 3000—Minerals Management.

PART 3000—MINERALS MANAGEMENT: GENERAL

2. Revise the authority citation for Part 3000 to read as follows:

Authority: 30 U.S.C. 189 and 359; and 40 Opinion of the Attorney General 41.

3. Remove the heading and the note following Group 3100—Oil and Gas Leasing.

PART 3100—OIL AND GAS LEASING

4. Revise the authority citation for part 3100 to read as follows:

Authority: 30 U.S.C. 189 and 359; 43 U.S.C. 1732(b), 1733, and 1740; and 40 Opinion of the Attorney General 41.

5. Revise § 3106.7–2 to read as follows:

§ 3106.7–2 If I transfer my lease, what is my continuing obligation?

(a) You are responsible for performing all obligations under the lease until the date BLM approves an assignment of your record title interest or transfer of your operating rights.

(b) After BLM approves the assignment or transfer, you will continue to be responsible for lease obligations that accrued before the approval date, whether or not they were identified at the time of the assignment or transfer. This includes paying compensatory royalties for drainage. It also includes responsibility for plugging wells and abandoning facilities you drilled, installed, or used before the effective date of the assignment or transfer.

6. Add new § 3106.7–6 to read as follows:

§ 3106.7–6 If I acquire a lease by an assignment or transfer, what obligations do I agree to assume?

(a) If you acquire record title interest in a Federal lease, you agree to comply with the terms of the original lease during your lease tenure. You assume the responsibility to plug and abandon all wells which are no longer capable of producing, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known at the time. You must also maintain an adequate bond to ensure performance of these responsibilities.

(b) If you acquire operating rights in a Federal lease, you agree to comply with the terms of the original lease as it applies to the area or horizons in which you acquired rights. You must plug and abandon all unplugged wells, reclaim the lease site, and remedy all environmental problems in existence and that a purchaser exercising reasonable diligence should have known at the time you receive the transfer. You must also maintain an adequate bond to ensure performance of these responsibilities.

7. Revise § 3108.1 to read as follows:

§ 3108.1 As a lessee, may I relinquish my lease?

You may relinquish your lease or any legal subdivision of your lease at any time. You must file a written relinquishment with the BLM State Office with jurisdiction over your lease. All lessees holding record title interests in the lease must sign the relinquishment. A relinquishment takes effect on the date you file it with BLM. However, you and the party that issued the bond will continue to be obligated to:

(a) Make payments of all accrued rentals and royalties, including payments of compensatory royalty due for all drainage that occurred before the relinquishments;

(b) Place all wells to be relinquished in condition for suspension or abandonment as BLM requires; and

(c) Complete reclamation of the leased sites after stopping or abandoning oil and gas operations on the lease, under a plan approved by the appropriate surface management agency.

PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE, ALASKA

8. Revise the authority citation for part 3130 to read as follows:

Authority: 42 U.S.C. 6508; 43 U.S.C. 1732(b), 1733, and 1740; and 40 Opinion of the Attorney General 41.

§ 3130.3 [Amended]

9. Amend § 3130.3 by revising the cross reference of ''§ 3100.3'' to read ''§ 3162.2.''

PART 3160—ONSHORE OIL AND GAS OPERATIONS

10. Revise the authority citation for part 3160 to read as follows:

Authority: 25 U.S.C. 396d; 30 U.S.C. 189 and 359; 43 U.S.C. 1733 and 1740; and 40 Opinion of the Attorney General 41.

§ 3160.0–5 [Amended]

11. Amend § 3160.0–5 as follows by:

a. Removing the paragraph designations (a) through (w) and alphabetizing all definitions;

b. Adding new definitions for *Drainage, Protective well,* and *Record title holder,* and revising the definitions of *Lessee* and *Operating rights owner* to read as follows:

* * * * *

Drainage means the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells.

* * * * *

Lessee means any person holding record title or owning operating rights in a lease issued or approved by the United States.

* * * * *

Operating rights owner means a person who owns operating rights in a lease. A record title holder may also be an operating rights owner in a lease if it did not transfer all of its operating rights.

* * * * *

Protective well means a well drilled or modified to prevent or offset drainage of oil and gas resources from its Federal or Indian lease.

* * * * *

Record title holder means the person(s) to whom BLM or an Indian lessor issued a lease or approved the assignment of record title in a lease.

* * * * *

12. Amend § 3162.2 as follows by:

§ 3162.2 [Amended]

a. Revising the heading;

b. Adding ''(s)'' after ''operating rights owner'' in paragraph (b) and (c) each time it appears, and by adding the term ''a lessee(s) and'' before ''operating rights owners'' each time it appears; and

c. removing paragraph (a).

§ 3162.2 Drilling, producing, and drainage obligations.

* * * * *

13. Add a new § 3162.2–1 and redesignate paragraphs (b) and (c) of

§ 3162.2 as paragraphs (a) and (b) of this new section.

§ 3162.2–1 Drilling and producing obligations.

* * * * *

14. Add new §§ 3162.2–2 through 3162.2–15 to read as follows:

Sec.

3162.2–2 What steps may BLM take to avoid uncompensated drainage of Federal or Indian mineral resources?
3162.2–3 When am I responsible for protecting my Federal or Indian lease from drainage?
3162.2–4 What protective action may BLM require the lessee to take to protect the leases from drainage?
3162.2–5 Must I take protective action when a protective well would be uneconomic?
3162.2–6 When will I have constructive notice that drainage may be occurring?
3162.2–7 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?
3162.2–8 Does my responsibility for drainage protection end when I assign or transfer my lease interest?
3162.2–9 What is my duty to inquire about the potential for drainage and inform BLM of my findings?
3162.2–10 Will BLM notify me when it determines that drainage is occurring?
3162.2–11 How soon after I know of the likelihood of drainage must I take protective action?
3162.2–12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?
3162.2–13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?
3162.2–14 May I appeal BLM's decision to require drainage protective measures?
3162.2–15 Who has the burden of proof if I appeal BLM's drainage determination?

§ 3162.2–2 What steps may BLM take to avoid uncompensated drainage of Federal or Indian mineral resources?

If we determine that a well is draining Federal or Indian mineral resources, we may take any of the following actions:

(a) If the mineral resources being drained are in Federal or Indian leases, we may require the lessee to drill and produce all wells that are necessary to protect the lease from drainage, unless the conditions of this part are met. BLM will consider applicable Federal, State, or Tribal rules, regulations, and spacing orders when determining which action to take. Alternatively, we may accept other equivalent protective measures;

(b) If the mineral resources being drained are either unleased (including those which may not be subject to leasing) or in Federal or Indian leases, we may execute agreements with the owners of interests in the producing well under which the United States or the Indian lessor may be compensated for the drainage (with the consent of the Federal or (in consultation with the Indian mineral owner and BIA) Indian lessees, if any);

(c) We may offer for lease any qualifying unleased mineral resources under part 3120 of this chapter or enter into a communitization agreement; or

(d) We may approve a unit or communitization agreement that provides for payment of a royalty on production attributable to unleased mineral resources as provided in § 3181.5.

§ 3162.2–3 When am I responsible for protecting my Federal or Indian lease from drainage?

You must protect your Federal or Indian lease from drainage if your lease is being drained of mineral resources by a well:

(a) Producing for the benefit of another mineral owner;

(b) Producing for the benefit of the same mineral owner but with a lower royalty rate; or

(c) Located in a unit or communitization agreement, which due to its Federal or Indian mineral owner's allocation or participation factor, generates less revenue for the United States or the Indian mineral owner for the mineral resources produced from your lease.

§ 3162.2–4 What protective action may BLM require the lessee to take to protect the leases from drainage?

We may require you to:

(a) Drill or modify and produce all wells that are necessary to protect the leased mineral resources from drainage;

(b) Enter into a unitization or communitization agreement with the lease containing the draining well; or

(c) Pay compensatory royalties for drainage that has occurred or is occurring.

§ 3162.2–5 Must I take protective action when a protective well would be uneconomic?

You are not required to take any of the actions listed in § 3162.2–4 if you can prove to BLM that when you first knew or had constructive notice of drainage you could not produce a sufficient quantity of oil or gas from a protective well on your lease for a reasonable profit above the cost of drilling, completing, and operating the protective well.

§ 3162.2–6 When will I have constructive notice that drainage may be occurring?

(a) You have constructive notice that drainage may be occurring when well completion or first production reports for the draining well are filed with either BLM, State oil and gas commissions, or regulatory agencies and are publicly available.

(b) If you operate or own any interest in the draining well or lease, you have constructive notice that drainage may be occurring when you complete drill stem, production, pressure analysis, or flow tests of the well.

§ 3162.2–7 Who is liable for drainage if more than one person holds undivided interests in the record title or operating rights for the same lease?

(a) If more than one person holds record title interests in a portion of a lease that is subject to drainage, each person is jointly and severally liable for taking any action we may require under this part to protect the lease from drainage, including paying compensatory royalty accruing during the period and for the area in which it holds its record title interest.

(b) Operating rights owners are jointly and severally liable with each other and with all record title holders for drainage affecting the area and horizons in which they hold operating rights during the period they hold operating rights.

§ 3162.2–8 Does my responsibility for drainage protection end when I assign or transfer my lease interest?

If you assign your record title interest in a lease or transfer your operating rights, you are not liable for drainage that occurs after the date we approve the assignment or transfer. However, you remain responsible for the payment of compensatory royalties for any drainage that occurred when you held the lease interest.

§ 3162.2–9 What is my duty to inquire about the potential for drainage and inform BLM of my findings?

(a) When you first acquire a lease interest, and at all times while you hold the lease interest, you must monitor the drilling of wells in the same or adjacent spacing units and gather sufficient information to determine whether drainage is occurring. This information can be in various forms, including but not limited to, well completion reports, sundry notices, or available production information. As a prudent lessee, it is your responsibility to analyze and evaluate this information and make the necessary calculations to determine:

(1) The amount of drainage from production of the draining well;

(2) The amount of mineral resources which will be drained from your Federal or Indian lease during the life of the draining well; and

(3) Whether a protective well would be economic to drill.

(b) You must notify BLM within 60 days from the date of actual or constructive notice of:

(1) Which of the actions in § 3162.2–4 you will take; or

(2) The reasons a protective well would be uneconomic.

(c) If you do not have sufficient information to comply with § 3162.2–9(b)(1), indicate when you will provide the information.

(d) You must provide BLM with the analysis under paragraph (a) of this section within 60 days after we request it.

§ 3162.2–10 Will BLM notify me when it determines that drainage is occurring?

We will send you a demand letter by certified mail, return receipt requested, or personally serve you with notice, if we believe that drainage is occurring. However, your responsibility to take protective action arises when you first knew or had constructive notice of the drainage, even when that date precedes the BLM demand letter.

§ 3162.2–11 How soon after I know of the likelihood of drainage must I take protective action?

(a) You must take protective action within a reasonable time after the earlier of:

(1) The date you knew or had constructive notice that the potentially draining well had begun to produce oil or gas; or

(2) The date we issued a demand letter for protective action.

(b) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, BLM will determine this on a case-by-case basis. When we determine whether you took protective action within a reasonable time, we will consider several factors including, but not limited to:

(1) Time required to evaluate the characteristics and performance of the draining well;

(2) Rig availability;

(3) Well depth;

(4) Required environmental analysis;

(5) Special lease stipulations which provide limited time frames in which to drill; and

(6) Weather conditions.

(c) If BLM determines that you did not take protection action timely, you will owe compensatory royalty for the period of the delay under § 3162.2–12.

§ 3162.2–12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?

The Department will assess compensatory royalty beginning on the first day of the month following the earliest reasonable time we determine you should have taken protective action. You must continue to pay compensatory royalty until:

(a) You drill sufficient economic protective wells and remain in continuous production;

(b) We approve a unitization or communitization agreement that includes the mineral resources being drained;

(c) The draining well stops producing; or

(d) You relinquish your interest in the Federal or Indian lease.

§ 3162.2–13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

If you acquire an interest in a Federal or Indian lease through an assignment of record title or transfer of operating rights under this part, you are liable for all drainage obligations accruing on and after the date we approve the assignment or transfer.

§ 3162.2–14 May I appeal BLM's decision to require drainage protective measures?

You may appeal any BLM decision requiring you take drainage protective measures. You may request BLM State Director review under 43 CFR 3165.3 and/or appeal to the Interior Board of Land Appeals under 43 CFR part 4 and subpart 1840.

§ 3162.2–15 Who has the burden of proof if I appeal BLM's drainage determination?

BLM has the burden of establishing a *prima facie* case that drainage is occurring and that you knew of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or to prove there was not sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible.

§ 3165.3 [Amended]

13. Amend § 3165.3 by adding the phrase ''and the lessee(s),'' after ''appropriate party'' in the first sentence of paragraph (a).

14. Amend § 3165.4 by adding a new paragraph (e)(4) to read as follows:

§ 3165.4 Appeals.

* * * * *

(e) * * *

(4) When an appeal is filed under paragraph (a) of this section from a decision to require drainage protection, BLM's drainage determination will remain in effect during the appeal, notwithstanding the provisions of 43 CFR 4.21. Compensatory royalty and interest determined under 30 CFR Part 218 will continue to accrue throughout the appeal.

* * * * *

[FR Doc. 01–446 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 9]

RIN 2130–AB32

Track Safety Standards

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

ACTION: Final rule.

SUMMARY: FRA amends the Track Safety Standards to provide procedures for track owners to use Gage Restraint Measuring Systems (GRMS) to assess the ability of their track to maintain proper gage. Under the current Track Safety Standards, track owners must evaluate a track's gage restraint capability through visual inspections conducted at frequencies and intervals specified in the standards. With this amendment, track owners may monitor gage restraint on a designated track segment using GRMS procedures. Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector.

DATES: *Effective Date:* This final rule is effective April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6236), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6047).

SUPPLEMENTARY INFORMATION:

Introductory Statement

Historically, railroads assess a track's ability to maintain gage through visual inspections of crossties and rail fastening systems. The maintenance decisions which determine crosstie and rail fastener replacement within the

industry today rely heavily on those visual inspections made by maintenance personnel whose subjective knowledge is based on varying degrees of experience and training. The subjective nature of these inspections sometimes results in inconsistent determinations about the ability of individual crossties and rail fasteners to maintain adequate gage restraint.

Crossties may not always exhibit strong indications of good or bad condition. If a crosstie in questionable condition is removed from track prematurely, its maximum service life is unnecessarily shortened resulting in added maintenance costs for the railroad. Yet, crossties of questionable condition left too long in track can cause a wide-gage derailment with its inherent risk of injury to railroad personnel and passengers and damage to property. In many instances of gage failure caused by defective crossties and/or rail fasteners, the static or unloaded gage is within the limits prescribed by the Federal Track Safety Standards contained in 49 CFR part 213. However, when a train applies an abnormally high lateral load to a section of track which contains marginal crosstie or rail fastener conditions, the result is often a wide-gage derailment.

Statistics taken from the Federal Railroad Administration's (FRA's) Annual Accident/Incident Bulletins indicate that wide gage resulting from defective crossties and rail fasteners has been, and continues to be, the largest single cause of reportable track-caused derailments. In response to this problem, a long-standing joint FRA/industry research project has developed a non-destructive performance-based technology to objectively measure the gage restraint capacity of crossties and rail fasteners. The GRMS applies known lateral and vertical loads to the track structure, measures the gage deflection under those loads, and then projects what the gage would become under severe track loading conditions of 24,000 pounds lateral and 33,000 pounds vertical. From this data, a gage widening ratio is calculated as a measure of overall track strength.

In 1993, FRA granted CSX Transportation (CSXT) a waiver of compliance from portions of the Track Safety Standards so that it could conduct a test program to evaluate a GRMS performance-based standard. In lieu of implementing existing crosstie and rail fastener requirements, CSXT used FRA's research vehicle to judge track strength of nearly 500 miles of track in various segments. The experience gained from this test program has afforded FRA and the industry the opportunity to adjust the operational and conditional requirements of a GRMS program to make it a more consistent method of objectively determining crosstie and rail fastener effectiveness.

During the past several years, CSXT contracted for the design and construction of two GRMS vehicles which are in use over its system, including the waiver territory. The former Consolidated Rail Corporation used a GRMS vehicle over its system, and several other Class I railroads have expressed a serious interest in obtaining GRMS vehicles. FRA believes that the GRMS technology has now advanced to the point where railroads can use it to reliably assist in determining compliance with crosstie and rail fastener requirements contained in the Track Safety Standards.

Proceedings To Date

A. Track Working Group

On April 2, 1996, the Railroad Safety Advisory Committee (RSAC) agreed to provide advice and recommendations to FRA for revision of the Track Safety Standards. The RSAC then assigned that responsibility to a specialized working group comprised of approximately 30 representatives from labor, railroads, trade associations, state government groups, track equipment manufacturers, and FRA.

The Track Working Group met monthly from May, 1996, through October, 1996, to provide to FRA advice on the development of a draft Notice of Proposed Rulemaking (NPRM) to recommend to the RSAC. Although the Track Working Group discussed extensively the subject of GRMS, it was unable to reach consensus about how GRMS technology should be addressed in the revised Track Safety Standards. Representatives of the railroads had anticipated that the revised track standards would include a provision allowing railroads to use GRMS technology in place of inspection requirements already outlined in Part 213. Labor representatives, however, expressed strong reluctance to agree to a change that could replace some of the discretion and judgment already allowed track inspectors. They expressed fear that the judgment of track inspectors would be overruled completely by GRMS technology.

At a public meeting on October 31, 1996, the Track Working Group presented its proposed rule to the RSAC. The proposed rule did not include a provision for GRMS. The RSAC therefore appointed a small task group to evaluate the possibility of developing GRMS standards to be added to the revised Track Safety Standards at a later time.

The proposed rule, based on recommendations received from the Track Working Group, was approved by a majority consensus of the RSAC, which in turn, recommended the proposal to FRA for adoption. On July 3, 1997, FRA issued an NPRM largely based upon that proposal. *See* 62 FR 36168. FRA conducted a public hearing and received mostly favorable comments from 12 respondents. On June 22, 1998, FRA issued a final rule, based upon its NPRM and the comments it received in response. *See* 63 FR 33992. Both the NPRM and the final rule identified and discussed the relevant issues concerning GRMS.

B. GRMS Task Group

A specialized Task Group met five times from June 1997, through February 1998, to advise FRA on regulatory language which addresses the use of GRMS technology for possible inclusion into the Track Safety Standards. The Task Group was comprised of approximately 12 representatives from labor, railroads, trade associations, state government groups, the Department of Transportation's Research and Special Programs Administration, and FRA. A member of the National Transportation Safety Board also participated in an advisory capacity.

The Task Group discussed at length whether GRMS technology should replace, or merely supplement, traditional inspection methods and the requirements for crossties and rail fasteners. Representatives of labor organizations argued that the technology should be used in conjunction with traditional inspection methods and existing requirements. Representatives of railroad management argued that GRMS technology should more than supplement existing standards because the use of GRMS technology produces an objective determination of whether crossties are able to continue effectively maintaining adequate gage restraint, or are approaching the end of their service lives and must be replaced. In some cases, the traditional method of crosstie evaluation would not necessarily agree with the GRMS evaluation.

To resolve this disagreement, the Task Group agreed that a GRMS provision in the Track Safety Standards should provide for discretion of employees fully qualified under § 213.7 to use Portable Track Loading Fixtures (PTLFs) between GRMS inspections to make individual judgements about a track's ability to maintain gage. A PTLF is a hand-carried gage measuring device that

exerts a lateral force between rails to test a track's ability to maintain gage under that pressure. Although the PTLF does not exert vertical force, as does the GRMS vehicle, it nevertheless functions as a surrogate measurement of track strength between inspections with the full-sized GRMS vehicle.

This amendment to the Track Safety Standards reflects the resolution reached by the Task Group. Under this amendment, railroads may designate track segments to be evaluated regularly by GRMS technology. Employees fully qualified under § 213.7 will use the PTLF as an additional analytical tool to determine compliance with the crosstie and fastener requirements. If a location passes the PTLF criteria, but the employee is uncomfortable with the condition of the track at that location, the employee retains the discretion to take additional remedial actions, such as placing slow orders at that location. On lines designated by the railroads to be evaluated by GRMS, FRA inspectors will determine compliance with the crosstie and fastener requirements solely on the basis of a PTLF measurement.

This amendment provides for two levels of compliance exceptions on track designated as GRMS track. This method closely follows the current procedures in effect on the CSXT waiver territory. First level exceptions are those locations which require the railroads to immediately place a 10 mph speed restriction, followed by verification and corrective action. Second level exceptions are those locations which do not appear to require immediate attention but must be monitored to ensure that they do not become defects before the next GRMS inspection.

The amendment also requires track owners to implement a formal training program for employees who are fully qualified under § 213.7 and whose territories are subject to the operation of a GRMS vehicle. The training program should provide affected employees with the necessary information to locate and verify GRMS defects, prescribe and record the appropriate remedial action, and provide specific instructions on the use and calibration of the PTLF.

In developing recommendations for inspection frequency requirements for GRMS, the Task Group considered such factors as class of track, amount of traffic, and whether or not the line is used for passenger transportation. In consideration of these varying factors, this amendment adopts a simplified but conservative approach by requiring annual GRMS inspections, not to exceed 14 months between inspections, on all line segments where the annual tonnage exceeds two million gross tons (MGTs) or where the maximum operating speed for passenger trains is more than 30 mph. On line segments where the traffic is two MGTs or less, and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between inspections must not exceed 24 months. This longer inspection interval makes the technology more accessible to short lines which may not have the same equipment or financial resources available to the larger railroads.

Section-By-Section Analysis of § 213.110

Paragraph (a)

Paragraph (a) provides for the implementation of a GRMS, supplemented by the use of a PTLF, to determine compliance with the crosstie and rail fastener requirements specified in §§ 213.109 and 213.127. Track owners electing to implement this technology must provide the appropriate FRA Regional Office with notification that specifically identifies the line segment(s) where GRMS will be used. The appropriate FRA office is the headquarters location for the FRA region in which the GRMS designated line segment is located.

The notification must be provided to FRA at least 30 days prior to the designation of any line segment which will be subject to the requirements of this section. Track owners must also provide FRA with at least 10 days notice prior to the removal of a line segment from GRMS designation.

Paragraph (b)

This paragraph specifies what information track owners should include in their notifications to FRA about line segments designated for GRMS inspection. The information must include, at a minimum, the segment's timetable designation, milepost limits, track class, million gross tons of traffic per year, and any other identifying characteristics of the segment.

Paragraph (c)

This paragraph describes minimum design requirements for GRMS vehicles. Track owners must submit to FRA sufficient technical data so that the agency can establish whether or not the track owner is in compliance with these design requirements. The paragraph requires that gage must be measured between the heads of the rail at an interval not exceeding 16 inches. The paragraph provides for design flexibility by establishing acceptable ranges for the lateral/vertical load ratio and the resulting lateral load severity, both of which can be satisfied by various load configurations, provided that the applied vertical load is not less than 10,000 pounds per rail.

Paragraphs (d), (e), and (f)

The mathematical formulas prescribed in these paragraphs are to be used in the calculation of the Gage Widening Ratio (GWR) and the Projected Loaded Gage 24 (PLG 24). The accurate measurements of unloaded gage, GRMS loaded gage, and the lateral load applied are of critical importance because these measurements are used in the calculation of PLG 24 values and the values for GWR, values which comprise a direct measure of track strength. Therefore, to avoid any influence from adjacent loads, design requirements specify that the unloaded track gage must be measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application. Loaded track gage measured by the GRMS vehicle shall be measured at a point no more than 12 inches from the lateral load application point.

The Task Group recommended that the loaded track gage measurement be taken at the point of application of the lateral load, as is the practice on existing in-service GRMS vehicles that use displacement transducers mounted on the instrumented wheelset. This final rule provides for the use of other gage measuring technologies, such as optical and laser gage measuring systems, by allowing the measurement of loaded gage to be taken no more than 12 inches from the lateral load application point.

Paragraphs (g), (h), and (i)

GRMS vehicles must be also capable of producing strip chart traces of all the parameters specified in paragraph (l) of this section, as well as a printed exception report listing by magnitude and location all exceptions from these parameters. The exception report listing must be provided to the appropriate person designated as fully qualified under § 213.7 prior to the next inspection required under § 213.233 of this part.

Paragraph (j)

The track owner is required to institute procedures that will ensure the integrity of data collected by the GRMS and PTLF systems. Track owners must maintain documented calibration procedures on each GRMS vehicle and make them available upon request from an FRA representative. FRA understands that common procedure is for GRMS systems to be calibrated at least once per day. Therefore, the rule requires that the procedures must

specify that calibration is done at least once per day. Track owners must also develop and implement the necessary PTLF inspection and maintenance procedures so that the 4,000-pound reading is accurate within plus/minus five percent.

Paragraph (k)

This paragraph recognizes the need for all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of this section to receive training on the implementation of GRMS technology. The track owner, therefore is required to develop a formal GRMS training program which must be made available to FRA upon request.

The training program must provide detailed instruction on the specific areas identified in this paragraph. In particular, the training must address basic GRMS operational procedures, interpretation and handling of exception reports, how to locate and verify GRMS defects in the field, remedial action requirements to be initiated when defects are verified, how to use and calibrate the PTLF, and the recordkeeping requirements associated with the implementation of GRMS technology.

Paragraph (l)

This paragraph specifies the parameters and threshold levels to be reported as a record of lateral restraint following an inspection by a GRMS vehicle. The regulation requires that two levels of exceptions are reported during the GRMS inspection. Specific remedial actions are required for each level, as identified in the Remedial Action Table in this section. First Level exceptions are required to be immediately protected by a 10 mph speed restriction until verification and corrective action can be instituted. Second Level exceptions are to be monitored and maintained within the PTLF criteria outlined in paragraph (m) of this section.

Footnote 2 in the Remedial Action Table of this section recognizes that typical good track will increase in total gage by as much as ¼ inch due to outward rail rotation under GRMS loading conditions. Accordingly, for Class 2 and Class 3 track, the GRMS loaded track gage values are also increased by ¼ inch to a maximum of 58 inches. GRMS loaded track gage values in excess of 58 inches must always be considered First Level exceptions. This ¼ inch allowance in gage applies only to GRMS loaded gage, and does not apply to PTLF gage measurements or to measurements made by more traditional methods.

Paragraph (m)

Paragraph (m) describes the manner in which a PTLF must be used as an additional analytical tool, between GRMS inspections, to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and rail fastener requirements specified in §§ 213.109 and 213.127. At locations identified by a GRMS record of inspection, or at any other location along the track, compliance with the crosstie and rail fastener requirements will be demonstrated when a PTLF is applied and (1) the total gage widening at that location does not exceed ⅝ inch when increasing the applied force from 0 to 4,000 pounds, and (2) the gage of the track measured under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) of this section for the class of track involved. Gage widening in excess of the ⅝ inch must constitute a deviation from Class 1 standards.

At locations where compliance with the crosstie and rail fastener requirements have been demonstrated through the use of a PTLF, a fully qualified § 213.7 individual retains the discretionary authority to prescribe additional remedial actions, such as the placement of speed restrictions, if the individual deems it necessary. FRA inspectors will determine compliance with the crosstie and fastener requirements solely on the basis of the PTLF measurements.

When a functional PTLF is not available to a fully qualified § 213.7 individual during a scheduled inspection under § 213.233 of this part, the track owner must repair or replace the PTLF prior to the next inspection required under § 213.233, or crosstie and rail fastener compliance will be based solely on the requirements specified in §§ 213.109 and 213.127.

At locations where crosstie or rail fastening compliance is questioned and vertical loading of the track structure is necessary to restore contact with the lateral rail restraint components, the crossties must be raised until lateral restraint contact is restored and a PTLF measurement must then be made.

Paragraph (n)

The track owner must maintain a record of the two most recent GRMS inspections at locations meeting the requirements specified in § 213.241(b). The records must indicate the location and nature of each First Level exception and, the nature and date of initiated remedial action, if any, for each First Level exception. First Level exceptions are described in the Remedial Action Table in Paragraph (l).

The track owner is not required to maintain records of Second Level exceptions. However, as required in paragraph (i), reports of all exceptions, including Second Level exceptions, must be provided to the appropriate fully qualified § 213.7 individuals prior to the next inspection required under § 213.233. Second Level exceptions are also described in the Remedial Action Table in Paragraph (l).

Paragraph (o)

On line segments where the annual tonnage exceeds two million gross tons, or where the maximum operating speeds for passenger trains exceeds 30 mph, GRMS inspections must be performed annually, with no more than 14 months between inspections. The maximum interval of 14 months is intended to provide some flexibility for scheduling when it may not be possible to schedule annual inspections within the same calendar month each year.

On line segments where the annual tonnage is two million gross tons or less and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between GRMS inspections cannot exceed 24 months. This extended frequency is an attempt to make the technology more accessible to short line operators who may not have the financial or equipment resources available to larger railroads.

Paragraph (p)

This list of definitions is offered to provide explanation of terms that are essential to the implementation of GRMS technology.

Regulatory Impact: Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. The final rule amending the Track Safety Standards is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, February, 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, N.W., Seventh Floor, Washington, D.C. Photocopies also may be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

Ordinarily, in conducting an analysis of the costs and benefits of a proposed or final rule, FRA gathers more extensive economic data than was made available in this proceeding. However, in light of the consensus in the GRMS Task Group, the Track Working Group, and the majority vote of the RSAC members, FRA does not believe more data is necessary. FRA has relied principally on the recommendations and experience of the railroad industry and labor representatives who, through the RSAC process, helped develop this rule. The GRMS Task Group members provided valuable non-quantitative data on their preferences. Thus, their unanimous consensus on the contents of the rule allows FRA to conclude that the rule is cost beneficial.

The main benefit of GRMS technology is that a railroad can improve safety by replacing ties that are not providing lateral restraint, and leave in service ties that may not look good but are providing adequate lateral restraint. The railroads using a GRMS will probably replace fewer ties initially, but by objectively determining through performance testing which ties need to be replaced, will be better able to ensure that existing ties will provide adequate lateral restraint. The primary reduction in costs to the railroad would result from a reduction in the number of ties replaced. In addition, the railroads would benefit from reduced accident costs and lower maintenance costs in attempting to maintain the geometry of track. The Association of American Railroads (AAR) estimates employment of a GRMS would reduce the requirement for new ties by 600,000 per year in the early years, although this benefit is likely to later shrink somewhat due to the finite life expectancy of crossties which a GRMS cannot extend. At $40 per tie, the benefit to the industry would be about $24 million in the first year. The 20-year discounted net present value would be about 10 times that amount, or $240 million, assuming some later shrinkage in the benefit and a seven percent discount rate. Assuming there are approximately 200,000 miles of track in the Nation, and each mile includes approximately 3,300 crossties, FRA believes this projection is reasonable.

A GRMS also provides a safety benefit. Wide gage derailments cost the railroad industry about $60 million per year. If GRMS can reduce the number of wide gage derailments by half, the railroad industry will save $30 million per year. The 20-year discounted benefit would be approximately 10 times that amount, or $300 million, assuming systemwide adoption of a GRMS.

This final rule provides the use of a GRMS as an option. It is not mandatory. Therefore, a railroad will not implement a GRMS unless the railroad believes that the benefit of the system will exceed its cost. A GRMS vehicle costs approximately $3 million. About 10 of them would be needed nationwide to test all of the railroads. Therefore, the cost of the vehicles to the railroad industry would be $30 million. The costs of operating a GRMS is approximately $300,000. The 20-year discounted cost therefore would be $3 million. In addition, the railroad industry would need approximately 1,000 PTLFs. At a cost of about $1,200 each, the total cost to the industry for PTLFs would be approximately $1.2 million.

In addition to the equipment costs, railroads would expend about $800 each to train track inspectors on the use of PTLFs. Assuming one track inspector per PTLF, the cost to the railroad industry for training would be $800,000. The total initial investment by the railroad industry, including equipment and training, would be $32 million.

Assuming maintenance costs about 10 percent of the initial investment, and maintenance most likely would not be needed the first year, the 20-year discounted cost of maintenance would be about nine times 10 percent, or 90 percent of $32 million: $28.8 million. Thus the total 20-year discounted cost would be about $60.8 million.

This non-mandatory provision for use of GRMS could return as much as $540 million in discounted benefits to the railroad industry, at a discounted cost of only $60.8 million, assuming GRMS procedures are adopted nationwide. The railroad industry will most likely gain financially while improving safety.

Federalism Implications

This final rule has been analyzed according to the principles of Executive Order 13132 (''Federalism''). The GRMS Task Group which developed this amendment to the Track Safety Standards included a representative of the American Association of State Highway and Transportation Officials (AASHTO). In addition, the task group included railroad and labor union representatives who operate in a number of different states. As far as FRA has been able to discern, there are no states which require, provide for, or otherwise regulate the use of GRMS procedures for inspecting and maintaining track gage. Therefore, this amendment to Part 213 does not have any federalism implications.

Regulatory Flexibility Act

This amendment to the Track Safety Standards provides for an alternative option for railroads to use in evaluating gage restraint capabilities of track. The use of a GRMS is not mandatory. Therefore, FRA concludes that this amendment will have no measurable impact on small units of government, businesses, or other organizations. FRA certifies that this amendment does not impose a significant economic impact on a substantial number of small entities. Therefore, the preparation of a Regulatory Flexibility Analysis is not required in accordance with 5 U.S.C. 605(b).

Small Business Regulatory Enforcement Fairness Act of 1996

Because an analysis under the Regulatory Flexibility Act is not required for this amendment to the Track Safety Standards, 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 (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this amendment have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements of the new section, which will be added to those of the Track Safety Standards (49 CFR Part 213), and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (hours)	Total annual burden cost
213.110—GRMS Technical Data 1—Compliance with Minimum Design Requirements.	685	40 notifications	45 minutes	46	$1,140
—GRMS Vehicle Output Reports	685	150 reports	5 minutes	13	494

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (hours)	Total annual burden cost
—GRMS Vehicle Exception Reports	685	150 reports	5 minutes	13	494
—GRMS Documented Calibration Procedures	685	10 documents	2 hours	20	760
—GRMS Training Programs + Training Sessions	685	10 programs + 25 sessions.	16 hours	560	21,280
—GRMS Inspection Records	685	200 records	2 hours	400	15,200

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. Information or a copy of the paperwork package submitted to OMB may be obtained by contacting Robert Brogan, Federal Railroad Administration, Office of Safety Analysis, at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than March 12, 2001. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, Office of Safety Analysis, Mail Stop 17, 1120 Vermont Ave., NW., Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty for violating information collection requirements on persons who do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated this amendment to the Track Safety Standards 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 amendment meets the criteria that establish it as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends part 213, title 49, Code of Federal Regulations as follows:

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

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461; and 49 CFR 1.49(m).

2. Section 213.110 is added to read as follows:

§ 213.110 Gage restraint measurement systems.

(a) A track owner may elect to implement a Gage Restraint Measurement System (GRMS), supplemented by the use of a Portable Track Loading Fixture (PTLF), to determine compliance with the crosstie and fastener requirements specified in §§ 213.109 and 213.127 provided that—

(1) The track owner notifies the appropriate FRA Regional office at least 30 days prior to the designation of any line segment on which GRMS technology will be implemented; and

(2) The track owner notifies the appropriate FRA Regional office at least 10 days prior to the removal of any line segment from GRMS designation.

(b) Initial notification under paragraph (a)(1) of this section shall include—

(1) Identification of the line segment(s) by timetable designation, milepost limits, class of track, or other identifying criteria; and

(2) The most recent record of million gross tons of traffic per year over the identified segment(s).

(c) The track owner shall also provide to FRA sufficient technical data to establish compliance with the minimum design requirements of a GRMS vehicle which specify that—

(1) Gage restraint shall be measured between the heads of rail —

(A) At an interval not exceeding 16 inches;

(B) Under an applied vertical load of no less than 10,000 pounds per rail; and

(C) Under an applied lateral load which provides for a lateral/vertical load ratio between 0.5 and 1.25, and a load severity greater than 3,000 pounds but less than 8,000 pounds.

(d) Load severity is defined by the formula—$S=L-cV$

Where—

S=Load severity, defined as the lateral load applied to the fastener system (pounds).

L=Actual lateral load applied (pounds).

c=Coefficient of friction between rail/tie which is assigned a nominal value of (0.4).

V=Actual vertical load applied (pounds).

(e) The measured gage values shall be converted to a Projected Loaded Gage 24 (PLG 24) as follows—

$$PLG\ 24 = UTG + A \times (LTG - UTG)$$

Where—

UTG=Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.

LTG=Loaded track gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

A=The extrapolation factor used to convert the measured loaded gage to expected loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load.

For all track—

$$A = \frac{13.513}{(.001 \times L - .000258 \times V) - .009 \times (.001 \times L - .000258 \times V)^2}$$

Note: The A factor shall not exceed (3.184) under any valid loading configuration.

where—

L=Actual lateral load applied (pounds).

V=Actual vertical load applied (pounds).

(f) The measured gage value shall be converted to a Gage Widening Ratio (GWR) as follows —

$$GWR = \frac{(LTG - UTG)}{L} \times 16{,}000$$

(g) The GRMS vehicle shall be capable of producing output reports that provide a trace, on a constant-distance scale, of all parameters specified in paragraph (l) of this section.

(h) The GRMS vehicle shall be capable of providing an exception report containing a systematic listing of all exceptions, by magnitude and location, to all the parameters specified in paragraph (l) of this section.

(i) The exception reports required by this section shall be provided to the appropriate person designated as fully qualified under § 213.7 prior to the next inspection required under § 213.233.

(j) The track owner shall institute the necessary procedures for maintaining the integrity of the data collected by the GRMS and PTLF systems. At a minimum, the track owner shall—

(1) Maintain and make available to the Federal Railroad Administration documented calibration procedures on each GRMS vehicle which, at a minimum, shall specify a daily instrument verification procedure; and

(2) Maintain each PTLF used for determining compliance with the requirements of this section such that the 4,000-pound reading is accurate to within five percent of that reading.

(k) The track owner shall provide training in GRMS technology to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of this section. The training program shall be made available to the Federal Railroad Administration upon request. At a minimum, the training program shall address—

(1) Basic GRMS procedures;

(2) Interpretation and handling of exception reports generated by the GRMS vehicle;

(3) Locating and verifying defects in the field;

(4) Remedial action requirements;

(5) Use and calibration of the PTLF; and

(6) Recordkeeping requirements.

(l) The GRMS record of lateral restraint shall identify two exception levels. At a minimum, the track owner shall initiate the required remedial action at each exception level as defined in the following table—

GRMS parameter [1]	If measurement value exceeds	Remedial action required
First Level Exception		
UTG	58 inches	(1) Immediately protect the exception location with a 10 mph speed restriction; then verify location; and (2) Restore lateral restraint and maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (3) Maintain compliance with § 213.53(b) of this part as measured with the PTLF.
LTG	58 inches	
PLG24	59 inches	
GWR	1.0 inches	
Second Level Exception		
LTG	57¾ inches on Class 4 and 5 track [2].	[2] Limit operating speed to no more than the maximum allowable under § 213.9 for Class 3 track; then verify location; and (1) Maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (2) Maintain compliance with § 213.53(b) of this part as measured with the PTLF.
PLG24	58 inches	
GWR	0.75 inches	

[1] Definitions for the GRMS parameters referenced in this table are found in paragraph (p) of this section.

[2] This note recognizes that typical good track will increase in total gage by as much as ¼ inch due to outward rail rotation under GRMS loading conditions. For Class 2 & 3 track, the GRMS LTG values are also increased by ¼ inch to a maximum of 58 inches. However, for any Class of track, GRMS LTG values in excess of 58 inches are considered First Level exceptions and the appropriate remedial actions must be taken by the track owner. This ¼-inch increase in allowable gage applies only to GRMS LTG. For gage measured by traditional methods, or with the use of the PTLF, the table in § 213.53(b) will apply.

(m) Between GRMS inspections, the PTLF shall be used as an additional analytical tool to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and fastener requirements of §§ 213.109 and 213.127 subject to the following criteria—

(1) At any location along the track that the PTLF is applied, that location will be deemed in compliance with the crosstie and fastener requirements specified in §§ 213.109 and 213.127 provided that—

(i) The total gage widening at that location does not exceed ⅝ inch when increasing the applied force from 0 to 4,000 pounds; and

(ii) The gage of the track under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) for the class of track.

(2) Gage widening in excess of ⅝ inch shall constitute a deviation from Class 1 standards.

(3) A person designated as fully qualified under § 213.7 retains the discretionary authority to prescribe additional remedial actions for those locations which comply with the requirements of paragraph (m)(1)(i) and (ii) of this section.

(4) When a functional PTLF is not available to a fully qualified person designated under § 213.7, the criteria for determining crosstie and fastener compliance shall be based solely on the requirements specified in §§ 213.109 and 213.127.

(5) If the PTLF becomes non-functional or is missing, the track owner will replace or repair it before the next inspection required under § 213.233.

(6) Where vertical loading of the track is necessary for contact with the lateral rail restraint components, a PTLF test will not be considered valid until contact with these components is restored under static loading conditions.

(n) The track owner shall maintain a record of the two most recent GRMS inspections at locations which meet the requirements specified in § 213.241(b). At a minimum, records shall indicate the following—

(1) Location and nature of each First Level exception; and

(2) Nature and date of remedial action, if any, for each exception identified in paragraph (n)(1) of this section.

(o) The inspection interval for designated GRMS line segments shall be such that—

(1) On line segments where the annual tonnage exceeds two million gross tons, or where the maximum operating speeds for passenger trains exceeds 30 mph, GRMS inspections must be performed annually at an interval not to exceed 14 months; or

(2) On line segments where the annual tonnage is two million gross tons or less and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between GRMS inspections must not exceed 24 months.

(p) As used in this section—

(1) *Gage Restraint Measurement System (GRMS)* means a track loading vehicle meeting the minimum design requirements specified in this section.

(2) *Gage Widening Ratio (GWR)* means the measured difference between loaded and unloaded gage measurements, linearly normalized to 16,000 pounds of applied lateral load.

(3) *L/V ratio* means the numerical ratio of lateral load applied at a point on the rail to the vertical load applied at that same point. GRMS design requirements specify an L/V ratio of between 0.5 and 1.25. GRMS vehicles using load combinations developing L/V ratios which exceed 0.8 must be operated with caution to protect against the risk of wheel climb by the test wheelset.

(4) *Load severity* means the amount of lateral load applied to the fastener system after friction between rail and tie is overcome by any applied gage-widening lateral load.

(5) *Loaded Track Gage (LTG)* means the gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

(6) *Portable Track Loading Fixture (PTLF)* means a portable track loading device capable of applying an increasing lateral force from 0 to 4,000 pounds on the web/base fillet of each rail simultaneously.

(7) *Projected Loaded Gage (PLG)* means an extrapolated value for loaded gage calculated from actual measured loads and deflections. PLG 24 means the extrapolated value for loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load.

(8) *Unloaded Track Gage (UTG)* means the gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load.

Issued in Washington, D.C. on January 4, 2001.

John V. Wells,

Acting Federal Railroad Administrator.

[FR Doc. 01–590 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH72

Import of Polar Bear Trophies From Canada: Change in the Finding for the M'Clintock Channel Population and Revision of Regulations in 50 CFR 18.30

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency interim rule with request for comments.

SUMMARY: We, the Fish and Wildlife Service, are amending our regulations, under the Marine Mammal Protection Act (MMPA), on the import of polar bears (*Ursus maritimus*) taken by U.S. hunters in sport hunts from M'Clintock Channel, Nunavut Territory, Canada. We have reviewed new information submitted by the Department of Environment Canada (Canadian Wildlife Service) which indicates that this population is severely depleted and current harvest quotas are unsustainable. We find that the M'Clintock Channel population no longer meets the import requirements of the MMPA and are amending our regulations to reflect that bears sport hunted in this population after the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Due to the dramatic change in population status, we are using this emergency interim rule to make the changes to our regulations effective immediately. In addition, we are updating our regulations to reflect the new territory of Nunavut and to notify the public on the lifting by Canada of the harvest moratorium in the Viscount Melville Sound polar bear population.

We invite your comments on this interim rule.

DATES: This rule is effective on January 10, 2001. We will accept comments on this rule until March 12, 2001.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Ms. Teiko Saito, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. You may also comment via the Internet to: fw9ia_dma@fws.gov. Please include ''Attn: Part 18 Comments (RIN 1018–AH72)'' and include your name and return address in your e-mail message. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Teiko Saito, at the above address, telephone (703) 358–2093, fax (703) 358–2280.

SUPPLEMENTARY INFORMATION:

Background

The 1994 Amendments to the MMPA (section 104(c)(5)(A)) allow for the issuance of permits to import sport-hunted polar bear trophies from Canada when we can make certain legal and biological findings. On February 18, 1997, we published regulations in the **Federal Register** (62 FR 7302) that established standards for the issuance of permits to allow the import of sport-hunted polar bear trophies (50 CFR Part 18.30). It made aggregate findings applicable for multiple harvest seasons for five populations, including M'Clintock Channel, as follows: (a) Canada has a sport-hunting program that allows us to determine before import that each polar bear was legally taken; (b) Canada has a monitored and enforced program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears; (c) Canada has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level for certain populations; and (d) the export of sport-hunted trophies from Canada and their subsequent import into the United States would be consistent with CITES and would not likely contribute to illegal trade of bear parts. A subsequent final rule on January 11, 1999 (64 FR 1529), made aggregate findings that approved two additional populations.

In Canada, management of polar bears has been delegated to the Provinces and Territories. However, the Canadian Wildlife Service, Canada's national wildlife agency, maintains an active research program and is involved in the management of populations that are shared between jurisdictions, particularly between Canada and other nations. In addition, Native Land Claims have resulted in Co-Management Boards for most of Canada's polar bear populations. The Federal/Provincial/Territorial Polar Bear Technical Committee (PBTC) and Polar Bear Administrative Committee meet annually to ensure a coordinated management process between these parties.

The basis of the Government of Northwest Territories (GNWT) and Government of Nunavut (GNUN) polar bear management program is that the human-caused killing of polar bears (e.g., harvest, defense, or incidental) must remain within the sustainable yield, with the anticipation of slow growth for any population. The program has several components including: (a) Use of scientific studies to determine and monitor changes in population size and establish population boundaries; (b) involvement of the resource users and incorporation of traditional knowledge to enrich and complement scientific studies; (c) harvest data collection and a license tracking system; and (d) enforcement measures through regulations and management agreements.

Regulations and management agreements between the GNWT, GNUN, and Native land claim beneficiaries provide the rules for polar bear harvest in the Northwest Territories (NWT) and Nunavut. Sport hunting of polar bears is presently legal only in NWT and Nunavut and includes additional requirements. All sport hunts must be conducted under Canadian jurisdiction and guided by a Native hunter. In addition, transportation during the hunt must be by dog sled, the tags must come from the community quota, and quota tags from unsuccessful sport hunts may not be used again. All bears taken by sport hunters must be accounted for within existing quota tags. Not all communities participate in sport hunting as it reduces hunting opportunities for local hunters. You should refer to the February 18, 1997 (62 FR 7302), and January 11, 1999 (64 FR 1529), rules for more extensive information on Canada's polar bear management program.

What Is the Status of the M'Clintock Channel Polar Bear Population?

As described in our February 18, 1997 (62 FR 7302) final rule, in the mid-1970s, Canada estimated the M'Clintock Channel population to be 900 polar bears based on a 6-year mark-recapture population study. Subsequently, local hunters advised that 700 might be a more accurate estimate. However, we note that new information submitted to us by Canada indicates the 1978 population inventory estimate was 350 bears and that it was revised upward to 700 based on the belief that the initial estimate was too low. Under a Local Management Agreement between Inuit communities that share this population, the harvest quota for this area was revised to levels expected to achieve slow growth based on the population estimate of 700 polar bears. Although Canada considered the population estimate information as poor, we approved this population since Canada, in conjunction with the local communities, agreed to the reduction (from 900 to 700) in the population estimate, hunting had been at a 2 male to 1 female sex ratio for several years, and there was a management agreement in place.

Canada initiated a new study of the polar bear population in M'Clintock Channel in 1998 to assess the population size currently being used to calculate harvest quotas. At the 2000 PBTC meeting, the GNUN presented preliminary results of the mark-recapture analysis based on data collected during 1998 and 1999. Although cautioning that the results were incomplete, the polar bear managers estimated that the newly revised population size for the M'Clintock Channel population was between 360 and 390 bears, considerably lower than the previous estimate of 700. The GNUN considered the reliability of the new estimate ''poor;'' and noted that a more accurate estimate was to be calculated following the end of the 3-year mark-recapture study.

Following the end of the study in 2000, the GNUN provided us with preliminary results based on data collected in 1998, 1999, and 2000. The recalculated population estimate of polar bears in M'Clintock Channel is between 238 and 399 bears, with 288 as the best estimate. Based on this updated estimate, the GNUN recalculated the maximum sustainable harvest that would sustain the population at its current level, with no population growth, at 8 bears per year (4 males and 4 females). The current quota is 32 bears (22 males and 10 females). The GNUN is currently reconstructing age data from polar bear teeth that will be used to calculate survival estimates which is expected to result in a more accurate population estimate. The analyses are

expected to be completed by the beginning of 2001 and presented at the PBTC Meeting in February 2001.

The GNUN indicates that at the current rate of harvest, the population is declining and would be reduced to zero in 10 years. With no harvest, the population would increase at only 4 percent annually. Thus, recovery of this population will be slow and each year of over-harvest will delay recovery time by a minimum of 2 years. The GNUN will be evaluating future management goals for this population such as identifying a target population recovery level.

Canada has made no adjustment to quotas to reflect the new population information since polar bears are co-managed with local communities through agreements and any modification requires community consultation. Discussions with local communities to develop the best plan of action were recently completed. Community consultation is expected to result in a change in quotas. The GNUN anticipates that conservation measures will be implemented before further significant harvest in the population occurs. Although the hunting season in M'Clintock Channel opened August 1, 2000, except for defense kills, no harvest is expected to occur before February 2001. Sport hunts are typically conducted in the spring, between March and May. The hunting season is limited by factors such as the lack of sea ice, the number of daylight hours, and winter weather conditions.

Table 1 summarizes the polar bear harvest in the M'Clintock Channel population during the 1989/1990 to 1998/1999 harvest seasons. Sport harvest in M'Clintock Channel began in 1991 with no sport hunts conducted from 1992 through 1994. A total of 266 bears were harvested over the past ten years, ranging from an annual harvest of 17 to 37 bears. Of these bears, 52 (47 male, 4 female, 1 unknown) were sport hunted. As of December 31, 1999, a total of 48 import permits, including 3 pre-Amendment bears, had been issued for bears sport hunted from this population by U.S. citizens. Since the MMPA was amended in 1994 to allow for the import of certain sport-hunted trophies, the number of bears taken in sport hunts in M'Clintock Channel as a percentage of the total annual harvest has ranged from a low of 29 percent (1994/1995) to a high of 57 percent (1996/1997), and decreased to 41 percent in 1998/1999. The total harvest of polar bears for all purposes did not exceed the annual quota nor did sport hunting increase the number of bears taken annually over the past 10 years.

TABLE 1.—POLAR BEAR HARVEST IN M'CLINTOCK CHANNEL

Season	Regular			Sport			Problem		Other		Total			
	M	F	U	M	F	U	M	F	M	F	M	F	U	T
1989/90	20	17									20	17	0	37
1990/91	12	15	1		1	1	2				14	16	2	32
1991/92	24	14									24	14	0	38
1992/93	11	8					1				12	8	0	20
1993/94	15	6						1			15	7	0	22
1994/95	5	3		5					1	3	11	6	0	17
1995/96	11	7		8							19	7	0	26
1996/97	6	6		15	1						21	7	0	28
1997/98	6	6		11	1						17	7	0	24
1998/99	9	4		8	1						17	5	0	22
Total	119	86	1	47	4	1	3	1	1	3	170	94	2	266

Regular = Community subsistence hunt
Sport = Must be guided by Native hunter, part of community quota
M = male; F = female; U = unsexed; T = total

The GNUN estimates that females comprise 65 percent of the current sex ratio of the adult (age 3+) population in M'Clintock Channel. This suggests that the number of adult males has been reduced, so that any continuing harvest will likely be increasingly composed of adult females. Protection of the female component of the population was an important consideration in developing sustainable harvest limits. Any additional take of females will further prolong the recovery time for this population.

How Does the Change in the Finding for the M'Clintock Channel Population Affect me?

We are amending our import regulations to reflect that bears sport hunted in the M'Clintock Channel population after May 31, 2000, the close of the 1999/2000 Canadian hunting season, will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Any person who hunts in the M'Clintock Channel population after this date is taking a risk that he or she may never be able to legally import the polar bear trophy into the United States.

Why Are We Using an Emergency Interim Rule to Amend our Regulations for the M'Clintock Channel Polar Bear Population?

The Canadian Wildlife Service has provided us with new information for the M'Clintock Channel polar bear population which indicates that the population is severely depleted and current harvest quotas are unsustainable. The MMPA requires us to review the best scientific information available; if we receive substantial new information on a population, we must review it and make a new finding as to whether to continue to approve the population. The new information for the M'Clintock Channel population reveals that scientifically sound quotas ensuring the maintenance of the population at a sustainable level are not in place and that terms of the 1973 International Agreement on the Conservation of Polar Bears, that requires the Parties to ''manage polar bear populations in accordance with sound conservation practices based on the best available scientific data'' are not being met. The report also indicates that, even with remedial steps, the population will not likely recover for some time. Due to the dramatic change in population status, we are using an emergency interim rule to make the changes to our regulations effective immediately.

Under the Administrative Procedure Act (5 U.S.C. 551–553), our normal practice is to publish regulations with a 30-day delay in effective date. But in

this case, we are using the ''good cause'' exemption under 5 U.S.C. 553(b) and (d)(3) to issue this rule without first invoking the usual notice and public comment procedure and to make this rule effective upon publication for the following reasons: (1) Official information submitted by the government of Canada shows that the M'Clintock Channel population no longer meets the import requirements of the MMPA, (2) as a matter of fairness to the regulated community it is necessary to put the public on notice immediately that bears sport hunted in the M'Clintock Channel population after May 31, 2000, the end of the 1999/2000 Canadian hunting season, will no longer be eligible for import under the finding which approved this population for multiple harvest seasons, and (3) it would be contrary to the public interest to maintain regulatory findings that purport to allow the importation of these polar bear trophies when those findings are no longer consistent with the MMPA.

What Happens Next?

After the 60-day comment period closes, we will consider all comments received, determine whether the emergency interim rule should be modified, and publish a final rule in the **Federal Register**. The final rule will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Why Are we Revising our Regulations To Include Nunavut Territory?

Besides restricting the importation of polar bears from the M'Clintock Channel population, we are updating our regulations at 50 CFR 18.30 to reflect that sport hunting of polar bears is legal in both the NWT and Nunavut Territory and that approved populations may now fall under either the GNWT and/or GNUN jurisdiction. Since the publication of the February 18, 1997 (62 FR 7302), and January 11, 1999 (64 FR 1529), final rules, the Nunavut Territory, formerly part of the NWT, officially joined the Federation of Canada on April 1, 1999. Prior to this, legal sport hunting of polar bears in Canada took place only in the NWT; now the majority of polar bear populations lie within or are shared with Nunavut. All GNWT legislative laws and agreements (including the polar bear management agreements) in place still stand in Nunavut. Inter-jurisdictional management agreements are being drafted or revised to reflect the change in government. Management agreements between participating communities and the GNWT and/or the GNUN (formerly part of GNWT), are still in effect for the approved polar bear populations as described in the February 18, 1997, and January 11, 1999, rulemakings. Management of polar bear populations now fall under the Department of Resources, Wildlife, and Economic Development (formerly the Department of Renewable Resources), GNWT, and/or the Department of Sustainable Development, GNUN.

What Recent Management Changes Has Canada Made for the Viscount Melville Sound Population?

Canada lifted its five-year harvest moratorium in the Viscount Melville Sound population effective August 1, 1999. This population was added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium. The GNUN/GNWT set the 1999/2000 annual harvest quota at four bears, with one female take allowed. We have received preliminary data on this population and will continue to coordinate with Canada on monitoring its status.

Public Comments Invited

We invite comments on this interim rule from affected or concerned government agencies, the public, the scientific community, industry, environmental organizations, and any other interested party. We will consider all comments submitted to us by the deadline indicated above in **DATES**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during normal business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The economic effects of this rule will impact a relatively small number of U.S. sport hunters. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests, or to any small entity. Some incidental economic benefits received by the sports-hunting travel/airline, taxidermist, and sport-hunting industries are expected to remain unchanged by this interim rule. If an estimated 10 U.S. citizens hunted a polar bear in M'Clintock Channel, Canada each year at a total cost of $21,000 (US) for each hunt, then $210,000 would be expected to be spent, mostly in Canada. Because the small number of U.S. hunters that hunt for polar bears in M'Clintock Channel, Canada, are the only group affected by this rule, the fact that no commercial activity in bear products is involved, and the effect of such hunts for U.S. outfitters and transportation services is likely to be small, this interim rule is not expected to be a major rule and will not have a significant economic effect.

Although we are amending our import regulations to reflect that bears sport hunted in the M'Clintock Channel population after the close of the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons, there are 6 other populations, including Viscount Melville Sound, from which U.S. sport hunters will continue to be able to import legally hunted bears. Thus, we expect there will be no substantial loss to U.S. hunters. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will have no economic effect as we are simply updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either GNWT and/or GNUN jurisdiction.

b. This rule will not create inconsistencies with other agencies' actions. Since 1972, responsibility for implementing the MMPA has been split between two federal agencies. Acting on behalf of the Secretary, Department of the Interior, we have been delegated the MMPA authority for several species of marine mammals, including the polar bear. The National Marine Fisheries Service (NMFS) implements the MMPA authority of the Secretary, Department

of Commerce for whales, dolphins, and most pinnipeds (*i.e.,* seals and sea lions). Currently, there are no special provisions in the MMPA for import of sport-hunted marine mammal species other than polar bear. Since the only federal agencies with authority for marine mammals are the NMFS and us, and the NMFS has not been delegated MMPA authority for this species and does not have any comparable action for other marine mammal species, this rule will not create inconsistencies with that agency's actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The groups most affected by this rule are the relatively small number of U.S. sport hunters who would have chosen to hunt polar bear in the M'Clintock Channel population in Canada, and a comparatively small number of U.S. outfitters, taxidermists, and personnel who provide transportation services for travel from the United States to Canada. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either Government of Northwest Territories and/or Government of Nunavut jurisdiction. Similarly, the announcement of the lifting by Canada of a harvest moratorium in the Viscount Melville Sound population will also have no effect as this population was previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium.

d. This rule will not raise novel legal or policy issues. This interim rule is limited to the Service's review of new information obtained from Canada on one polar bear population previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. Under section 104(c)(5)(A) of the MMPA, before issuing a permit for the import of a polar bear trophy, we must make certain legal and scientific findings. In a previous rule published in 1997 [62 FR 7302], we put the public on notice that if we receive substantial new information on a population, we would review it and make a new finding, if necessary, after consideration of public comment. After reviewing the new information, we find that the M'Clintock Channel population no longer meets the import requirements of the MMPA. Due to the dramatic change in population status, we are using an emergency interim rule to make the changes to our regulations effective immediately. At the same time, we are soliciting comments and will consider those comments in issuing a final rule. The revision of our regulations at 50 CFR 18.30 to include the new territory of Nunavut will also not raise novel legal or policy issues as we are merely updating our regulations to reflect that populations approved for the import of sport-hunted polar bear trophies may now fall under either GNWT and/or GNUN jurisdiction. Similarly, we are merely announcing Canada's lifting of the harvest moratorium in the Viscount Melville Sound population, a population we previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium.

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. Based upon its analysis of the factors identified above, we have determined that no individual industries within the United States will be significantly affected and no changes in the demography of populations are anticipated. This rule involves the importation of polar bear trophies for personal, non-commercial use only, and therefore will have no effect on the commercial fur trade market. Polar bear sport hunting is not allowed within the United States. Therefore, sport hunting of polar bears in Canada can have no effect on polar bear sport hunts in the United States since such hunts are currently prohibited. For these reasons, and those described under the EO 12866 required determination above, we have, therefore, determined that the rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and have determined that a small entity flexibility analysis study is not necessary.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The economic effects of this rule will impact a relatively small number of U.S. sport hunters. A total of 50 polar bears have been taken in sport hunts from the M'Clintock Channel between 1995 and 1999 with a range of 5 to 16 bears taken per year; approximately 74% of sport hunters are U.S. citizens. The announcement of the lifting by Canada of a harvest moratorium in the Viscount Melville Sound population will have no economic effect as this population was previously added to the list of populations approved for the import of sport-hunted polar bear trophies in our February 18, 1997 (62 FR 7302), rulemaking, subject to the lifting of the harvest moratorium. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests, or to any small entity. The revision of our regulations to include the new territory of Nunavut will have no economic effect as we are merely updating our regulations to reflect the change in government jurisdiction for populations approved for the import of sport-hunted polar bear trophies.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The importation of polar bear trophies is for personal, non-commercial use only. The small benefits gained by U.S. outfitters and transportation services as U.S. hunters travel to Canada will most likely remain unchanged as most sport hunters will simply redirect their hunting efforts from the M'Clintock Channel to one of the 6 other approved populations. The revision of our regulations to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect a change in government jurisdiction.

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The groups most affected by this rule are the extremely small number of U.S. sport hunters who would have chosen to hunt polar bear in M'Clintock Channel, Canada, and a small number of U.S. outfitters, taxidermists, and personnel who provide transportation services for travel from the United States to Canada. The importation of legally taken sport trophies is still approved for 6 other populations from

Canada, including Viscount Melville Sound, and it is anticipated that most sport hunters will simply redirect their hunting efforts to one of the 6 other populations. The revision of our regulations to include the new territory of Nunavut will have no effect as we are merely updating our regulations to reflect a change in government jurisdiction.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. This rule is limited to our review of new information obtained from Canada on one polar bear population that we previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. We are revising our regulations to include the new territory of Nunavut merely to reflect a change in government jurisdiction.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. We have determined that the rule has no potential takings of private property implications as defined by Executive Order 12630, for the reasons described under the EO 12866 required determination above.

This rule will place the hunting community on immediate notice that our 1997 finding that approved the M'Clintock Channel population for multiple harvest seasons is no longer in effect after May 31, 2000, the end of the 1999/2000 Canadian hunting season. If hunters nonetheless proceed to take polar bears from this population after the emergency rule is published, they do so with full notice that the M'Clintock Channel population no longer meets the eligibility criteria set out in the MMPA for the issuance of import permits.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required since the rule is limited to the importation of personal sport-hunted polar bear trophies for personal (non-commercial) use, only by the person who sport hunted the trophy.

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This interim rule is limited to our review of new information obtained from Canada on one polar bear population previously approved for issuance of permits to import polar bear trophies personally sport hunted by U.S. residents. Under section 104(c)(5)(A) of the MMPA, before issuing a permit for the import of a polar bear trophy, the Service must make certain legal and scientific findings. In a previous rule published in 1997 [62 FR 7302], the Service told the public that the findings that approved populations as published in the CFR are aggregate findings applicable in subsequent years. However, it also put the public on notice that if we receive substantial new information on a population, we would review it and make a new finding after consideration of public comment. After reviewing the new information, we find that M'Clintock Channel no longer meets the import requirements of the MMPA and are amending our regulations to reflect that bears sport hunted in this population after May 31, 2000, the close of the 1999/2000 Canadian hunting season, will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Due to the dramatic change in population status, we are using an emergency interim rule to make the changes to our regulations effective immediately. At the same time, we are soliciting comments and will consider those comments in issuing a final rule.

This regulation does not contain new or revised information for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection associated with Federal Fish and Wildlife permits is covered by an existing OMB approval, and is assigned clearance number 1018–0093, Form 3–200–45, with an expiration date of February 28, 2001. Details of the information collection requirements for the import of sport-hunted polar bear trophies appear at Title 50 of the Code of Federal Regulations, Section 18.30(a). We 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.

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department's NEPA procedures in Part 516 of the Department Manual, Chapter 2, Appendix 1.10.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The rule is limited to our review of new information obtained from Canada on the M'Clintock Channel polar bear population. Polar bear sport hunting is not allowed within the United States. Therefore, sport hunting of polar bears in Canada can have no effect on polar bear sport hunts in the United States since such hunts are currently prohibited.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could we do to make this rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, D.C. 20240. You may also email comments to: Exsec@ios.doi.gov

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend Part 18, Subchapter B of chapter I, Title 50 of the Code of Federal Regulations to read as follows:

PART 18—[AMENDED]

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Amend § 18.30 by revising paragraphs (a)(4)(i), (a)(4)(iii), (a)(4)(iv), and (i)(1) introductory text to read as follows:

§ 18.30 Polar Bear sport-hunted trophy import permits.

(a) * * *

(4) * * *

(i) A copy of the Northwest Territories (NWT) or Nunavut Territory hunting license and tag number;

* * * * *

(iii) A copy of the NWT or Nunavut Territory export permit; or

(iv) A certification from the Department of Resources, Northwest Territories, or the Department of Sustainable Development, Nunavut Territory,

* * * * *

(i) * * *

(1) We have determined that the Northwest Territories and Nunavut Territory, Canada, have a monitored and enforced sport-hunting program that meets issuance criteria of paragraphs (d)(4) and (5) of this section for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound (subject to the lifting of the moratorium in this population), Western Hudson Bay, M'Clintock Channel (only for polar bears lawfully taken on or before May 31, 2000), Lancaster Sound, and Norwegian Bay, and that:

* * * * *

Dated: January 4, 2001.

Kenneth L. Smith,

Assistant Secretary Fish and Wildlife and Parks.

[FR Doc. 01–656 Filed 1–8–01; 11:37 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110800A]

RIN 0648-AJ67

Atlantic Highly Migratory Species; Pelagic Longline Fishery Vessel Monitoring Systems

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

ACTION: Final rule; stay of effectiveness; request for comments.

SUMMARY: As ordered by the U.S. District Court for the District of Columbia on September 25, 2000, NMFS is undertaking further consideration of the scope of vessel monitoring system (VMS) requirements in the Atlantic pelagic longline fishery in light of any relevant conservation requirements. NMFS previously provided notice of the Court's ruling by distribution on the Highly Migratory Species Fax Network and in a mailing to permit holders. NMFS requests comments on options for implementing VMS requirements in the Atlantic pelagic longline fishery. As a result of the Court's order, NMFS delays the effective date of regulations regarding application of VMS requirements to the Atlantic pelagic longline fishery adopted as part of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), pending further ruling of the Court on the agency's reconsideration of this matter.

DATES: Effective October 1, 2000, 50 CFR 635.69 is stayed indefinitely. Written comments must be received on or before February 8, 2001.

ADDRESSES: Copies of the HMS FMP, accompanying regulations and supporting documents, and the Hawaii VMS Pilot Project Report can be obtained from Othel Freeman, 301-713-2347; fax: 301-713-1917. Written comments should be addressed to Jill Stevenson, Highly Migratory Species Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702 or by fax. Comments submitted via e-mail or on the Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Buck Sutter, 727-570-5447; fax: 727-570-5656; or e-mail at jill.stevenson@noaa.gov or buck.sutter@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS published final regulations implementing the HMS FMP on May 28, 1999 (64 FR 29090). Those regulations require all pelagic longline fishermen to report hourly using a NOAA-approved VMS. In June 1999, after the final regulations were published, a coalition of commercial pelagic longline fishermen and dealers sued the Secretary of Commerce, challenging, among other measures, the VMS requirements of the final rule. On September 25, 2000, Judge Richard W. Roberts, U.S. District Court for the District of Columbia, issued an order that found that there was inadequate evidence in the record to support fleet-wide application of the VMS requirements under national standards 7 and 8 of the Magnuson-Stevens Fishery Conservation and Management Act. The Judge indicated that ''the Secretary failed to set forth a rational connection between the factual record and the choice to impose a blanket VMS requirement on all pelagic longline fishers, regardless of whether they are geographically located near a time/area closure....'' Judge Roberts ordered that the agency further consider the scope of the VMS requirements in light of potential conservation benefits compared to costs.

In the biological and economic analyses of the HMS FMP that accompanied publication of the regulations, NMFS included information concerning fishery conservation benefits and the potential enforcement and communication benefits of VMS to both fishery managers and fishermen. Those benefits include increased communications for fishermen and real-time monitoring, which significantly improves enforcement of large offshore closed areas. For example, NMFS and the U.S. Coast Guard would be able to detect and to document unlawful incursions into closed areas. Without the VMS, such violations could only be detected with costly at-sea monitoring efforts. Monitoring the Atlantic pelagic longline fleet through the use of VMS would require only a small percentage of the cost of traditional surveillance methods.

Reconsideration of VMS Program

NMFS did not include in its original analyses supporting the rulemaking all of the background information that has been used by NMFS and fishery managers and enforcement agencies world-wide as a standard for application of VMS requirements. Pursuant to Judge Roberts' order, NMFS is now reviewing that background information and the results of VMS programs implemented in other fisheries around the world.

In addition, new circumstances that may influence NMFS's consideration of the scope of VMS requirements have arisen since the final regulations were published in 1999. Specifically, on August 1, 2000, NMFS published regulations establishing three new closed areas to reduce bycatch and incidental catch in the pelagic longline fishery in the Gulf of Mexico and the Southeast Atlantic Ocean off the coasts of South Carolina, Georgia, and Florida. Also, on October 13, 2000 (65 FR 60889), NMFS established one more closed area in the North Atlantic Ocean

to reduce the serious injury and mortality of threatened and endangered sea turtles incidentally caught in this fishery.

In addition to the fishing closures implemented under the HMS FMP and its Amendment 1, U.S. pelagic longline fishermen are also subject to closures in the Exclusive Economic Zones (EEZs) of other nations unless contractual arrangements have been made by vessel operators. Pelagic longline vessels are very mobile, with some vessels fishing in the South Atlantic Ocean (e.g., off the coasts of Namibia or Brazil). U.S. Atlantic pelagic longline vessels frequently traverse waters close to or within the EEZs of Canada, Mexico, the Bahamas, and other Caribbean nations on the way to high seas fishing grounds.

The United States supports recent international initiatives, including those undertaken by the International Commission for the Conservation of Atlantic Tunas (ICCAT) to eliminate illegal, unregulated, and unreported fishing activities. NMFS was recently informed at the 2000 ICCAT meeting that at least one U.S. longline vessel is fishing in the Mediterranean Sea. The fishing activities of that vessel have not been reported by that vessel to NMFS. Noting the obligation of every ICCAT Contracting Party to monitor the fishing activities of all vessels throughout the ICCAT management unit in order to comply with ICCAT conservation and management measures, it is clear that the United States must monitor pelagic longline activities ocean-wide.

Costs to Fishermen

NMFS also notes that VMS operating cost estimates have decreased by 25 to almost 50 percent since the HMS FMP economic analyses were completed. Currently, the cost of the VMS is approximately $1,800 to $3,800 per vessel for the initial purchase of the equipment, depending on which model is chosen by the vessel owner. Installation of the equipment could cost up to $1,000, and communication charges for required automated position reports range $1.00-5.00 per day. Repair and maintenance costs may approach $1,000 per year.

NMFS has considered mitigating costs to pelagic longline fishermen, but alternatives such as low-interest loans from the government and outright purchase by the agency were not adopted in the final regulations. The western Pacific pelagic longline VMS program was funded by the government as a pilot program solely for the purposes of testing the viability and effectiveness of VMS technology when utilized in longline fisheries. That study has been completed, and the study report is available from NMFS (See **ADDRESSES**).

The VMS requirement is imposed fleet-wide in the western Pacific pelagic longline fishery due to the mobility of that fleet. The program is successful and meets the enforcement and monitoring needs of NMFS and the United States Coast Guard (USCG), such as near-real time detection of unlawful incursions into closed areas. Considering the experience in the Western Pacific pelagic longline pilot program, NMFS has pursued the use of VMS in several other U.S. fisheries. Installation of a VMS unit is now required at the vessel owners' or operators' expense in the Western Pacific crustacean fishery, the Atlantic sea scallop fishery, and the Alaska Atka mackerel fishery.

The Atlantic pelagic longline VMS program would allow NMFS and USCG to monitor vessel position on a real-time basis anywhere in the Atlantic Ocean. This is particularly important for enforcement of time/area closures due to the mobility of this fleet. While some pelagic longline vessels are small and do not venture far from shore, many vessels are large enough to follow the migrations of swordfish and other HMS up and down the east coast, through the Caribbean, or even into the Eastern Atlantic Ocean, South Atlantic Ocean, and Mediterranean Sea. In light of this information and the Court's concerns regarding the necessity of a fleet-wide VMS program, NMFS is reconsidering the scope of the VMS program with respect to costs and benefits to the Atlantic pelagic longline fishery.

Request For Comments

NMFS requests comments on alternatives for implementing VMS requirements in the Atlantic pelagic longline fishery. Specifically, NMFS requests comments on the scope of the program:

How can NMFS achieve the goal of effectively monitoring, on a real-time basis, the location of U.S. pelagic longline vessels?

Should NMFS apply VMS requirements fleet-wide in the Atlantic pelagic longline fishery in order to monitor all fishing activities?

Should NMFS impose VMS requirements only on certain sectors of the fleet based on geographic location of home port or other criteria?

Additionally, NMFS seeks input on the costs and benefits of a VMS program:

Should NMFS consider other alternatives for enforcing time/area closures and monitoring the fleet other than VMS and existing reporting strategies?

NMFS will consider comments received prior to the close of the comment period when responding to the Court. Send comments to NMFS at the specified location (see **ADDRESSES**).

Delayed Effective Date

The VMS requirement specified at 50 CFR 635.69 initially was to be effective September 1, 1999. On August 9, 1999, NMFS delayed the effective date of this final rule until January 1, 2000 (64 FR 43101). On October 14, 1999, NMFS again delayed the effective date of this final rule until June 1, 2000 (64 FR 55633). NMFS further delayed the effective date of this final rule until October 1, 2000 (65 FR 49941, August 16, 2000). NMFS now stays indefinitely the effectiveness and implementation of §635.69, the VMS regulations, pending the Court's ruling on the agency's reconsideration. NMFS will notify the public at such time as the stay is removed and an implementation date is specified or the regulations are amended pursuant to the direction of the Court.

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

Dated: December 29, 2000.

Valerie Chambers,

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

[FR Doc. 01–448 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 7
Wednesday, January 10, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2000–2001 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 2000–2001 crop year. The percentages are 50 percent free and 50 percent restricted and would establish the proportion of cherries from the 2000 crop which may be handled in normal commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. This action would also authorize the release of reserve pool cherries to replace those purchased for government sales. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by January 25, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: *moabdocket.clerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Dawana R. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 2000–2001 crop year, beginning July 1, 2000, through June 30, 2001. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with section 930.59 of the order and section 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under section 930.62 of the order and section 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; and District seven—Utah. Districts four, five, six, eight, and nine (New York, Oregon, Pennsylvania, Washington, and Wisconsin, respectively) would not be regulated for the 2000–2001 season.

The order prescribes under section 930.52 that, upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of New York, Oregon,

Pennsylvania, Washington, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2000–2001 crop year. Production from New York was regulated last year. Production from the other four States was not subject to regulation.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of section 930.50.

The Board met on June 22, 2000, and computed, for the 2000–2001 crop year, an optimum supply of 275 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 245 million pounds; an 88 million pound carryin added to that estimate results in a total available supply of 333 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 275 million pounds from the total estimated available supply results in a surplus of 58 million pounds of tart cherries. An adjustment for changed economic conditions of 35 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 93 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (195 million pounds) and resulted in a restricted percentage of 48 percent for the 2000–2001 crop year. The free percentage was 52 percent (100 percent minus 48 percent). The Board unanimously established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2000–2001 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	275
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	275
Preliminary Percentages:	
(4) USDA crop estimate	245
(5) Plus carryin held by handlers as of July 1, 2000	88
(6) Total available supply for current crop year	333
(7) Surplus (item 6 minus item 3)	58
(8) Economic adjustment to surplus	35
(9) Adjusted surplus (item 7 plus item 8)	93
(10) USDA crop estimate for regulated districts	195

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	52	48

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. The Board met on September 8, 2000, and recommended final free and restricted percentages of 50 percent. The Board recommended that the interim percentages and final percentages be the same. At that time, the Board had available actual production, sales, and carryin inventory amounts to review and made adjustments to the percentages.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used an updated optimum supply figure in determining the final free and restricted percentages. The revised optimum supply is 277 million pounds, instead of 275 million pounds used in June. The 3-year average sales figure computed in June included an estimate of June 2000 sales because actual June sales were not yet available. The 3-year average sales figure used in the final calculations reflects actual

sales for each month of the 3-year period.

The actual production reported by the Board was 284 million pounds, which is a 39 million pound increase from the USDA crop estimate of 245 million pounds. The increase in production was due to higher yields in the major producing States (Michigan, New York, Utah, Washington, and Wisconsin). For 2000–2001, production in the regulated districts totaled 232 million pounds, 37 million pounds greater than the USDA estimate of 195 million pounds.

An 87 million pound carryin (actual carryin as opposed to the 88 million pounds originally estimated in June) was added to the Board's reported production of 284 million pounds, yielding a total available supply for the current crop year of 371 million pounds. The optimum supply of 277 million pounds was subtracted from the total available supply which resulted in a 94 million pound surplus. An adjustment of 22 million pounds for changed economic conditions was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 116 million pounds of tart cherries. The total surplus of 116 million pounds is divided by the 232 million-pound volume of tart cherries produced in the regulated districts. This results in a 50 percent restricted percentage and a corresponding 50 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2000–2001 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	277
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the September meeting	277
Final Percentages:	
(4) Board reported production	284
(5) Plus carryin held by handlers as of July 1, 2000	87
(6) Tonnage available for current crop year	371
(7) Surplus (item 6 minus item 3)	94
(8) Economic adjustment to surplus	22
(9) Adjusted surplus (item 7 plus item 8)	116
(10) Production in regulated districts	232

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	50	50

As previously mentioned, the Board recommended an economic adjustment in computing both the preliminary and final percentages for the 2000–2001 crop year. This is authorized under section 930.50. These provisions provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having a bearing on the marketing of cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions.

The order provides that the 3-year average of all sales be used in determining the optimum supply of cherries. The industry wants to export diversion cherries to foreign markets, excluding Canada and Mexico. Exports are used by handlers to meet their diversion requirements. Including this volume of sales in the optimum supply formula, however, results in an overestimate of the volume of tart cherries that can be profitably marketed in unrestricted markets. Thus, the Board recommended adjusting its estimate of surplus cherries by adding exempt export sales (all exports except those going to Canada and Mexico).

This season the Board also recommended that the adjustment reflect the impact that USDA purchases for school lunch and other purposes might have on the sales component of the optimum supply formula. Purchases by USDA are part of the average sales history for the industry. In recent years, USDA has purchased about 17 million pounds of tart cherry products and this has been factored into the optimum supply formula. During the 2000–2001 crop year, USDA expects to purchase about 10 million pounds of frozen and hot pack cherries, and 20 million pounds of dried cherries. The Board determined that the difference between the expected purchases (30 million pounds) during the 2000–2001 crop year and the average purchases of 17 million pounds should not be included in the optimum supply figure. Therefore, the Board adjusted the expected surplus to 22 million pounds (35 million pounds of exports minus 13 million pounds of USDA purchases). Without this adjustment, the surplus for the 2000–2001 crop year would have been 129 million pounds. Dividing this figure by the Board reported production in the regulated districts (232 million pounds) would have resulted in a 56 percent restricted percentage. Hence, this adjustment resulted in a reduction in the restricted percentage from 56 percent to 50 percent. The 50 percent restricted percentage would allow growers to deliver more of their crop to handlers. This reduction should provide some benefits to growers in Michigan and Utah which are the only States restricted for the 2000–2001 crop year.

By recommending this marketing policy modification, the Board believes that it will provide stability to the marketplace and the industry will be in a better situation in future years. This modification is intended to further facilitate and encourage market expansion. Board members were of the opinion that, if this adjustment is not made, growers could be paid less than their production costs, because handlers would suffer financial losses that would probably be passed on to the growers. In addition, the value of cherries already in inventory could be depressed due to the overabundant supply of available cherries, a result inconsistent with the intent of the order and the Act.

The Board also recommended that a like quantity of cherries be released from the reserve to replace cherries that are purchased by the USDA. This would provide an adequate supply of cherries throughout the season. The release would be based on the USDA's intention to purchase tart cherries and not on actually what is purchased. According to the Board, releasing a like quantity of tart cherries from the reserve to replace cherries that are purchased by USDA would remove the variability and irregularity of USDA purchase patterns and thereby make the optimum supply formula more stable and predictable. The Board believes that this release would spread the benefit of the USDA purchase throughout the industry. The Board believes that a release equal to the amount of the USDA purchase would be an equitable distribution of the purchase since all handlers regulated under the order, and not just those handlers who successfully bid and sold product to USDA, would benefit from the bonus USDA tart cherry purchase.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This

goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under section 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 27 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In crop year's 1987/88 through 1999/00, tart cherry production ranged from a high of 359.0 million pounds in 1987/88 to a low of 189.9 million pounds in 1991/92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial

coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than 15 million pounds. Currently, only the three districts in Michigan and Utah are subject to restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carrying inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry would result in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been estimated. The estimated model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan and Utah are the only restricted areas for this crop year and their combined total production is 232 million pounds. A 50 percent restriction means 116 million pounds is available to be shipped to primary markets from these two states. Production levels of 17 million pounds for New York, 4 million pounds for Oregon, 5 million pounds for Pennsylvania, 17 million pounds for Washington, and 10 million pounds for Wisconsin results in an additional 53 million pounds available for primary market shipments.

In addition, USDA requires a 10% release from reserves as a market growth factor. This results in an additional 28 million pounds being available for the primary market. The 116 million pounds from Michigan and Utah, the 53 million pounds from the other producing states, and the 28 million pound release gives a total of 197 million pounds being available for the primary markets. This results in 88 million pounds being restricted and an effective restricted percent of 30.8 percent.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.12 per pound. With volume controls, the estimated grower price would increase to approximately $0.20 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $34.2 million in 2000/01. In this scenario, production is 284 million pounds and price, without regulation, is estimated to be $0.12 per pound. With regulation, growers' revenues from processed cherries are estimated to be $43.8 million. In this scenario, 197 million pounds are available for the primary markets with an estimated price of $0.20 per pound. Over the past several seasons, growers received approximately $0.05 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as grower prices are $0.15 per pound or greater, then growers' are better off with the regulation. With a price of $0.15 per pound, the estimated revenues under no regulation would be similar to the revenues with a 50 percent regulation.

It is concluded that the 50 percent volume control would not unduly burden producers, particularly smaller growers. The 50 percent restriction is only applied to the growers in Michigan and Utah. The growers in the other 5 regulated states will benefit from this restriction. Michigan and Utah produced over 80 percent of the tart cherry crop during the 2000/01 crop year.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

In discussing the possibility of marketing percentages for the 2000–2001 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2000 of the restricted percentages proposed in this rule (50 percent free and 50 percent restricted).

A positive factor for the cherry industry this year is the unusually large USDA purchases of cherries during this crop year. These USDA sales include a significant amount of frozen cherries and large quantities of dried cherries. It also appears likely that the USDA will offer to buy more cherries later this year using Congressionally appropriated

funds designated for purchases of specified commodities, including tart cherries.

A number of industry leaders have suggested that the Board should consider alternative approaches for dealing with this challenging situation which has developed with this year's crop because of (a) the considerably larger actual crop size, (b) the resulting high regulation percentage, and the prospect of a significant secondary reserve, (c) the unusually large USDA purchases and (d) other factors.

The Board discussed two alternatives. The first alternative was an economic adjustment component for the large USDA purchases. The Board added a separate component for the economic adjustment in the supply regulation calculations for the large USDA purchases.

The average of USDA purchases during the last three years has been 17 million pounds. This year USDA has purchased 10 million pounds of frozen cherries to be delivered during the 2000 crop-marketing year. USDA has also currently offered to buy another approximately 20 million pounds as dried cherries. If all of this is successfully awarded after the bids, this will be a total of 30 million pounds to be delivered this year. This is 13 million pounds more than USDA tart cherry purchases in recent years. Those who support this type of economic adjustment for the USDA demand agree that the additional 17 million pounds over the average could be used as a partial balance to the 35 million pounds of the economic adjustment for the expected export diversion credit volume.

The second alternative is that no change be made in the economic adjustment (with a reserve release if needed). The Board might decide to make no changes in the economic adjustment with the expectation that, if cherries are needed from the reserve to meet the unusually large USDA purchases, a reserve release will be made by the Board when needed during the coming marketing year. Some in the industry stated that even though the crop turned out to be considerably larger than expected in June, and despite the large USDA purchases, it is best to keep the economic adjustment factor at 35 million pounds. With the larger crop size, this would result in a regulation of 57 percent in the regulated districts. With this alternative, if more open market cherries are needed because of the large USDA purchases to date (and/or an expected additional purchase later this year), some of the reserve can be used to replace the free tonnage tart cherries.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2000–2001 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.154 is added to read as follows:

§ 930.154 Reserve release.

If USDA initiates an invitation to purchase product, the Board shall release a like quantity of cherries from the reserve pool to each handler who has a proportionate share in the reserve.

3. Section 930.252 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.252 Final free and restricted percentages for the 2000–2001 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2000, which shall be free and restricted, respectively, are designated as follows: Free percentage, 50 percent and restricted percentage, 50 percent.

Dated: December 28, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 01–240 Filed 1–1–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV01–955–1 PR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Vidalia Onion Committee (Committee) for the 2001 and subsequent fiscal periods from $0.10 to $0.12 per 50-pound bag of Vidalia onions handled. The Committee locally administers the marketing order, which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins on January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955, (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Vidalia onions beginning on January 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2001 and subsequent fiscal periods from $0.10 to $0.12 per 50-pound bag or equivalent of Vidalia onions.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and producer/handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on November 16, 2000, and discussed 2001 expenditures of $411,102 and an increased assessment rate of $0.12 per 50-pound bag or equivalent of onions. The Committee held a telephone meeting on November 27, 2000, and recommended this budget and assessment rate change in a vote of 5 in favor and 3 opposed. The three members opposed objected to increasing the assessment rate following a season with reduced returns.

The recommended assessment rate of $0.12 is $0.02 higher than the rate currently in effect. Last year, budgeted expenditures were $421,600 and the assessment rate was $0.10. The Committee projected 4.2 million assessable 50-pound bags of Vidalia onions for the 2000 fiscal period. The actual quantity of assessable onions was closer to 3,908,000 50-pound bags. Because of this shortfall, the Committee had to use its authorized reserve funds to cover approved expenses. The Committee believes that fewer acres of Vidalia onions will be planted in 2001 because of lower grower returns and high yield losses last season. The quantity of assessable Vidalia Onions for the 2001 fiscal period is projected to be less than in previous seasons. Therefore, the increase in the assessment rate is needed to cover expenses and to replenish the reserve fund.

The major expenditures recommended by the Committee for the 2001 fiscal period include $135,227 for administrative costs, $37,850 for compliance activities, $188,025 for promotional activities, and $50,000 for

research projects. Budgeted expenses for these items in 1999–2000 were $135,127, $31,800, $175,000, and $47,000 respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Vidalia onion shipments for the year are estimated at 3.6 million 50-pound bags and should provide $432,000 in assessment income at the proposed rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Income in excess of expenses would be added to the Committee's reserve fund. Funds in the reserve (currently around $77,000) would be kept within the maximum permitted by the order (about three fiscal period's expenses; § 955.44).

The Committee vote was 5 votes in support of the increase and 3 votes opposed. Those casting negative votes stated they were opposed because of the relatively poor grower returns received in fiscal year 2000 and the need for fiscal conservatism. The majority of the Committee members pointed out the need for funds to cover the estimated expenses for 2001, to build up its operating reserve, and to pay any loans that might be needed to cover expenses until assessment monies are received in the spring of 2001. Also, the positive voters pointed out that without the increase, there would be limited funds for promotion and research which was the reason for instituting the marketing order in the first place. Therefore, the Committee recommended the increase in the assessment rate.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2001 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 133 producers of Vidalia onions in the production area and approximately 102 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Georgia Agricultural Statistical Service and Committee data, the average annual f.o.b. price for fresh Vidalia onions during the 2000 season was $13.00 per 50-pound bag for all shipments, and total shipments for the 2000 season were around 3.9 million bags of Vidalia onions. Many Vidalia onion handlers ship other vegetable products which are not included in the Committee data but would contribute further to handler receipts.

Using the available data, about 97 percent of Vidalia onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia onion producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2001 and subsequent fiscal periods from $0.10 to $0.12 per 50-pound bag of Vidalia onions. The Committee recommended 2001 expenditures of $411,102 and an assessment rate of $0.12 per 50-pound bag or equivalent. The proposed assessment rate of $0.12 is $0.02 higher than the 2000 rate. The quantity of assessable Vidalia onions for the 2001 fiscal period is estimated at 3.6 million 50-pound bags. Thus, the $0.12 rate should provide $432,000 in assessment income. Income derived from handler assessments, along with interest income would be adequate to cover budgeted expenses and any excess funds would be placed in the reserve fund.

The major expenditures recommended by the Committee for 2001 fiscal period include $135,227 for administrative costs, $37,850 for compliance activities, $188,025 for promotional activities, and $50,000 for research projects. Budgeted expenses for these items in 1999–2000 were $135,127, $31,800, $175,000, and $47,000 respectively.

The Committee projected 4.2 million assessable 50-pound bags of Vidalia onions for the 2000 fiscal period. The actual quantity of assessable Vidalia onions was closer to 3.9 million 50-pound bags. Because of this shortfall, the Committee had to use about $20,000 from its authorized reserve fund to cover approved expenses. The quantity of assessable Vidalia onions for the 2001 fiscal period is projected to be 3.6 million 50-pound bags, which is less than in previous seasons. To cover necessary expenses and to bring the reserve fund back to an acceptable level (about $50,000), the Committee voted to recommend an increase in its assessment rate.

The Committee reviewed and recommended 2001 expenditures of $411,102, which included increases in expenditures for compliance, promotion, and research. Prior to arriving at this budget, the Committee considered information from various sources, such as the Budget Subcommittee, the Research Subcommittee, and the Advertising and Promotion Subcommittee. Alternative expenditure levels and assessment rates were discussed by these groups and the full Committee, based upon the relative value of various promotion and research projects to the Vidalia onion industry. With assessable onions in 2001 estimated to total 3.6 million 50-pound bags, the present assessment rate of $0.10 was too low to cover estimated expenses and would leave no funds to replenish the reserve fund. The Committee then considered a $0.15 cent assessment rate, but it was not supported. While the majority of the Committee believed that many growers would support a $0.02 increase in assessments, they did not, however, believe a $0.05 increase in assessments would be supported by a majority of the industry at this time. Therefore, this alternative was rejected.

The assessment rate of $0.12 per 50-pound bag of assessable Vidalia onions was then determined by dividing the total recommended budget by the

quantity of assessable Vidalia onions, estimated at 3.6 million 50-pound bags for the 2001 fiscal period. This would generate approximately $22,500 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2001 fiscal period could range between $10.00 and $15.00 per 50-pound bag of Vidalia onions. Therefore, the estimated assessment revenue for the 2001 fiscal period as a percentage of total grower revenue could range between .08 and 1.2 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Vidalia onion production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 16, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2001 fiscal period begins on January 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Vidalia onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is proposed to be amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR parts 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.209 is revised to read as follows:

§ 955.209 Assessment rate.

On and after January 1, 2001, an assessment rate of $0.12 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: January 4, 2001.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 01–717 Filed 1–9–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–297–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R (A300–600) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes; and all Model A300–600 series airplanes; that currently requires a one-time inspection for cracking of the gantry lower flanges in the main landing gear (MLG) bay area; and repair, if necessary. That AD was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by that AD are intended to detect and correct cracking of the gantry lower flanges in the MLG bay area, which could result in decompression of the airplane. This action would remove airplanes from the applicability of the existing AD.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may 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–297–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.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

in this action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–297–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–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 17, 1998, the FAA issued AD 98–13–37, amendment 39–10628 (63 FR 34589, June 25, 1998), applicable to certain Airbus Model A300 series airplanes, and all Model A300–600 series airplanes. That AD requires a one-time inspection for cracking of the gantry lower flanges in the main landing gear (MLG) bay area; and repair, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil aviation authority. The requirements of that AD are intended to detect and correct cracking of the gantry lower flanges in the MLG bay area, which could result in decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directive 1997–372–236(B) R1, dated July 12, 2000. The revised French airworthiness directive removes Model A300 F4–622R from the applicability of the original French airworthiness directive since that airplane model is not subject to the same unsafe condition specified previously for other Model A300 and A300–600 series airplanes.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 98–13–37 to continue to require the actions specified in that AD. This proposed AD would remove Model A300 F4–622R airplanes from the applicability of the existing AD.

Explanation of Airplane Model Designation

The applicability of AD 98–13–37 includes the following airplane models: A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, F4–605R, and F4–622R. However, since these airplanes are commonly referred to as ''Model A300–600 series airplanes,'' that model designation was specified in the applicability of that AD. Since the issuance of that AD, the FAA has determined that these airplanes should be designated exactly as they appear on the type certificate data sheet. Therefore, the applicability of this proposed AD designates each specific model (excluding Model F4–622R airplanes, which are purposely removed) without referring to the common name of the airplane.

Cost Impact

Since this proposed AD would merely delete airplanes from the applicability of the rule, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this proposed AD are reiterated in their entirety (as follows) for the convenience of affected operators:

The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $16,080, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. 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 removing amendment 39–10628 (63 FR 34589, June 25, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–297–AD. Revises AD 98–13–37, Amendment 39–10628.

Applicability: Model A300 B2 and B4 series airplanes on which Airbus Modification 3474 has been accomplished; and all Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the gantry lower flanges in the main landing gear (MLG) bay area, which could result in decompression of the airplane, accomplish the following:

Restatement of Actions Required by AD 98–13–37

(a) Prior to the accumulation of 16,300 total flight cycles, or within 500 flight cycles after July 30, 1998 (the effective date of AD 98–13–37, amendment 39–10628), whichever occurs later, perform a one-time ultrasonic inspection for cracking of the gantry lower flanges in the MLG bay area, in accordance with Airbus All Operators Telex (AOT) 53–11, dated October 13, 1997.

(1) If any cracking is detected, prior to further flight, repair in accordance with the AOT.

(2) If no cracking is detected, no further action is required by this AD.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch,ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 1997–372–236(B) R1, dated July 12, 2000.

Issued in Renton, Washington, on January 4, 2001.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–660 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–306–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R (A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, that currently requires repetitive ultrasonic inspections to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. That AD was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. The actions specified by that AD are intended to detect and correct fatigue cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings. This action would remove airplanes from the applicability of the existing AD.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–306–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may 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–306–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.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–306–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–306–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 11, 2000, the FAA issued AD 2000–03–20, amendment 39–11580 (65 FR 8642, February 22, 2000), applicable to all Airbus Model A300–600 series airplanes, to require repetitive ultrasonic inspections to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. That action was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. The requirements of that AD are intended to detect and correct fatigue cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directive 1995–063–177(B) R4, dated July 12, 2000. The revised French airworthiness directive removes Model A300 F4–622R from the applicability of the original French airworthiness directive since that airplane model is not subject to the unsafe condition specified previously for other Model A300–600 series airplanes.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 2000–03–20 to continue to require the actions specified in that AD. This proposed AD would remove Model A300 F4–622R airplanes from the applicability of the existing AD.

Explanation of Airplane Model Designation

The applicability of AD 2000–03–20 includes the following airplane models:

A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, F4–605R, and F4–622R. However, since these airplanes are commonly referred to as ''Model A300–600 series airplanes,'' that model designation was specified in the applicability of that AD. Since the issuance of that AD, the FAA has determined that these airplanes should be designated exactly as they appear on the type certificate data sheet. Therefore, the applicability of this proposed AD designates each specific model (excluding Model F4–622R airplanes, which are purposely removed) without referring to the common name of the airplane.

Cost Impact

Since this proposed AD would merely delete airplanes from the applicability of the rule, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this proposed AD are reiterated in their entirety (as follows) for the convenience of affected operators:

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane (1 work hour per side) to accomplish the proposed ultrasonic inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $4,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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 removing amendment 39–11580 (65 FR 8642, February 22, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–306–AD. Revises AD 2000–03–20, Amendment 39–11580.

Applicability: All Model A300 B4–601, B4–603, B4–620, B4–605R, B4–622R, and F4–605R airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings, accomplish the following:

Inspections and Corrective Actions

(a) Perform an ultrasonic inspection to detect cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997, at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated fewer than 9,100 total landings or 22,300 total flight hours as of March 28, 2000 (the effective date of AD 2000–03–20, amendment 39–11580): Inspect at the later of the times specified in either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 7,250 total landings or 17,700 total flight hours, whichever occurs first.

(ii) Within 1,500 landings after March 28, 2000.

(2) For airplanes that have accumulated 9,100 total landings or more and 22,300 total flight hours or more as of March 28, 2000: Inspect within 750 landings after March 28, 2000.

Note 2: Inspections that were accomplished prior to March 28, 2000, in accordance with Airbus Service Bulletin A300–57–6062, Revision 1, dated July 23, 1995, are considered acceptable for compliance with paragraph (a) of this AD.

(b) If no crack is detected during the inspection required by paragraph (a) of this AD, repeat the ultrasonic inspection required by that paragraph thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first; in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997.

(c) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, install an access door, and perform an eddy current inspection to confirm the presence of a crack; in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997. Accomplishment of this eddy current inspection terminates the repetitive inspection requirement of paragraph (b) of this AD.

(1) If no crack is detected during the eddy current inspection, repeat the eddy current inspection, in accordance with the service bulletin, thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first.

(2) If any crack is detected during any eddy current inspection performed in accordance with paragraph (c) or (c)(1) of this AD, prior to further flight, blend out the crack and repeat the eddy current inspection in accordance with the service bulletin.

(i) If the eddy current inspection performed after the blend-out shows that the crack has been removed, and if the blend-out is equal to or less than 50 millimeters (mm) long and equal to or less than 2 mm deep, thereafter repeat the eddy current inspection at intervals not to exceed 2,800 landings or 7,000 flight hours, whichever occurs first.

(ii) If the eddy current inspection performed after the blend-out shows that the crack has not been removed, or if the blend-out is more than 50 mm long or more than 2 mm deep, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (or its delegated agent).

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Operators may request an extension to the compliance times of this AD in accordance with the ''adjustment-for-range'' formula found in Paragraph 1.B.(5) of Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997; and provided in A300–600 Maintenance Review Board, Section 5, Paragraph 5.4. The average flight time per flight cycle (landing) in hours used in this formula should be for an individual airplane. Average flight time for a group of airplanes may be used if all airplanes of the group have flight times differing by no more than 10 percent. If compliance times are based on the average flight time for a group of airplanes, the flight times for individual airplanes of the group must be included for FAA review.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 1995–063–177(B) R4, dated July 12, 2000.

Issued in Renton, Washington, on January 4, 2001.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–662 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–19]

Proposed Revision of Class E Airspace; Ketchikan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Ketchikan, AK. The need to redefine the Ward Cove surface area exclusion in the Class E (surface area) airspace at Ketchikan, AK, has made this action necessary. Adoption of this proposal would result in the provision of an accurate Ward Cove exclusion in the surface area at Ketchikan, AK.

DATES: Comments must be received on or before February 26, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 00–AAL–19, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.ctr.van-Haastert@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AAL–19.'' The postcard will be date/time stamped and returned to the commentor. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587 or view the NPRM at the Alaskan Region's Air Traffic website at http://www.alaska.faa.gov/at. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Ketchikan, AK, due to the revision of the Ward Cove exclusion area in the surface area at Ketchikan, AK. The Ward Cove exclusion area was established for seaplane holding on July 2, 1996 [61 FR 34391]. During a recent review of the Revilla Corridor Operation, the exclusion area was found to be incorrectly described in statute miles and magnetic degrees. Descriptions are mandated to be in nautical miles and true degrees. The intended effect of this proposal is to provide an accurate Ward Cove exclusion in the surface area at Ketchikan, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 in FAA Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, is to be amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Ketchikan, AK [Revised]

Ketchikan International Airport, AK
(Lat. 55° 21′ 20″ N., long. 131° 42′ 49″ W.)
Ketchikan Localizer
(Lat. 55° 20′ 51″N., long. 131° 42′ 00″ W.)
Danger Island
(Lat. 55° 24′ 08″ N., long. 131° 48′ 47″ W.)
East Island
(Lat. 55° 23′ 46″ N., long. 131° 44′ 46″ W.)
Wrong Benchmark
(Lat. 55° 23′ 35″ N., long. 131° 44′ 10″ W.)
Decoy Benchmark
(Lat. 55° 23′ 55″ N., long. 131° 44′ 33″ W.)

Within a 3–mile radius of the Ketchikan International Airport and within 1 mile each side of the Ketchikan localizer northwest/southeast courses extending from the 3–mile radius to 4.6 miles northwest and 4.1 miles southeast of the airport excluding that airspace from Danger Island to East Island to the Wrong Benchmark thence along the Ward Cove shore line to the Decoy Benchmark thence north along the Refuge Cove shore line to a point abeam Refuge Cove State Recreation Site picnic area (Lat. 55° 24′ 31″

N., 131° 45′ 36″ W.) thence to the point of beginning.

* * * * *

Issued in Anchorage, AK, on December 18, 2000.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–700 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209461–79]

RIN 1545–AY67

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and amendments to notice of proposed rulemaking.

SUMMARY: This document withdraws § 1.125–2 Q&A–6(b),(c), and (d), and amends § 1.125–2 Q&A–6(a) in the notice of proposed rulemaking relating to cafeteria plans that was published in the **Federal Register** on March 7, 1989. Further, this document amends § 1.125–1 Q&A–8 in the notice of proposed rulemaking relating to cafeteria plans that was published in the **Federal Register** on May 7, 1984, and amended on November 7, 1997 and March 23, 2000. This withdrawal and amendment are made because of changes made to these rules in the § 1.125–4 final regulations relating to cafeteria plans published elsewhere in this issue of the **Federal Register**.

DATES: Written or electronically generated comments and requests for a public hearing must be received by April 10, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–209461–79), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:M&SP:RU (REG–209461–79), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Christine Keller or Janet Laufer at (202)622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1989, the IRS issued proposed regulations § 1.125–2 Q&A–6 relating to the circumstances under which participants may revoke existing elections and make new elections under a cafeteria plan. Elsewhere in this issue of the Federal Register the IRS is publishing final regulations under § 1.125–4 that address certain parts of this rule. Accordingly, § 1.125–2 Q&A–6(b), (c), and (d) are withdrawn and § 1.125–2 Q&A–6(a) of this rule is amended.

Further, on May 7, 1984, the IRS issued proposed regulations § 1.125–1 Q&A–8 relating to the requirements that apply to participants' elections under a cafeteria plan. Q&A–8 of these regulations was amended on November 7, 1997 and March 23, 2000 to conform with the § 1.125–4T and § 1.125–4 regulations published on these dates, and is further amended to conform with the final § 1.125–4 regulations published on January 10, 2001.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.125–2 Q&A–6(b), (c) and (d) in the notice of proposed rulemaking that was published on March 7, 1989 (54 FR 9460) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to Previously Proposed Rules

Accordingly, the proposed rules published on May 7, 1984 (49 FR 19321) and amended on November 7, 1997 (62 FR 60196), and March 23, 2000 (65 FR 15587) and the rules published on March 7, 1989 (54 FR 9460) are amended as follows:

PART 1— INCOME TAXES

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

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

Par. 2. In § 1.125–1, as proposed May 7, 1984 (49 FR 19321) and as amended March 23, 2000 (65 FR 15587), Q&A–8 is amended by removing the last four sentences of A–8 and adding a sentence in their place to read as follows:

§ 1.125–1 Questions and answers relating to cafeteria plan.

* * * * *

Q–8: What requirements apply to participants' elections under a cafeteria plan?

A–8: * * * However, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and make a new election with respect to the remainder of the period of coverage if both the revocation and the new election are permitted under § 1.125–4.

* * * * *

Par. 3. In § 1.125–2, as proposed March 7, 1989 (54 FR 9460) and as amended March 23, 2000 (65 FR 15587), A–6 is amended by removing A–6(b), A–6(c), and A–6(d), redesignating A–6(e) as paragraph A–6(b), removing the last 5 sentences of A–6(a) and adding a sentence in their place to read as follows:

Q–6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A–6: * * *

(a) * * * However, to the extent permitted under § 1.125–4, the terms of a cafeteria plan may permit a participant to revoke an existing election and to make a new election with respect to the remaining portion of the period of coverage.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–259 Filed 1–9–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–128]

RIN 2115–AE47

Drawbridge Operation Regulations: Miami River, Miami, Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to permanently change the operating regulations of all the draws on the Miami River, from the mouth to and including the N.W. 27th Avenue bridge, mile 3.7, Miami, FL. This proposed rule would expand the operating schedule to include all Federal holidays in addition to the six Federal holidays which are currently named in the regulations.

DATES: Comments and related material must reach the Coast Guard on or before February 9, 2001.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–00–128), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current rule governing the Miami River Drawbridges, from the mouth to and including the N.W. 27th Avenue bridge, mile 3.7, is inconsistent with current practices regarding Federal holidays. The current regulation was written when there were only six Federal holidays. Changing the regulation to include all Federal holidays will update this regulation and reduce confusion of which Federal holidays apply.

Discussion of Proposed Rule

The current regulations were written prior to the establishment of several newer Federal holidays. Changing the regulation to include all Federal holidays will reduce confusion and provide regulatory consistency.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 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 want to assist small entities in understanding this proposed 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 Mr. Barry Dragon at (305) 415–6743.

Collection of Information

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

Unfunded Mandates and Enhancing the Intergovernmental Partnership

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 proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed 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 considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.305 is revised to read as follows:

§ 117.305 Miami River.

The draw of each bridge from the mouth to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. During the period of a hurricane alert issued by the National Weather Bureau, all bridges shall open on signal. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: December 21, 2000.

T.W. Allen,

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

[FR Doc. 01–762 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA111–4111; FRL–6932–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: Determination of Attainment of Ozone Standard in the Pittsburgh and Lancaster Areas and Determination of Applicability of Certain Requirements for the Pittsburgh Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Pittsburgh-Beaver Valley Ozone Nonattainment Area (the Pittsburgh Area) and the Lancaster Ozone Nonattainment Area (the Lancaster Area) have attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Pittsburgh Area, classified as moderate, is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties. The Lancaster Area, classified as marginal, consists of Lancaster County. These determinations are based upon three years of complete, quality-assured, ambient air monitoring data for the years 1998–2000 which indicate that these two have attained the 1-hour ozone NAAQS. On the basis of this determination, EPA is also proposing to determine that certain requirements of the Clean Air Act (the Act) do not apply to the Pittsburgh Area so long as it continues to attain the 1-hour NAAQS for ozone.

DATES: Written comments must be received on or before February 9, 2001.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814–2033, or by e-mail at Webster.Jill@epamail.epa.gov.

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A. What Action Is EPA Proposing To Take?

The EPA is proposing to determine that the Pittsburgh and Lancaster Areas have attained the 1-hour NAAQS for ozone. The Lancaster Area, which is classified as marginal, consists of Lancaster County. The Pittsburgh Area, which is classified as moderate, is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties. On the basis of this determination, EPA is also proposing to determine that certain attainment demonstration requirements (section 182(b)(1)), along with certain other related requirements, of Part D of Title I of the Act, specifically the section 172(c)(1) requirements and the section 172(c)(9) contingency measure requirements, are not applicable to the Pittsburgh Area as long as it continues to attain the ozone NAAQS. These requirements have never been applicable to areas classified as marginal, such as the Lancaster Area.

Although EPA is proposing to determine that the air quality in the Pittsburgh and Lancaster Areas meets the 1-hour ozone NAAQS, we are not proposing to redesignate either of these areas to attainment at this time. Under section 107(d)(3)(E) of the Act, there are five criteria that must be met in order for EPA to approve a states's request to redesignate an area from nonattainment to attainment. The determination that an area has attained the NAAQS is the first of those five criteria. There are no redesignation requests currently pending before EPA for either of these areas. The Commonwealth of Pennsylvania is, however, currently preparing its formal redesignation requests and the associated maintenance plans for these areas for submittal to EPA in the near future. Those requests will be the subject of future rulemakings.

B. Why Is EPA Taking This Action?

The EPA proposes to determine that these two areas have attained the ozone NAAQS, because three years of the most recent ambient air monitoring data demonstrate that the 1-hour ozone NAAQS has been attained. The EPA believes it is reasonable to interpret the provisions regarding attainment demonstrations, along with certain other related provisions, so as not to require State Implementation Plan (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 years of complete, quality-assured, air quality monitoring data. The EPA is basing these determinations upon the most recent three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the ozone NAAQS has been attained in the Pittsburgh and Lancaster Areas.

C. What Would Be the Effect of This Action?

The requirements of section 172(c)(1) and 182(b)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment will not be applicable to the area. This proposal does not revoke the 1-hour NAAQS for ozone in these areas.

EPA is proposing to find that the requirements of section 182(b)(1) and related requirements of section 172(c)(1) and 172(c)(9) do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If, while this proposal is pending, a violation of the ozone NAAQS is monitored in these nonattainment areas (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) the EPA would not issue a final determination of attainment for the affected area. If the area remains in attainment and EPA issues a final determination of attainment, a subsequent monitored violation would also mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9), since the basis for the determination that they do not apply would no longer exist.

D. What Is the Background for This Action?

Subpart 2 of part D of Title I of the Act 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, along with certain other related provisions, so as not to 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 is demonstrated with three years, of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provision of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996))

The attainment demonstration requirements of section182(b)(1) require 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 this Act.'' If an area has in fact monitored attainment of the standard, EPA concludes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I where EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached,'' (57 FR at 13564, see also September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2, including the contingency measure requirements of section 172(c)(9) of the Act. The EPA has previously interpreted the contingency measures requirements of section 172(c)(9) as no longer being applicable 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 Commonwealth 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 1-hour ozone standard must be consistent 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 1-hour 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).

Furthermore, the determinations of these actions will 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, other nonattainment areas (see section 110(a)(2)(D)). EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions as necessary and appropriate to deal with transport situations.

E. What Is EPA's Analysis of the Air Quality Data?

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 Pittsburgh and Lancaster nonattainment areas in the Commonwealth of Pennsylvania from 1998 through the present time. On the basis of that review EPA has concluded that both areas attained the 1-hour ozone standard during the 1998–2000 period and both areas continue to attain the standard through the present time.

The current design value for the Pittsburgh nonattainment area, computed using ozone monitoring data for 1998 through 2000 is 123 parts per billion. The average annual number of expected exceedances is 1.0 for that same time period. The current design value for the Lancaster area, also computed using ozone monitoring data for 1998 through 2000 is 121 parts per billion. The average annual number of expected exceedances for the Lancaster nonattainment area is 0.67 for that same time period. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0. Thus, these areas are no longer recording violations of the 1-hour air quality standard for ozone. A more detailed summary of the air quality data recorded for the Pittsburgh and Lancaster Areas is provided in the Technical Support Document (TSD) for this action.

F. What Administrative Requirements Were Considered?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to determine that air quality meets federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to determine that air quality meets federal requirements and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as

specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to determine that air quality meets federal requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule to determine that the Pittsburgh and Lancaster areas have attained that ozone NAAQS and the proposed determination as to the applicability of certain requirements, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: December 21, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 01–695 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 169–0265; FRL–6931–9]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) concerning volatile organic compound (VOC) emissions from soil decontamination operations. We are also proposing full approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State SIP concerning VOC emissions from municipal solid waste disposal sites and oil-effluent water separators. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by February 9, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

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

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	416	Oil-Effluent Water Separators	09/14/99	05/26/00
SJVUAPCD	4642	Solid Waste Disposal Sites	04/16/98	09/29/98
VCAPCD	74.29	Soil Decontamination Operations	10/10/95	03/26/96

On October 6, 2000, January 26, 1999, and May 15, 1996, respectively, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of ICAPCD Rule 416 into the ICAPCD portion of the SIP as rule 416, Oil-Effluent Water Separators, on January 27, 1981 (46 FR 8472).

There are no previous versions of SJVUAPCD Rule 4642 in the SIP, although the District adopted an earlier version of this rule on July 20, 1995 and CARB submitted it to us on October 18, 1995. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittal.

There are no previous versions of VCAPCD Rule 74.29 in the SIP.

C. What Are the Changes in the Submitted Rules?

Submitted ICAPCD Rule 416 has the following changes:

- The requirement of 90% by weight or greater reduction in vapor emission for a vapor recovery system was added.
- Compliance test methods, periodic inspection requirements, and a record retention period were added.

Submitted SJVUAPCD Rule 4642 has the following requirements for a solid waste disposal site gas collection system:

- Must maintain surface concentration of total organic compounds of 1,000 ppmv (as methane) or less.
- Must maximize landfill gas extracted while preventing overdraw.
- Must achieve 98 percent by weight VOC destruction or outlet concentration of 20 ppmv (as methane) or less.

Submitted VCAPCD Rule 74.29 has the following requirements:

- Prohibits soil aeration that emits VOC in concentration greater or equal to 50 ppmv (as hexane).
- Establishes VOC emission limits on gasses vented from vapor extraction, bioremediation, or bioventing systems.
- Prohibits in situ bioventing or bioremediation systems that emit fugitive VOC in concentrations greater or equal to 50 ppmv (as hexane).
- Requires notification by owner prior to underground gasoline storage tank excavation.
- Requires the covering of soil exposed during tank excavation.

There are numerous exemptions to the rule that are discussed in the TSD.

The TSDs have more information about all of these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). ICAPCD regulates a transitional ozone nonattainment area, SJVUAPCD regulates a serious ozone nonattainment area, and VCAPCD regulates a severe ozone nonattainment area. (See 40 CFR part 81). Therefore, ICAPCD Rule 416, SJVUAPCD Rule 4642, and VCAPCD Rule 74.29 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987* **Federal Register**, (Blue Book), notice of availability published in the **Federal Register** (May 25, 1988).
- *Model Volatile Organic Compound Rules for Reasonably Available Control Technology* (June 1992).

B. Do the Rules Meet the Evaluation Criteria?

These rules strengthen the SIP by establishing more stringent emission limits, by clarifying monitoring, recording and recordkeeping provisions, and by adding two rules that were previously not in the SIP. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

The following provision in VCAPCD Rule 74.29 conflicts with section 110 and part D of the Act and prevents full approval of the SIP revision:

- (Section C.4) This section provides for case-by-case exemptions by the Director from the 0.08 lb/hr allowable emission rate for vapor extraction or bioremediation, if the operator can demonstrate compliance with VCAPCD Rule 51, Nuisance. This exemption is deficient, because it does not specify replicable criteria for an exemption nor require equivalent emissions reduction for an exempted source.

D. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of submitted VCAPCD Rule 74.29 to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the VCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

As authorized in section 110(k)(3) of the Act, EPA is also proposing a full approval of ICAPCD Rule 416 and SJVUAPCD Rule 4642 to strengthen the SIP.

We will accept comments from the public on these proposed actions for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

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

B. 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, 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, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the 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.''

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

D. Executive Order 13132

Executive Order 13132, entitled 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 proposed 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 acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on 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. 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.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: December 26, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 01–696 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2000–8156, Notice No.1]

RIN 2130–AB28

Roadway Maintenance Machine Safety

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend its regulations by adding operational and design safety standards for railroad on-track roadway maintenance machines. The proposed regulations cover self-propelled rail-mounted non-highway machines whose light weight exceeds 7,500 pounds.

DATES: *Written Comments:* Written comments must be received before March 12, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: FRA does not plan to conduct a public hearing unless requested to do so by an interested party.

ADDRESSES: *Written comments:* Submit one copy to the Department of Transportation Central Docket Management Facility located in Room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All docket material on the proposed rule will be available for inspection at this address and on the Internet at *http://doms.dot.gov.* Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Persons desiring notification that their comments have been received should submit with their comments a stamped, self-addressed postcard. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

Public hearing: The date and location of the public hearing will be announced at a later date in this publication.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6236), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6047).

SUPPLEMENTARY INFORMATION:

Introduction

Background

In May, 1990, the Brotherhood of Maintenance of Way Employes (BMWE) filed a petition with FRA to revise the Track Safety Standards and add to them new regulations addressing the safety of roadway workers and roadway maintenance machines. In response, FRA first initiated a negotiated rulemaking to address roadway worker safety. The final rule resulting from that rulemaking was published in December, 1996 (*see* 61 FR 65959), and the regulations addressing roadway worker safety now reside in 49 C.F.R. part 214, subpart C.

Also in 1996, FRA requested that the newly formed Railroad Safety Advisory Committee (RSAC) address by rulemaking the revision of the Track Safety Standards, as petitioned by the BMWE. The RSAC agreed to the task and formed a Track Working Group to draft a proposed revision. The Track Working Group decided by consensus that the draft revision would update the Track Safety Standards found at 49 C.F.R. part 213, and that a new set of regulations addressing the safety of on-track roadway maintenance machines would be initiated in a separate rulemaking. The RSAC approved by majority consensus a draft Notice of Proposed Rulemaking (NPRM) for revision of part 213 in October, 1996. FRA published the NPRM on July 3, 1997 (*see* 62 FR 36138), and the final rule on June 22, 1998 (*see* 63 FR 33992). The revised track standards became effective on September 21, 1998.

Even after the publication of the revised Track Safety Standards, the Track Working Group remained in existence to accomplish two additional tasks adopted by the RSAC: the amendment of part 213 to add safety standards for Gage Restraint Measuring Systems (GRMS) and the amendment of part 214 to add safety standards for on-track roadway maintenance machines. To accomplish the latter, the Track Working Group appointed a six-member Task Group to draft by consensus rule language, as well as analysis of the new rule for the preamble. The product of that Task Group is contained in this document.

The Task Group consisted of representatives from FRA, Association of American Railroads (AAR), Norfolk Southern Railway, an equipment supplier, and the BMWE. The group met several times and conducted numerous conference calls before reaching

agreement on draft rule language to recommend to the RSAC for approval.

Early Efforts and Size Categories

The Task Group initially divided roadway maintenance machines into three broad categories: On-track, on/off track, such as hi-rails, and off-track. The group quickly decided to confine the regulations to on-track equipment and equipment used both on and off track. The group further divided two remaining categories of roadway maintenance machines into five sub-categories: large self propelled equipment, medium self propelled equipment, small ''walk-along'' equipment, hi-rail equipment and motor cars.

The Task Group conducted a systematic review of various types and configurations of machinery, as well as their current use in the railroad industry. The group determined that the railroad industry is rapidly phasing out the use of motor cars, replacing them with hi-rail vehicles. In fact, motor cars have not been manufactured for use in the United States in several years. Therefore, the Task Group decided there was no need to write a rule covering motor cars. However, if in the future, the industry returns motor cars for widespread use as inspection vehicles, FRA may reconsider its decision to exclude motor cars from this regulation.

Next, the Task Group decided to eliminate small ''walk-along'' track equipment from the scope of the new regulations. ''Walk-along'' equipment includes small pieces of track maintenance equipment that rolls on the rails but may not be self-propelled. This type of machine includes tie borers, nut runners, portable rail grinders and other track maintenance equipment of similar size which can be placed on, or removed from, the track with relative ease by one or more roadway workers. The group determined that the great variety of this type of equipment would dictate writing a very complicated set of regulations governing a category of equipment that does not pose a very significant safety hazard. Therefore, the Task Group decided to focus the rulemaking on the three remaining sub-categories groups of roadway maintenance equipment: large on-track machines, medium on-track machines, and hi-rails.

To distinguish large on-track machines from medium-sized on-track machines, the Task Group decided to consider the light weight of the vehicles. Large equipment was designated ''Category I'' and included on-track self-propelled roadway maintenance machines that weigh (light weight) more than 17,500 lbs. ''Category II'' machines included similar equipment whose light weight was less than 17,500 lbs. but more than 7,500 pounds.

The final categorization of covered roadway maintenance machines dealt with the age of the vehicles. The Task Group determined that all of the regulations would apply to new machines. The group decided to define ''new'' as any machine ordered for manufacture 90 days after the issuance of a final rule. This delay in the implementation of the rule on new equipment is meant to prevent the rule from interfering with the manufacture of new equipment already on order but not yet completed as of the date of the issuance of the final rule.

Likewise, the Task Group felt it necessary to limit the number of older roadway maintenance machines that would need retrofitting following the issuance of a final rule in this proceeding. Because technology has much changed and many types of roadway maintenance machines have been redesigned in more recent years, the Task Group determined that the new rule should not apply to the oldest equipment in the industry's collective fleet. Therefore, the group decided that the requirements for retrofitting would not apply to any roadway maintenance machine manufactured prior to 1990.

With the parameters about types of equipment agreed upon, the Task Group then set out to determine what safety features on the machine should be covered by the regulations. The group reviewed existing standards for work equipment issued by the Occupational Safety and Health Administration (OSHA), and discussed the American National Standards Institute (ANSI) and the Society of Automotive Engineers (SAE) standards, which are voluntary industry standards. The group identified 18 items on the Category I and Category II machines that should be included in the regulations:

- Operator Seating
- Brakes
- Horn
- Work Lights
- Mirrors
- Change of Direction Alarm
- Fire Extinguisher
- Safety Glass
- Power Wipers
- Strobe Light
- Heat and Ventilation Non-Pressurized Cab
- Flagging Equipment
- Headlights
- Turntable Positive Restraint Device
- Equipment Lite Weight Displayed
- Heat, Ventilation, Air Conditioning Pressurized Cab
- Brake Lights
- First Aid Kit

For hi-rail vehicles, the group determined that the regulations should address:

- Operator Seating
- Brakes
- Horn
- Mirrors
- Fire Extinguisher
- Safety Glass
- Power Wipers
- Heat and Ventilation Non-Pressurized Cab
- Headlights
- Equipment Lite Weight Displayed
- Brake Lights
- Change of Direction Alarm
- Strobe Light
- Flagging Equipment
- First Aid Kit

Because the regulations are meant to cover hi-rails only when they are being used as on-track vehicles, the Task Group determined that the regulations should not replace any state requirements covering hi-rail vehicles when they are used as roadway motor vehicles.

As the discussions continued over many months and the proposed rule evolved, early decisions made by the group also evolved and some changed. For example, the Category I and II designations, which helped the group early in the discussions, eventually became unnecessary as proposed requirements changed. The proposed rule reflected in this document makes the distinction between large equipment and medium-sized equipment in only two instances, making it unnecessary to maintain the designated categories for purposes of the rule.

Shunting

Early in the deliberations, the Task Group explored whether or not these proposed regulations should require that the covered track maintenance machines be non-insulated for the purpose of shunting the track circuits. Machines capable of shunting track circuits would enable a track circuit to indicate track occupancy by the machine, affording an extra measure of protection for the track crew through the signal system, as well as protection at highway-rail crossings through the activation of warning devices at crossings so equipped.

The railroad industry has struggled many years to develop a technology that would provide reliable shunting capabilities for track maintenance machines. Even heavy equipment such as rail diesel cars (RDC's) and lite locomotives do not always shunt the track circuits. The Task Group

discussed the advantages of current shunting technologies when the technologies work successfully, and balanced them against the possibility that the technologies might fail. Roadway workers could develop a false sense of security when using machines designed to shunt track circuits, perhaps relying too heavily on shunting as a method of protection when the reliability of the shunting is not failsafe.

The Task Group agreed that, because present shunting technology has not advanced enough to guarantee a level of reliability necessary for track maintenance machines, this rule should not propose to require that the machines be non-insulated. However, if FRA finds in the future that the technology has advanced to a high level of reliability for track maintenance machines, the agency may reconsider its position regarding insulation.

Noise Conservation

The Task Group considered including in the proposed regulations a design standard that would require new roadway maintenance machines covered by this proposed rule to maintain the noise level in the cab of the machine to 85 dBA measured on the A-scale of a standard sound level meter at slow response over an eight-hour period. Hearing loss caused by exposure to loud levels of noise over an extended period of time is a significant issue among roadway workers. Workers on roadway maintenance machines are currently protected by Occupational Safety and Health Administration (OSHA) regulations in Title 29, Code of Federal Regulations, Section 1910.95, which requires a covered employer to provide a hearing conservation program, hearing protection, and training for employees.

However, if FRA were to establish noise exposure standards here with a new design standard, the standards would preempt OSHA's jurisdiction over hearing conservation, pursuant to section 4(b)(1) of the Occupational Safety and Health Act. 29 U.S.C. 653(b)(1). Therefore, with a design standard for new equipment, but no requirement for a hearing conservation program, personal hearing protection and employee training, the roadway workers affected by this proposed rule would receive less protection than they receive now under OSHA regulations. In addition, an effort by FRA to enter the field of hearing conservation on some roadway maintenance machines could result in FRA's preemption of OSHA regulations as to all roadway maintenance machines. This result would leave operators of roadway equipment not under the proposed design standard (*i.e.,* older equipment or equipment weighing less than 7,500 lbs.) with no hearing protection under Federal law whatsoever.

To prevent such an unwanted result, FRA would need to institute its own set of comprehensive regulations dealing with hearing protection, hearing conservation programs, and testing. Given the fact that OSHA currently has authority to address noise exposure and hearing loss for these employees, and the requisite expertise at hand to do so effectively, FRA sees no need to duplicate such a program. In fact, as FRA understands it, the railroads currently follow the OSHA regulations and have established hearing conservation programs that include these employees.

Environmental Controls in Cabs

The issue of environmental controls in cabs of roadway maintenance machines, including heating, air conditioning, and protection from air contaminants like silica dust, was the topic of much discussion among Task Group members. The group worked hard to find a balance between environmental controls perceived to be safety enhancements and those perceived by some to be merely ''comfort'' improvements. The resulting requirement in this proposed rule therefore is designed to protect employees working on certain types of roadway machines from air contaminants that may cause respiratory health problems for employees while also protecting equipment components from the effects of temperature extremes or degradation from dust and debris. The proposed standard would also enhance safety by reducing noise inside the equipment cabs, thereby effectuating clearer radio communications between employees. In addition, the proposed standard would afford clearer visibility for those working inside the cab.

Under this proposed regulation, OSHA environmental standards, which already govern the working environments of roadway maintenance machines, would essentially remain in effect. The NPRM proposes to ''incorporate by reference'' the OSHA standards contained in 29 CFR 1910.1000. This action would mean that FRA would become the enforcing agency as to environmental controls over the selected types of equipment, rather than OSHA. Environmental controls in equipment not covered by this proposed rule and the limiting of exposure to employees working outside equipment would remain subject to OSHA enforcement, although the regulation is the same (29 CFR 1910.1000).

It is important to note that the proposed requirement is to incorporate the OSHA standards ''as amended.'' OSHA has announced plans to revise its environmental standards. By incorporating the standards ''as amended,'' FRA's environmental standards under this rule would automatically change with any revision by OSHA so as to remain in conformance with those standards. This action prevents an undesirable result where operators of roadway machines covered by this regulation receive less protection than other operators after OSHA revises its standards.

The regulation proposed here is meant to cover only certain roadway maintenance machines. The regulation proposes positive pressurized ventilation systems with temperature controls only on new roadway maintenance machines as defined in the proposed definition in § 214.7. In addition, the proposed regulation is limited to ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. It is FRA's understanding that these types of equipment are now typically manufactured with engineering controls that prevent inhalation of hazardous substances. The proposed regulation would require temperature controls because, by their nature, pressurized cabs require full enclosure without access to open windows or alternative sources of ventilation. It becomes imperative, therefore, that the cabs also be equipped with a means to control the temperature inside the cab. If the engineering controls fail for the ventilation system of any roadway maintenance machine covered by this section of the regulation, employees on the machine must be equipped with personal respiratory protective equipment that is operative and meets the OSHA standards in 29 CFR 110.134.

To prevent confusion about which agency has enforcement authority over specific roadway maintenance machines, the rule proposes to require railroads to maintain a roster of machinery that would fall under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, OSHA, and other Federal and state agencies so that inspectors may determine which agency has responsibility for inspection of which machines. The roster should prevent confusion that may cause certain machines to be inspected by two

Federal agencies while other machines go uninspected altogether.

Although the proposed rule addresses pressurized cabs and temperature controls for only certain types of new roadway maintenance machines, railroads are not precluded from equipping other types of machinery, or older machinery, with the same features. If the railroad desires that FRA become the inspection agency for those machines so retrofitted, the railroad may simply add the designated machines to the roster. However, once added to the roster, a designated machine must remain on the roster until it is retired or its ownership changes.

Crane Safety

In 1998, the BMWE petitioned FRA to issue new regulations governing the safety of on-track railroad maintenance cranes. Currently, the safety of railroad crane operations is governed generally by OSHA regulations at 29 CFR 1910.180. In its petition, the BMWE is seeking to reduce the number of railroad crane operators who are killed or seriously injured when cranes accidentally tip over due to shifting loads, excessive loads, defective equipment, supervisor misjudgment, or operator error. It is not clear from the data FRA has now whether a reduction in railroad crane accidents is best accomplished through better equipment design or improved employee training.

This proposed rule is not intended to cover crane safety as envisioned by the petition. FRA has made a commitment to gather data and information regarding crane safety and upon completing that, to seek the advice of the RSAC about the necessity of issuing regulations.

Section by Section Analysis

FRA proposes to amend part 214 of Title 49, Code of Federal Regulations by adding a new subpart D specifically devoted to the prevention of accidents and casualties caused by the operation of on-track roadway maintenance machines and hi-rail vehicles. FRA also proposes to amend subpart A of part 214 by adding new definitions to section 214.7 that describe and categorize the types of roadway maintenance machines that subpart D will address. (see page 15)

Section 214.7—Definitions

Section 214.7 contains additional entries which are particularly important to the understanding of the types of equipment that are to be covered by the proposed rule. Subpart D will address two general types of roadway maintenance machines. *On-track roadway maintenance machines* are defined as self-propelled, rail mounted, non-highway, roadway maintenance machines whose light weight is in excess of 7,500 pounds, and whose purpose is not for the inspection of railroad track. *Hi-rail vehicles* are defined as roadway maintenance machines that are manufactured to meet Federal Motor Vehicle Safety Standards and are equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks.

Both *on-track roadway maintenance machines* and *hi-rail vehicles* are classified as either new or existing for the purposes of this rule. The new classification is defined as any vehicle covered by subpart D which is ordered after 90 days following the effective date of this rule, and completed after one year following the effective date of this rule. The *existing* classification is defined as any vehicle covered by subpart D which does not meet the definition of a *new* vehicle.

Roadway maintenance machines not included within the scope of the proposed subpart D are *on-track roadway maintenance machines* whose light weight does not exceed 7,500 pounds, off-track equipment such as bulldozers, backhoes, and road graders, as well as that class of antiquated equipment referred to as motor cars. Although this equipment is not covered under the scope of proposed subpart D, it nevertheless meets the general definition of *roadway maintenance machines* as defined in this section for purposes of the Roadway Worker Protection regulations contained in subpart C of this Part.

In addition, it is important to note here that the term ''employer'' as defined in Subpart A includes railroads and contractors of railroads. In Subpart D, FRA has used the term ''employer'' as defined; that is both railroads and their contractors are subject to the requirements of subpart D.

Section 214.501—Purpose and Scope

The purpose for the minimum safety standards prescribed under this subpart is the protection of roadway workers during the lawful operation of on-track roadway maintenance machines and hi-rail vehicles. This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles, although railroads and railroad contractors (referred to collectively as ''employer'' throughout subpart D, as the term is defined in subpart A) may adopt more stringent standards as long as they are consistent with this subpart. As it has done in other regulations, FRA would include railroad contractors in the scope of this proposal. A good deal of track maintenance is completed by contractors to railroads, and so it is important for those entities to fall within the requirements for safe completion of that work.

This section further states that any working condition which involves the protection of railroad employees engaged in roadway maintenance duties but which is not specifically addressed in this subpart (for example, noise exposure) continues to be governed by the regulations of OSHA.

In addition, FRA would like to clarify here that all of the provisions set forth in subpart A to this part, which discuss purpose and scope of the part, would apply to subpart D as well.

Section 214.503—Good Faith Challenges; Procedures for Notification and Resolution

Section 214.503 outlines the circumstances under which employees operating on-track roadway maintenance machines are guaranteed the right and have the responsibility to make challenges relative to the operation or condition of the on-track roadway maintenance machine. A challenge must be made in good faith in order to fall within the purview of this section.

Paragraph (a) addresses the employee's responsibility to inform the employer whenever the employee makes a good faith determination that the employer's rules governing the on-track roadway maintenance machine do not comply with FRA regulations. The employee should not only consider the minimum safety requirements specified in this subpart, but should also consider the general requirements specified in § 214.341 of subpart C of this Part, which addresses the issue of on-track safety around roadway maintenance machines.

Paragraph (b) guarantees the employee's right of refusal to operate any on-track roadway maintenance machine once the employee has made a good faith determination that the machine does not meet all the requirements of this subpart, or has a condition that prohibits its safe operation. Section 531 allows the employer up to seven days to repair a roadway machine found to be noncompliant. However, the employer cannot require an employee, who in good faith challenges the fitness of a machine, to operate the machine until the challenge has been resolved.

Under paragraph (c), each employer must have in place, and must adhere to, written procedures for attaining a

prompt and equitable resolution of challenges resulting from good faith determinations made in accordance with this section. The procedures shall outline the steps the employer will take to investigate each good faith challenge. They shall also include steps to be taken, once the employer's investigation shows that the challenged machine should not be used as it is, to ensure that the challenged machine is not used until repaired to comply with this subpart. FRA's purpose in requiring these procedures is to make certain that a machine operator who makes a good faith challenge of a machine's fitness to operate receives an explanation of an employer's decision to either keep the machine in service, or repair or replace it. FRA will not consider an employer to be compliant with this section if it responds to any good-faith challenge with a mere ''yes'' or ''no'' answer.

The written procedures shall also include the title and location of the employer's designated official(s) for the purpose of reporting conditions found to be in non-compliance with this subpart. This requirement helps ensure that machine operators are informed as to whom they should address any good faith challenges.

FRA envisions that machine operators will challenge the fitness of an assigned machine only in good faith, and the employer likewise will respond only in good faith. FRA realizes that a employer's fleet of roadway maintenance machines may be very large and that machines may sometimes become unfit for safe use without the employer's immediate knowledge. This provision seeks to establish a system under which a machine operator, who on any day may be in the best position to assess the safety fitness of a particular machine, can call the employer's attention to safety deficiencies and other defects that should be immediately addressed.

However, FRA also realizes that sometimes defects can appear to be more serious than they actually are. What may appear to be a defect jeopardizing operational safety may in reality be a minor flaw that can be addressed at a later, more convenient time or location. This section allows for employers to investigate a good faith challenge to a machine's safety fitness and make its own good faith determination that the machine may be used without immediate repairs. However, this section requires good faith on the part of all parties involved. If FRA determines that an employer has not exercised good faith in determining that a machine need not be immediately repaired or replaced, FRA may seek enforcement action against the employer for violation of this section. On the other hand, FRA will not consider an employer's response to a challenge a violation of this section if FRA determines that the challenge was made for purposes of disrupting or delaying work or in a manner demonstrating a motivation other than good faith and concern for safety.

Section 214.505—Required Environmental Control and Protection Systems for New On-Track Roadway Maintenance Machines

Paragraph (a) proposes to require that certain types of new roadway maintenance machines be equipped with enclosed cabs with a positive pressurized ventilation system that includes climate control. By design, most pressurized ventilation systems do not provide a means of exchanging internal air for outside air while the roadway maintenance machine is in operation. In other words, the machine cabs with pressurized ventilation systems generally are not equipped with other means of ventilation or climate control, such as operable windows. Therefore, the proposed requirement for positive pressurized ventilation systems in new on-track roadway maintenance machines dictates that these machines also be equipped with operative heating and air conditioning systems.

The equipment subject to this requirement includes ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. This equipment is used to perform track and roadbed maintenance that typically creates a good deal of noise, debris, and dust. This work often occurs while employees are situated both in the cab of the equipment and along the right-of-way, in close proximity to the equipment as it is operated.

This proposed requirement will ensure the safety of employer operations and employee safety in a variety of ways.

- Employees working in the cab will be protected from exposure to unhealthy levels of silica dust, which is prevalent in many regions of the country where track repair is done, as well as other air contaminants.
- The components of the equipment will be protected from temperature extremes and the degradation that may occur due to concentrations of dust and debris.
- Any combustion fumes generated by the equipment will be prevented from entering the cab so that employees are not exposed to the potential hazards of fuel exhaust.
- With diminished noise, dust, and debris in the cab, employees will be able to better communicate with one another in the cab and, through the use of radios, with those employees working on the ground who might be placed at risk if the equipment moves or operates unexpectedly.
- The visibility of those working in the cab will improve.

The standards of this section affect only those listed machines manufactured after [insert date 90 days following the effective date of this rule]. FRA proposes to incorporate by reference and enforce OSHA environmental standards contained in 29 CFR 1910.1000 as amended. Environmental controls of older machinery will be governed by the same regulations, but compliance will be enforced by OSHA. It is FRA's understanding that new roadway machines of the type listed in this section are manufactured with engineering controls that prevent the inhalation of hazardous substances, as required by the OSHA standards. By adopting the OSHA regulations for new machinery, FRA will be in a position to make progressive improvements in environmental quality of roadway equipment based upon a foundation of protection already established by OSHA.

FRA proposes that employers maintain a roster of machinery that will fall under FRA's jurisdiction for purposes of this regulation. The roster, which may be electronic, must be readily available to FRA and other federal and state agencies upon request so that inspectors may determine which agency has responsibility for inspection and enforcement of respiratory safety regulations for each roadway machine.

Employers may elect to include on the roster older machines that are equipped with engineering controls for air ventilation. These machines designated for inclusion on the roster may be ones manufactured with engineering controls for ventilation or machines retrofitted by the employer to have engineering controls. If added to the roster, the designated machines become subject to FRA's inspection and enforcement. Once a machine is added to the roster, however, it must remain on the roster until it is retired or its ownership changes.

FRA recognizes that engineering controls for ventilation may fail from time to time. When a new or designated roadway maintenance machine of the type listed in paragraph (a) does not offer the protection required by 29 CFR 1910.1000 because the engineering controls have temporarily failed, the

employer must provide employees on that machine personal respiratory protective equipment for protection from air contamination. The personal respiratory protective equipment must be operative and must meet the standards issued by OSHA in 29 CFR 1910.134. The standards set by OSHA require employers to use NIOSH-certified respirators. Employers must have in place a respiratory protection program including procedures for proper inspection and maintenance of the respirators and medical evaluations of personnel designated to use the respirators.

By referencing OSHA's regulations already in effect, FRA is not creating a new burden on employers. Rather, FRA is simply adopting standards that are already required by another government agency. A requirement in the final rule for heating, air conditioning, pressurized cabs, and personal respiratory protective equipment in new roadway maintenance machines would constitute an exercise of FRA jurisdiction over the working condition of employee exposure to temperature extremes and air contaminants for those employees working in the cabs of this equipment. This exercise would oust any authority or enforcement actions by OSHA concerning working conditions related to the operation of air conditioning and heating systems or high levels of air contaminants in the cabs of this equipment. FRA is prepared to address these working conditions that may arise in these cabs, either through consultation with employers to remedy problems, or through the imposition of an enforcement action to bring about compliance.

OSHA has announced plans to revise its regulations regarding protection from silica dust. Therefore, FRA proposes to incorporate by reference the OSHA standards as revised, making it clear that when the revised OSHA standards go into effect, FRA will likewise enforce the revised standards on those machines over which FRA has jurisdiction. This incorporation will ensure that the proposed OSHA revision does not create an inconsistency where some types of roadway machines are governed by the revised standards enforced by OSHA and others are governed by the older standards enforced by FRA. FRA's extent of protection reaches only as far as the cab of the covered on-track roadway maintenance machine. The adoption of OSHA standards by FRA does not include protection from silica dust for employees not working inside the cabs of covered on-track roadway maintenance machines. For example, roadway workers working along the right-of-way continue to receive silica dust protection as administered by OSHA. Workers inside the cabs receive protection from FRA while working inside the cab, but receive protection from OSHA when working outside the cab.

This proposal adopted in final form would not constitute an exercise of authority over noise exposure for employees working on or around equipment covered by this section. This requirement does not establish permissible noise exposure levels for employees working on or around this equipment. OSHA's existing standards for noise exposure, 29 CFR 1910.95, will continue to apply.

Paragraph (g) requires that new on-track roadway maintenance machines, other than the specific types listed in paragraph (a) that are designed with enclosed cabs, shall be equipped with operative heating and ventilation systems.

Paragraph (h) refers to new on-track roadway maintenance machines that have, in addition to the main cab, non-enclosed operator stations in other places on the machine. These stations should be equipped with covering of some kind that will protect the operator in that position from midday sun or from normal rain. Of course, there will be times during the day when the sun is in such a position in the sky that a covering will not completely protect the operator from the sun. Likewise, a cover may not completely protect an operator from very heavy or wind-driven rain. This paragraph is not intended to require coverings to protect the operator in all circumstances.

The coverings are required only where the design of the machine allows for placement of a covering. Some operator's positions may be situated such that the addition of a covering is either impossible or would obstruct another working part of the equipment. In those instances, the coverings will not be required.

Section 214.507—Required Safety Equipment for New On-Track Roadway Maintenance Machines

Section 214.507 specifies the safety equipment required on all new on-track roadway maintenance machines. Several of the requirements are structural in nature, such as seats and handrails, and would be best met through engineering design by the equipment manufacturer. Other requirements, like fire extinguishers and first aid kits, can be installed either by the manufacturer or by the employer after delivery from the manufacturer.

Paragraph (a) requires that each new on-track roadway maintenance machine be equipped with a seat for each operator, unless the machine is designed to be operated by an operator in the standing position. Each roadway worker transported on a piece of on-track roadway maintenance machinery is required to have a safe and secure position with handholds, handrails, or a secure seat. These safe and secure positions should be located so that they offer protection from moving parts of the machine which could entangle clothing or body extremities. FRA is considering additional regulatory language describing ''safe and secure positions'' with more specificity. FRA requests comments about the need for more specific descriptions of ''safe and secure positions'' and what those descriptions should include.

Some on-track roadway maintenance machines are equipped with turntables to allow them to quickly change working direction when wye or loop tracks are not readily accessible. Paragraph (a) will require new machines to have turntables equipped with a positive method of mechanical securement, through engagement of pins and hooks, to prevent the lowering of the turntable device below the head of the rail when not in use. This arrangement of pins and hooks will provide a safety redundancy in case the main activation system fails or is accidentally triggered.

Paragraph (a) requires new on-track roadway maintenance machines to have windshields made of safety glass or other material with similar properties, such as Lexan. The machinery is also required to have power windshield wipers; however, in cases where traditional windshield wipers are incompatible with the windshield material, the employer should provide a suitable alternative that offers the operator an equivalent level of vision.

Paragraph (a) requires that new on-track roadway maintenance machines be equipped with primary braking systems capable of effectively controlling the movement of the machines under normal operating conditions. New machines must also have a suitable first aid kit and fire extinguisher readily accessible to the operator(s). The first aid kit must meet the requirements of 29 CFR 1926.50(d)(2), as amended (OSHA regulations). This requirement means that the first aid supplies in the kits must be in individual sealed packages for each type of item and placed in a weatherproof container. The kits must be inspected weekly and expended items replaced. OSHA does not regulate the minimum contents of the first aid

kit, but it recommends as an example the description of the contents of a generic first aid kit described in American National Standard (ANSI) Z308.1–1978 ''Minimum Requirements for Industrial Unit-Type First-Aid Kits.'' (See Appendix A to 29 CFR 1926.50.)

The fire extinguisher must be operative and properly charged, securely mounted near the operator's work station, and designed with a rating of 5 BC or higher. A fire extinguisher with a ''BC'' rating is suitable to combat fires generated by flammable liquids or electrical equipment. The ''5'' designation indicates the extinguisher's volume and fire-fighting capacity. A requirement of a 5BC rating is consistent with workplace standards in other industries.

Where new on-track roadway maintenance machines are designed to be operated with the operator in a standing position, the requirements of paragraph (a)(1) of this section do not apply. Paragraph (b) requires these machines to be designed and equipped with handholds and handrails that provide the operator with a safe and secure position.

Paragraph (c) requires that an on-track roadway maintenance machine with a light weight in excess of 32,500 pounds be equipped with a speed indicator if the machine is operated at speeds in excess of 20 mph. The speed indicator must be calibrated to be accurate within ± 5 mph of the actual speed when speeds are 10 mph or faster.

Paragraph (d) requires the manufacturer of new on-track roadway maintenance machines to clearly display the as-built light weight of the machine. Light weight of the machine is calculated when the machine is not loaded with passengers or extraneous equipment not part of the machine itself. The light weight should be displayed in a conspicuous location on the machine and will serve to identify its proper category for the purposes of this regulation. The light weight will also provide essential information to crane operators in the event the machines are off-loaded to flatbed trucks or rail cars for shipment from one work site to another.

Section 214.509—Required Visual Illumination and Reflective Devices for New On-Track Roadway Maintenance Machines.

Section 214.509 prescribes requirements for lights and reflective devices for new on-track roadway maintenance machines. The machine operator must have sufficient light to safely work or travel, especially during night time operations. To ensure that the machines are visible to roadway workers on the track and to vehicular traffic at highway-rail crossings, they must be equipped with headlights or other illumination devices that, under normal weather and atmospheric conditions, can illuminate the track ahead for a distance of 300 feet.

In several paragraphs, this section refers to visibility in normal weather and atmospheric conditions. The requirement for illumination for 300 feet is a measure to be considered under generally clement weather and atmospheric conditions. FRA understands that during periods of rain, fog, snow and other occurrences that are common in normal weather patterns, the lighting capability of the illuminating devices may temporarily be unable to extend a full 300 feet. These temporary instances when full illumination is not possible will not be considered a violation of this regulation. In addition, FRA will not consider unusual weather events such as hurricanes, tornadoes, eclipses, or horizontally driven snowstorms to be normal weather and atmospheric conditions under which this regulation must apply.

Paragraph (a)(1) requires an illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions. When on-track roadway maintenance machines are operated between ½ hour after sunset and ½ hour before sunrise, or in dimly lit areas such as tunnels, they are required by paragraph (a)(2) to be equipped with operating work lights unless equivalent lighting is otherwise provided, for example, by portable wayside generator-driven light plants.

Paragraph (a)(3) requires an operative warning light or beacon mounted to the roof of the machine. The light or beacon should be designed to intermittently flash while rotating 360 degrees. Exempt from this requirement are on-track roadway maintenance machines that have a light weight greater than 7,000 pounds and less than 17,500 pounds and are designed without fixed roofs.

Paragraph (a)(4) requires on-track roadway maintenance machines to be equipped with brake lights activated by an application of the machine braking system. The brake light should be visible for a distance of 300 feet under normal weather and atmospheric conditions.

Paragraph (a)(5) requires that on-track roadway maintenance machines be equipped with operative rearward viewing devices, such as rearview mirrors or their functional equivalent, to enable machine operators to better see other machines or roadway workers within the immediate work zone.

Section 214.511—Required Audible Warning Devices for New On-Track Roadway Maintenance Machines

This section requires audible warning devices on new on-track roadway maintenance machines to provide additional safety for roadway workers as well as other machine operators.

Paragraph (a)(1) specifies that audible warning devices, such as horns, produce sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the audible warning device must be clearly identifiable and within easy reach of the machine operator.

Paragraph (a)(2) requires that automatic change-of-direction alarms produce an audible signal that is at least three seconds long, is loud enough to be heard by roadway workers and other machine operators within the immediate work area, and is uniquely distinguishable from any surrounding noise. The change-of-direction alarm should sound automatically in each instance where the on-track roadway maintenance machine's transmission changes the machine's movement direction.

In addressing the required loudness of the audible warning devices and change-of-direction alarms, the Task Group chose not to set a decibel standard. However, the standard as proposed, *i.e.,* ''loud enough to be heard by * * * workers * * * within the immediate work area,'' may invite too many variables, making the standard difficult for FRA to enforce. FRA invites comments about whether or not this standard should be changed to a particular decibel level, and if so, what level.

Section 214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines

This section specifies a schedule of retrofit items applicable to all existing on-track roadway maintenance machines. By definition referenced in § 214.7, *existing* means any on-track roadway maintenance machine that was in existence or was on order prior to [insert date 90 days following the effective date of this rule.]

Paragraph (a)(1) states that each roadway worker transported on an existing on-track roadway maintenance machine shall have a safe and secure position that also provides protection from moving machine parts that could entangle clothing or body extremities.

These positions may include seats or foot platforms with handholds so that the roadway worker can maintain a stable and balanced position on the machine as it is moving down the track. Roadway workers are prohibited from being transported on machines on which it is not possible to provide safe and secure positions for them.

Because there exists no set standard or pattern for where positions are located on an on-track roadway maintenance machine for roadway workers to ride, paragraph (b) requires that each existing machine have stenciling or documentation on the machine to clearly identify the location of safe and secure positions for the machine operator and any roadway workers transported on the machine. If roadway workers are not permitted on a particular machine, that prohibition should be so noted on the stenciling or documentation. FRA received a suggestion from some members of the Track Working Group that a systemwide operating rule prohibiting the transport of roadway workers on certain roadway maintenance machines could serve as an effective and efficient means of documenting this prohibition. FRA is therefore requesting comments regarding the effectiveness and efficiency of allowing employers the option of using an operating rule to identify which roadway maintenance machines are prohibited from transporting roadway workers.

Paragraph (c) states that within 18 months from the effective date of this rule, each existing on-track roadway maintenance machine shall have a permanent or portable horn or other audible warning device. The audible warning device shall be easily accessible to the machine operator and shall produce a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area.

As in section 214.511, the Task Group chose not to set a decibel standard to address the required loudness of the audible warning devices on existing roadway maintenance machines. FRA invites comments addressing whether or not such a standard is necessary, and if so, what decibel level is appropriate.

Paragraph (d) states that within 18 months from the effective date of this rule, each existing on-track roadway maintenance machine shall be equipped with a permanent illumination device, such as a headlight, or a portable light source securely placed on the machine and not hand-held. The portable light does not have to be permanently affixed to the vehicle. FRA will consider the light source to be securely placed on the machine if it is held in place through any arrangement of screws, bolts, mounting clips, or heavy-duty magnets that maintains the light steadily in place without requiring a person to hold it. Lights are required if the machine is operated between ½ hour after sunset and ½ hour before sunrise or in dimly light areas such as tunnels. The illumination device or portable light source must be capable of illuminating obstructions on the track ahead for a distance of 300 feet under normal weather and atmospheric conditions.

The regulation permits the employers up to 18 months to retrofit the on-track roadway maintenance machines with audible warning and illumination devices to allow time to order this new equipment if necessary. The stenciling requirement, however, becomes effective within one year of the effective date of the rule because most employers are already equipped with stencils and paint.

Section 214.515—Overhead Covers for Existing On-Track Roadway Maintenance Machines

This section addresses the maintenance of overhead covers on existing on-track roadway maintenance machines, as well as the feasibility of providing overhead covers on certain machines not originally designed and manufactured with such protection.

Paragraph(a) states that within 18 months from the effective date of this rule, overhead covers on existing on-track roadway maintenance machines shall be repaired and thereafter maintained in accordance with the provisions of § 214.531 of this subpart. The covers or canopies must be capable of shielding the operator from overhead sunlight, but are not expected to offer complete protection from the sun when the sun is relatively low in the sky, soon after sunrise and just before sunset. The covers should also be capable of shielding the operator from ordinary rainfall or snowfall, but are not expected to shield the operator from the effects of windblown precipitation.

Many older on-track roadway maintenance machines were not designed with overhead covers, although machine operators could greatly benefit from their presence. Paragraph (b) allows an operator assigned to operate a particular on-track roadway maintenance machine, or that operator's designated representative, to request in writing that the employer evaluate the feasibility of providing an overhead cover where original design specifications did not provide for one or where the overhead cover was an option that was not purchased. Under paragraph (b), the employer must respond in writing within 60 days to each request.

If the employer finds that the addition of an overhead cover is not feasible for a particular machine, the written response must state why. There may be a number of reasons why an employer would find that the addition of an overhead cover is not feasible. There may be no room on the machine to install an effective cover or canopy, or the machine may not provide a safe place on which a cover may be mounted or attached. Employers must proceed with caution in retrofitting a cover that is supported by an additional pole or stanchion. A stanchion may be used incorrectly by a roadway worker as a handhold. FRA therefore recommends that stanchions added to a machine for any reason should be strong and secure enough to also qualify as a safe handhold for a roadway worker.

Section 214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured After 1990

This section specifies a schedule of retrofit items for existing on-track roadway maintenance machines manufactured after 1990. On-track roadway maintenance machines manufactured prior to 1990 are exempt from these requirements. Within 18 months from the effective date of this rule, the following retrofitted items should be installed:

- Change-of-direction alarm, or rearview mirror or other rearward viewing device. The proposed rule makes such an alarm or rearview mirror a requirement ''if feasible from an engineering standpoint.'' Among the wide variety of roadway maintenance machines, there exist some machines to which such a retrofit would be useless, unnecessary, impossible, or impractical. Under this proposed regulation, feasibility for retrofitting a change-of-direction alarm or rearview mirror to a particular roadway maintenance machine would be determined by the employer after considering available compliance options, as well as the durability and functional quality of the proposed retrofit on a machine specific basis.

A change-of-direction alarm notifies workers near the roadway maintenance machine that its movement is about to change. A rearward viewing device assists the operator of the machine in safeguarding roadway workers in area of the machine. Both devices offer protection for roadway workers, but from two different perspectives. FRA seeks comments regarding whether this standard should require both a change-

of-direction alarm and a rearward viewing device in order to afford adequate protection for roadway workers working in the area of a roadway maintenance machine.

• Heater that is operative when the ambient temperature is less than 50 degrees Fahrenheit. Roadway workers typically dress in seasonal clothes appropriate to perform work outdoors, unlike locomotive cab employees who expect to spend most of the workday inside the cab of a locomotive. Therefore, the threshold ambient temperature may be as low as 49 degrees Fahrenheit before triggering the requirement for an operative heater in a roadway maintenance machine.

• Light weight of the machine stenciled, or otherwise clearly displayed, on the machine if the light weight is known.

• Brake lights or other reflective devices or material.

• Safety glass when glass is normally replaced on the machine. However, if the employer has on hand as of the effective date of this rule replacement glass that is other than safety glass and is specifically intended for use on these machines, the employer may utilize the supply until it is exhausted. The Task Group did not specify standards for safety glass. FRA requests comments about whether the final rule should include safety glass standards, such as requirements delineated in 49 CFR part 223 (Safety Glazing Standards).

• Turntable restraint devices, such as an arrangement of pins and hooks designed to prevent an undesired lowering of the turntable device, or a warning light that would indicate to the machine operator that the turntable device is not in a normal travel position.

• Handholds, handrails, secure seats or benches for each roadway worker transported on a machine. FRA is considering adding to this rule regulatory standards for these handholds, handrails, seats and benches. Therefore, FRA seeks comments regarding the need for such regulatory standards and what those standards should include.

Section 214.519—Floors, Decks, Stairs, and Ladders for New and Existing On-Track Roadway Maintenance Machines

All new and existing on-track roadway maintenance machines shall have floors, decks, stairs, and ladders that are of appropriate design. The purpose of this requirement is to provide secure footing for the machine operator and any roadway workers transported on the machine. Current industry standards specifying material such as diamond plate, rubber tile, or other slip-resistant material design would be considered appropriate for the purposes of this regulation.

In addition, accumulations of oil, grease, or other contaminants or obstructions that could create a slipping, falling, or fire hazard must be promptly removed from floors, decks, stairs, and ladders.

Section 214.521—Flagging Equipment for On-Track Roadway Maintenance Machines and Hi-Rails Vehicles

This section requires that flagging kits be available when on-track roadway maintenance machines and hi-rail vehicles are operated over trackage subject to a railroad operating rule requiring flagging. Flagging kits must comply with the requirements specified in the operating rules of railroads over which the equipment is being operated. This requirement applies to each on-track roadway maintenance machine or hi-rail vehicle that is being operated alone or as the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority. Flagging kits are not needed, and thus are not required, for machines and hi-rail vehicles that are being operated as middle vehicles in a single roadway work group. However, vehicles must be under the same occupancy authority to be considered part of a single group.

Section 214.523—Hi-Rail Vehicles

This section prescribes certain inspection and record keeping requirements for all hi-rail vehicles, new as well as existing. It also prescribes specific requirements applied to only new hi-rail vehicles.

By definition, hi-rail vehicles have retractable flanged wheels giving them the ability to operate over the general highway system as well as on the railroad track. Operation of these vehicles over the general highway system requires the vehicle to be manufactured to meet Federal Motor Vehicle Safety Standards.

Paragraph (a) requires that all hi-rail vehicles must have the safety critical components of the hi-rail gear inspected at least annually. Tram, wheel wear and gage measurements must be checked at least annually and adjusted, if necessary, to provide for continued safe operation. If the hi-rail vehicle is involved in a derailment or highway accident, it shall be inspected and necessary repairs or adjustments made in the hi-rail gear prior to its next operation on the railroad track. An inspection of a hi-rail vehicle following a derailment or highway accident may consist of a cursory safety check to ensure that the vehicle remains safe to operate; it need not be a full inspection comparable to the required annual inspection.

Paragraph (b) specifies a record keeping requirement to document the safety inspections. Records may be retained on paper forms devised by the employer, or they may be stored electronically in a computer data base. The employer shall maintain each record for at least one year, and the records shall be made available for inspection and copying by the FRA during normal business hours. The records may be kept on the hi-rail vehicle itself, or maintained at a location designated by the employer.

The requirements specific to only new hi-rail vehicles are contained in Paragraph (c). Each new hi-rail vehicle shall be equipped with:

• An automatic change-of-direction alarm or backup alarm which produces an audible signal that is at least three seconds long, loud enough to be heard by roadway workers and other machine operators within the immediate work area, and uniquely distinguishable from any surrounding noise.

• An operative warning light or beacon mounted to the roof of the vehicle and designed to intermittently flash or rotate 360 degrees. The Task Group did not discuss requirements for a particular color for the warning light or beacon. FRA requests comments about whether or not the final rule should specify a color for the warning light and if so, what color is appropriate.

Paragraph (c) does not specify a decibel level required for the change-of-direction or backup alarms on hi-rail vehicles. Rather, the proposed standard for loudness of these devices is ''loud enough to be heard by roadway workers and other machine operators within the immediate area.'' Such a standard may invite too many variables, making it difficult for FRA to enforce. FRA invites comment about whether or not a decibel standard should be required for these devices, and if so, what that decibel level should be.

Paragraph (d) requires the operator of each new hi-rail vehicle to inspect the vehicle for compliance with this subpart prior to each daily operation of that vehicle.

Paragraph (e) requires that any non-complying condition that cannot be repaired immediately should be tagged and dated in a manner prescribed by the employer and promptly reported to the employer's designated official.

Paragraph (f) states that defective automatic change-of-direction or backup alarms and 360-degree intermittent

warning lights or beacons must be repaired or replaced as soon as practical within seven calendar days.

Section 214.525—Towing With On-Track Roadway Maintenance Machines or Hi-Rails Vehicles

This section prescribes the manner in which on-track roadway maintenance machines or hi-rail may be used to tow pushcars or other on-track roadway maintenance machines.

Paragraph (a) specifies that whenever an on-track roadway maintenance machine or hi-rail is used to tow other equipment, it must provide a safe and secure attachment with a towing bar or other coupling device designed for that purpose.

The towing of pushcars or other on-track roadway maintenance equipment is prohibited under paragraph (b) when such an operation would exceed the braking capabilities of the on-track roadway maintenance machine or hi-rail doing the towing. When determining whether or not the braking capability of a machine or vehicle would be exceeded, the employer must also consider the track gradient or slope in the area, as well as the number and weight of pushcars or other equipment being towed. Paragraph (b) does not cover locomotives hauling conventional rail cars used in track maintenance work, such as ballast cars. Such locomotives must meet the requirements in 49 CFR part 229 (Railroad Locomotive Safety Standards).

Section 214.527—On-Track Roadway Maintenance Machines: Inspection for Compliance; Schedule for Repairs

This section prescribes the manner in which on-track roadway maintenance machines are to be inspected and repaired. Paragraph (a) requires the operator of an on-track roadway maintenance machine to perform a daily inspection of that machine for compliance with the requirements of this subpart. The inspection must take place prior to each daily operation of that machine. Under paragraph (b), any non-complying condition that cannot be immediately repaired must be tagged and dated according to established employer procedures and reported to the designated official.

Paragraph (c) allows for continued operation of on-track roadway maintenance machines with noted non-complying conditions subject to certain requirements:

- A machine with non-complying headlights or work lights may be operated only between the period from ½ hour before sunrise to ½ hour after sunset for seven calendar days. In other words, it may not be operated during the darkness between sunset and sunrise. The ½ hour before sunrise (dawn) and the ½ hour after sunset (dusk) are thought to provide enough light for safe operation on a temporary basis.
- Portable horns may be substituted for non-complying or missing horns or other audible warning devices for no more than seven calendar days.
- Temporary portable fire extinguishers that are readily available for use may replace missing, defective, or discharged permanent fire extinguishers on new on-track roadway maintenance machines for seven calendar days, after which time the permanent fire extinguisher must be replaced or repaired.
- Non-complying change-of-direction alarms or backup alarms, and 360-degree intermittent warning lights or beacons shall be repaired or replaced as soon as practical within seven calendar days.
- A structurally defective or missing operator seat shall be replaced or repaired within 24 hours, or by the start of the machine's next tour of duty, whichever is later. This paragraph provides flexibility for the employer in cases where the operator seat is found to be defective on a Thursday afternoon and the next tour of duty for that machine is not scheduled until the following Monday. If the operator's seat becomes defective during the machine's tour of duty, the machine may be operated for the remainder of the operator's tour of duty only if it is determined that the operation may continue in a safe manner.

Section 214.529—In-Service Failure of Primary Braking System

Paragraph (a) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, the machine may be operated for the remainder of the tour of duty through the use of a secondary braking system, if the machine is so equipped, or by coupling to another on-track roadway maintenance machine. In either case, the employer must determine that continued operation of the machine is safe. FRA is considering adding to this section criteria to be used by the employer in determining the safety of continuing to use an on-track roadway maintenance machine after its primary braking system has experienced a total in-service failure. FRA seeks comments about the need for such criteria and what the criteria should include.

Paragraph (b) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, when no secondary braking system is available and no other machine is available for coupling, the machine may, if it is determined to be safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired.

Section 214.531—Schedule of Repairs

This section specifies a general schedule of repairs for all on-track roadway maintenance machines and hi-rail vehicles. If an on-track roadway maintenance machine or hi-rail vehicle does not meet all of the requirements of this subpart, it shall be repaired as soon as practical within seven days.

More restrictive requirements for repairs to on-track roadway maintenance machines apply for missing or defective operator seats as prescribed in § 214.527(c)(5), as well as a total in-service failure of a primary braking system as prescribed in § 214.529. In the event necessary parts for the repair of a non-complying on-track roadway maintenance machine or hi-rail vehicle are not in the employer's inventory and must be ordered, the repair schedule is governed by the requirements specified in § 214.533 which addresses the availability of repair parts.

Section 214.533—Schedule of Repairs: Subject to Availability of Parts

Under paragraph (a) of this section, when necessary parts needed to repair a non-complying condition on an on-track roadway maintenance machine or new hi-rail vehicle are not in the employer's inventory, the employer must order the necessary parts by the end of the next business day following the report of the non-complying condition.

Paragraph (b) requires the employer to repair the non-complying on-track roadway maintenance machine or new hi-rail within seven days after receiving the necessary parts. However, if the non-complying condition still exists 30 days after the initial report of the condition, regardless of the reason, the employer must remove the on-track roadway maintenance machine or new hi-rail from service until the condition is brought into compliance. FRA realizes that there may be times when parts needed for repairs are difficult or impossible for the employer to obtain. The employer may continue to use the on-track roadway maintenance machine or new hi-rail with a non-complying condition until the necessary parts for repair are received, subject to the requirements of § 214.503. The defective machine or hi-rail must be removed

from service 30 days after the defect is reported. This provision prevents the use of a defective on-track roadway maintenance machine or new hi-rail for a protracted and undetermined length of time.

Paragraph (c) states that if the employer fails to order the necessary parts as required in paragraph (a) of this section, or fails to install the repair parts within seven days after receiving them as required in paragraph (b) of this section, it must remove the on-track roadway maintenance machine or new hi-rail from service until it is brought into compliance.

To ensure that the provisions of this section are followed, FRA must be able to review records concerning the ordering and installation of parts necessary to repair machines and hi-rails. Paragraph (d) requires the employer to maintain for one year records relating to the ordering and installation of repair parts on-track roadway maintenance machines and new hi-rails. The employer may decide how and where the records are kept. The records may be electronic or on paper. They may be stored on the vehicles or in a location chosen and designated by the employer.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies

This NPRM has been evaluated in accordance with existing policies and procedures. It is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, February, 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., Seventh Floor, Washington, DC. Photocopies also may be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

This proposal would cost about $1,250,000 per year. About 40% of that or $500,000 per year would go into safety enhancements which serve to prevent accidents and acute injuries of the type usually reported to FRA. That portion would generate benefits of about $1,900,000 per year. The remainder of the proposal would address long term risks like skin cancer and chronic diseases related to silica exposure, or would address event mitigation, through requiring first-aid kits and fire extinguishers. FRA does not have a good way to quantify that portion of the benefit, although existing industry practices, and the willing participation of the representatives of the railroads are substantial evidence that the burden is likely not to be very great. The almost infinite variety of equipment involved combined with limited information collection resources and reporting detail, make it impossible more accurately to measure the problem without a substantial expenditure of resources. But in consultation with our industry partners, we have agreed that there is a risk reduction opportunity. We have, together, come up with a reasonable minimum set of precautions and measures, at a reasonable level of costs, that we believe will achieve the desired reduction in risk. Our industry partners will willingly absorb these new costs because they believe it is justified to do so.

A significant portion of the costs of environmental controls will be offset by productivity enhancements. The vast majority of new roadway maintenance machines are ordered with air conditioning because it enhances productivity. There may be some cases in which the additional productivity does not offset the cost of the environmental controls, but there will be a safety benefit in terms of reduced long term exposure to silica dust.

FRA found one fatal accident in the years 1996–2000 which would have been prevented by the proposed rule. In that case a contract employee fell off a crane, which then rolled over him. The proposal would have required a safe place to ride on the crane and likely would have prevented the fatality. See FRA accident file CFE–4–97, 6/23/97, Fort Worth, Texas.

FRA analyzed the costs estimates provided to the task group by AAR. FRA believes that the number of units affected was estimated as too high a number by AAR, and has adjusted its estimates accordingly, but FRA seeks comments from knowledgeable parties regarding the number of units affected by each provision, the unit cost of the provision as it applies to those roadway maintenace machines, the annual maintenance and upkeep costs of the proposal, and the benefits of the proposal, including any particular serious accidents which FRA has overlooked in its analysis, which may be found in the public docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Initial Regulatory Flexibility Assessment (IRFA) which assesses the small entity impact on this proposal. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a railroad business ''line-haul operation'' that has fewer than 1,500 employees and a ''switching and terminal'' establishment with fewer than 500 employees. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority, FRA has published an interim policy which formally establishes ''small entities'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's (STB's) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposes to use this alternative definition of ''small entity'' for this rulemaking. Since this is an alternative definition, FRA is using it in consultation with the SBA and requests public comments on its use.

FRA took steps during the proceedings for this rulemaking to minimize the adverse effects of the proposal on small entities. FRA invited the American Short Line Railroad Administration (ASLRRA) to be a member of the task group. ASLRRA declined, securing representation by the individual also representing the AAR. It appears the proposal will have a minimal effect on small entities as the overwhelming majority of roadway maintenance machines owned by small entities were manufactured before 1990, and would be exempt from the proposal. FRA was careful to limit retrofit requirements, which might have imposed an undue burden on small

entities. There appears to be no substantial impact on a significant number of small entities. FRA seeks comments on the effect of the accompanying proposal on small entities.

The IRFA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a ''significant'' economic impact on a ''substantial'' number of small entities. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Assessment (RFA), FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by this proposed rule. The Agency will consider the comments and data it receives, or lack thereof, in making a decision on the RFA for the final rule.

C. Paperwork Reduction Act

The information collection requirements in this amendment to the final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements of the Subpart D, which will be added to those of the Roadway Worker Protection Final Rule (49 CFR part 214), and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total amount burden cost
214.503—Good Faith Challenges; Procedures for Notification and Resolution.	50,000 Roadway Workers.	250 notifications	10 minutes	42	1,260
—Resolution Procedures	685 Railroads	20 procedures	2 hours	40	1,520
214.505—Req'd Environmental Control and Protection Systems For New On-Line Roadway Maintenance Machines with Enclosed Cabs.	685 Railroads	30 lists	2.5 hours	75	2,850
—Designated Machines	685 Railroads	20 add'l machine	5 minutes	2	76
214.511—Req'd Audible Warning Devices For New On-Track Roadway Maintenance Machines.	685 Railroads	250 mechanisms	5 minutes	21	630
214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines.	685 Railroads	1,200 stencils	5 minutes	100	3,000
—Identification of Triggering Mechanism—Horns.	685 Railroads	4,000 mechanisms	5 minutes	333	9,990
214.515—Overhead Covers For Existing On-Track Roadway Maintenance Machines.	685 Railroads	1,050 requests + 050 responses.	10 minutes + 20 minutes.	525	18,550
214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured After 1990.	685 Railroads	6,000 stencils	5 minutes	500	15,000
214.523—Hi-Rail Vehicles	685 Railroads	3,000 insp. record	30 minutes	1,500	45,000
—Non-Complying Conditions	685 Railroads	250 tags + 250 reports.	5 min. + 5 min	84	2,250
214.527—inspection for Compliance; Repair Schedules.	685 Railroads	550 tags + 550 reports.	5 min. + 5 min	184	5,520
214.533—Schedule of Repairs; Subject to Availability of Parts.	685 Railroads	250 records	15 minutes	63	2,394

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than March 12, 2001. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 17, 1120 Vermont Ave., NW., MS–17, Washington. DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain

current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of the FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This NPRM meets the criteria that establish this as a non-major action for environmental purposes.

E. Federalism Implications

FRA has analyzed this NPRM in accordance with the principles and criteria contained in 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 43255. From the information FRA has at this time, it is apparent that the rule as proposed may have federalism implications. The governance of safety of hi-rail vehicles may have an unintended effect on state laws addressing the safety of these vehicles as they are operated over roads and highways. The rule proposed in this document is meant to cover the safety of hi-rail vehicles only while they are operated on railroad tracks. The proposed requirements on hi-rail vehicles are not intended to preempt any state laws addressing motor vehicles. FRA requests comments concerning what state laws, if any, may be affected by this proposed rule.

If it is determined through the comment period that federalism is impacted, FRA will document its consultations with State and local officials as appropriate and will prepare a federalism summary impact statement to accompany the final rule. FRA will continue to consult with State and local officials during this rulemaking proceeding. The RSAC, which recommended this proposed rule, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO) and the Association of State Rail Safety Managers (ASRSM). The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members.

F. Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law.'' (See Section 201). Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any 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 $100,000,000 or more (adjusted annually for inflations) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement . . .'' detailing the effect on State, local and tribal governments and the private sector. The NPRM issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and record keeping requirements.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Part 214, Title 49, Code of Federal Regulations as follows:

1. The authority citation for Part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

2. Section 214.7 is amended by adding in alphabetical order definitions as follows:

§ 214.7 Definitions.

* * * * *

Designated official means any person(s) designated by the employer to receive notification of non-complying conditions on-track roadway maintenance machines and hi-rail vehicles.

* * * * *

Hi-rail vehicle means a roadway maintenance machine that is manufactured to meet Federal Motor Vehicle Safety Standards and is equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks.

Hi-rail vehicle, new means a hi-rail vehicle that is ordered after [date 90 days following the effective date of this rule] or completed after [date one year following the effective date of this rule].

* * * * *

On-track roadway maintenance machine means a self-propelled, rail mounted, non-highway, maintenance machine whose light weight is in excess of 7,500 pounds, and whose purpose is not for the inspection of railroad track.

On-track roadway maintenance machine, existing means any on-track roadway maintenance machine that does not meet the definition of a new on-track roadway maintenance machine.

On-track roadway maintenance machine, new means an on-track roadway maintenance machine that is ordered after [date 90 days following the effective date of this rule] and completed after [date one year following the effective date of this rule].

* * * * *

3. Subpart D is added to part 214 reading as follows:

Subpart D—On-Track Roadway Maintenance Machines and Hi-Rails

Sec.

214.501 Purpose and scope.
214.503 Good faith challenges; procedures for notification and resultion.
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.
214.507 Required safety equipment for new on-track roadway maintenance machines.
214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.
214.511 Required audible warning devices for new on-track roadway maintenance machines.
214.513 Retrofitting of existing on-track roadway maintenance machines.
214.515 Overhead covers for existing on-track roadway maintenance machines.
214.517 Retrofitting on existing on-track roadway maintenance machines manufactured after 1990.
214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines.
214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.
214.523 Hi-rail vehicles.
214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.
214.527 Inspection for compliance; schedule for repairs.
214.529 In-service failure of primary braking system.
214.531 Schedule of repairs.

214.533 Schedule of repairs; subject to availability of parts.

§ 214.501 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties caused by the lawful operation of on-track roadway maintenance machines and hi-rail vehicles.

(b) This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles. An employer may prescribe additional or more stringent standards that are consistent with this subpart.

(c) Any working condition that involves the protection of employees engaged in roadway maintenance duties covered by this subpart but is not within the subject matter addressed by this subpart, including employee exposure to noise, shall be governed by the regulations of the U.S. Department of Labor, Occupational Safety and Health Administration (29 CFR part 110).

§ 214.503 Good faith challenges; procedures for notification and resolution.

(a) An employee operating an on-track roadway maintenance machine will inform the employer whenever the employee makes a good faith determination that the employer's rules governing the machine do not comply with FRA regulations.

(b) Any employee charged with operating an on-track roadway maintenance machine covered by this subpart may refuse to operate the machine if the employee makes a good faith determination that it does not comply with this subpart or has a condition that prohibits its safe operation. The employer will not require the employee to operate the machine until the challenge resulting from the good faith determination is resolved.

(c) Each employer will have in place, and will follow, written procedures to assure prompt and equitable resolution of challenges resulting from good faith determinations made in accordance with this section. The procedures will include specific steps to be taken by the employer to investigate each good faith challenge, as well as procedures to follow once the employer finds a challenged machine does not comply with this subpart or is otherwise unsafe to operate. The procedures will also include the title and location of the employer's designated official.

§ 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.

(a) The following new on-track roadway maintenance machines will be equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

(1) Ballast regulators;

(2) Tampers;

(3) Mechanical brooms;

(4) Rotary scarifiers;

(5) Undercutters; or

(6) Functional equivalents of any of the machines listed in the paragraph (a).

(b) New on-track roadway maintenance machines, and existing roadway maintenance machines specifically designated by the employer, of the types listed in paragraph (a) of this section will be capable of protecting employees on the machines from exposure to air contaminants, in accordance with 29 CFR 1910.1000.

(c) An employer will maintain a list of new and designated roadway maintenance machines of the types listed in paragraph (a) of this section. The list will be kept current and available to the Federal Railroad Administration and other Federal and state agencies upon request.

(d) An existing roadway maintenance machine of the types listed in paragraph (a) of this section becomes ''designated'' when the employer adds the machine to the list required in paragraph (c) of this section. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to paragraph (b) of this section until it is retired or sold.

(e) If the ventilation system on a new on-track roadway maintenance machine or a designated existing on-track roadway maintenance machine of the types listed in paragraph (a) of this section becomes incapable of protecting employees on the machine from exposure to air contaminants in accordance with 29 CFR 1910.1000, personal respiratory protective equipment will be provided for each operator of that machine until the machine is repaired in accordance with § 214.531.

(f) Personal protective equipment provided for operators of new on-track roadway maintenance machines and designated existing on-track roadway maintenance machines of the types listed in paragraph (a) of this section will meet U.S. Department of Labor standards set forth in 29 CFR 1910.134, including Appendices A, B–1, B–2, C, and D of that section.

(g) New on-track roadway maintenance machines with enclosed cabs, other than the types listed in paragraph (a) of this section, will be equipped with operative heating and ventilation systems.

(h) When new on-track roadway maintenance machines require operation from non-enclosed stations outside of the main cab, the non-enclosed stations will be equipped, where feasible from an engineering standpoint, with a permanent or temporary roof, canopy, or umbrella designed to provide some cover from normal rain and midday sun.

§ 214.507 Required safety equipment for new on-track roadway maintenance machines.

(a) Each new on-track roadway maintenance machine will be equipped with:

(1) A seat for each operator, except as provided for in paragraph (b) of this section;

(2) A safe and secure position with handholds, handrails, or a secure seat for each roadway worker transported on that machine, as well as protection from moving parts inside of the cab;

(3) A positive method of securement for turntables through engagement of pins and hooks that block the descent of devices below the rail head when not in use;

(4) A windshield with safety glass, or other material with similar properties, and power windshield wipers or suitable alternatives that provide the operator an equivalent level of vision if windshield wipers are incompatible with the windshield material;

(5) A machine braking system capable of effectively controlling the movement of the machine under normal operating conditions;

(6) A first aid kit that is readily accessible and meets U.S. Department of Labor requirements of 29 CFR 1926.50(d)(2); and

(7) An operative and properly charged fire extinguisher of 5 BC rating or higher which is securely mounted and readily accessible to the operator from the operator's work station.

(b) New on-track roadway maintenance machines designed to be operated and transported by the operator in a standing position will be equipped with handholds and handrails to provide the operator with a safe and secure position.

(c) Each new on-track roadway maintenance machine that weighs more than 32,500 pounds light weight and is operated in excess of 20 mph will be equipped with a speed indicator that is accurate within ± 5 mph of actual speed at speeds 10 mph and above.

(d) Each new on-track roadway maintenance machine will have the as-built light weight displayed in a conspicuous location on the machine.

§ 214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.

Each new on-track roadway maintenance machine will be equipped with the following visual illumination and reflective devices:

(a) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions;

(b) Work lights, if the machine is operated during the period from ½ hour after sunset to ½ hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided;

(c) An operative 360-degree intermittent warning light or beacon mounted on the roof of the machine. New roadway maintenance machines that are not equipped with fixed roofs and have a light weight greater than 7,000 pounds but less than 17,500 pounds are exempt from this requirement;

(d) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and

(e) Visual reflective equipment, such as rearview mirrors.

§ 214.511 Required audible warning devices for new on-track roadway maintenance machines.

Each new on-track roadway maintenance machine will be equipped with:

(a) A horn or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device shall be clearly identifiable and within easy reach of the machine operator; and

(b) An automatic change-of-direction alarm which provides an audible signal that is at least three seconds long and is distinguishable from the surrounding noise.

§ 214.513 Retrofitting of existing on-track roadway maintenance machines.

(a) Each existing on-track roadway maintenance machine will have a safe and secure position for each roadway worker transported on that machine and protection from moving parts inside the cab.

(b) By [date one year following the effective date of this rule], each existing on-track roadway maintenance machine will have stenciling or documentation on the machine identifying the location of safe and secure positions for the machine operator and roadway workers to be transported on the machine. If roadway workers are not permitted on the machine, the prohibition will be noted by the stenciling or documentation on the machine.

(c) By [date 18 months following the effective date of this rule], each existing on-track roadway maintenance machine will be equipped with a permanent or portable horn or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device will be clearly identifiable and within easy reach of the machine operator.

(d) By [date 18 months following the effective date of this rule], each existing on-track roadway maintenance machine will be equipped with a permanent illumination device or a portable light that is securely placed and not hand-held. The illumination device or portable light will be capable of illuminating obstructions on the track ahead for a distance of 300 feet under normal weather and atmospheric conditions when the machine is operated during the period from ½ hour after sunset to ½ hour before sunrise or in dark areas such as tunnels.

§ 214.515 Overhead covers for existing on-track roadway maintenance machines.

(a) Overhead covers on existing on-track roadway maintenance machines will be repaired by [date 18 months following the effective date of this rule] and thereafter maintained in accordance with the provisions of § 214.531.

(b) The employer will evaluate the feasibility of providing an overhead cover for an existing on-track roadway maintenance machine if requested in writing by the operator assigned to operate that machine or by the operator's designated representative. The employer will provide the operator a written response for each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response will include an explanation of the reasoning used by the employer to reach that conclusion.

§ 214.517 Retrofitting of existing on-track roadway maintenance machines manufactured after 1990.

In addition to the requirements of § 214.513, after [date 18 months following the effective date of this rule], each existing on-track roadway maintenance machine manufactured after 1990 must have the following:

(a) A change-of-direction alarm or rearview mirror or other rearward viewing device, if feasible from an engineering standpoint;

(b) An operative heater, when the machine is equipped with a heater by the manufacturer and is operated at an ambient temperature less than 50 degrees Fahrenheit;

(c) The light weight of the machine stenciled, or otherwise clearly displayed, on the machine if the light weight is known;

(d) Reflective material, or a reflective device, or operable brake lights;

(e) Safety glass when glass is normally replaced, except that replacement glass that is specifically intended for on-track roadway maintenance machines and is in the employer's inventory as of [effective date of this rule] may be utilized until exhausted;

(f) A turntable restraint device to prevent undesired lowering, or a warning light indicating that the turntable is not in the normal travel position; and

(g) Handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine.

§ 214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines.

Floors, decks, stairs, and ladders of on-track roadway maintenance machines will be of appropriate design and maintained to provide secure access and footing, and will be free of oil, grease, or any obstruction which creates a slipping, falling, or fire hazard.

§ 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.

When operating over trackage subject to a railroad operating rule requiring flagging, each on-track roadway maintenance machine and each hi-rail vehicle will have on board a flagging kit that complies with the operating rules of the railroad if the equipment is not part of a roadway work group or is the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority.

§ 214.523 Hi-rail vehicles.

(a) The hi-rail gear of all hi-rail vehicles will be safety inspected at least annually. Tram, wheel wear and gage measurements will be adjusted if necessary to allow the vehicle to be safely operated.

(b) Each employer will keep records pertaining to compliance with paragraph (a) of this section. Records may be kept on forms provided by the employer or by electronic means. The employer will retain each record for at least one year, and the records will be available for inspection and copying by

the Federal Railroad Administration during normal business hours. The records may be kept on the hi-rail vehicle or at a location designated by the employer.

(c) A new hi-rail vehicle will be equipped with:

(1) An automatic change-of-direction alarm or backup alarm that provides an audible signal at least three seconds long and distinguishable from the surrounding noise; and

(2) An operable 360-degree intermittent warning light or beacon mounted on the outside of the vehicle.

(d) Prior to starting work each day, the operator of a new hi-rail vehicle will check the hi-rail vehicle for compliance with this subpart.

(e) Non-complying conditions that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(f) Non-complying automatic change-of-direction alarms, backup alarms, or 360-degree intermittent warning lights or beacons will be repaired or replaced as soon as practical within seven days.

§ 214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.

(a) When used to tow pushcars or other maintenance-of-way equipment, each on-track roadway maintenance machine or hi-rail vehicle will be equipped with a towing bar or other coupling device that provides a safe and secure attachment.

(b) An on-track roadway maintenance machine or hi-rail vehicle will not be used to tow pushcars or other maintenance-of-way equipment if the towing would cause the machine or hi-rail vehicle to exceed the capabilities of its braking system. In judging the limit of the braking system, the employer will consider the track grade (slope), as well as the number and weight of pushcars or other equipment being towed.

§ 214.527 Inspection for compliance; schedule for repairs.

(a) Prior to starting work each day, the operator of the on-track roadway maintenance machine will check the machine components for compliance with this subpart.

(b) Non-complying conditions that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(c) The operation of an on-track roadway maintenance machine with noted non-complying conditions will be governed by the following requirements:

(1) An on-track roadway maintenance machine with headlights or work lights that are not in compliance may be operated from ½ hour before sunrise to ½ hour after sunset for seven calendar days;

(2) Portable horns may be substituted for non-complying or missing horns for a period not to exceed seven calendar days;

(3) Fire extinguishers readily available for use may temporarily replace missing, defective or discharged fire extinguishers on new on-track roadway maintenance machines for a period not to exceed seven calendar days pending the permanent replacement or repair of the missing, defective or used fire extinguisher;

(4) Non-complying automatic change-of-direction alarms, backup alarms, or 360-degree intermittent warning lights or beacons will be repaired or replaced as soon as practical within seven calendar days; and

(5) A structurally defective or missing operator seat will be replaced or repaired within 24 hours or by the start of the machine's next tour of duty, whichever is later. The machine may be operated for the remainder of the operator's tour of duty if the defective or missing operator seat does not prevent its safe operation.

§ 214.529 In-service failure of primary braking system.

(a) In the event of a total in-service failure of its primary braking system, an on-track roadway maintenance machine may be operated for the remainder of the tour of duty with the use of a secondary braking system or by coupling to another machine, if such operations may be done safely.

(b) If the total in-service failure of an on-track roadway maintenance machine's primary braking system occurs where other equipment is not available for coupling, the machine may, if it is safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired.

§ 214.531 Schedule of repairs.

Except as provided in §§ 214.527(c)(5), 214.529, and 214.533, an on-track roadway maintenance machine or new hi-rail vehicle that does not meet all the requirements of this subpart will be repaired as soon as practical within seven calendar days. If repairs are not made within seven calendar days, the on-track roadway maintenance machine or new hi-rail vehicle will be placed out of service.

§ 214.533 Schedule of repairs; subject to availability of parts.

(a) The employer will order parts necessary to repair a non-complying condition on an on-track roadway maintenance machine or a new hi-rail vehicle by the end of the next business day following the report of the defect.

(b) When the employer cannot repair a non-complying condition as required by § 214.531 because of the temporary unavailability of necessary parts, the employer will repair the on-track roadway maintenance machine or new hi-rail vehicle within seven days after receiving the necessary parts. The employer may continue to use the on-track roadway maintenance machine or new hi-rail with a non-complying condition until the necessary parts for repair are received, subject to the requirements of § 214.503. However, if repair of a non-complying condition exceeds 30 days following the report of the defect, the employer will remove the on-track roadway maintenance machine or new hi-rail vehicle from service.

(c) If the employer fails to order parts necessary to repair the reported non-complying condition, or if it fails to install available parts within the required seven calendar days, the on-track roadway maintenance machine or new hi-rail vehicle will be removed from service until brought into compliance with this subpart.

(d) Each employer will maintain records pertaining to compliance with this section. Records may be kept on forms provided by the employer or by electronic means. The employer will retain each record for at least one year, and the records will be available for inspection and copying by the Federal Railroad Administration during normal business hours. The records may be kept on the on-track roadway maintenance machine or new hi-rail vehicle or at a location designated by the employer.

Issued in Washington, DC, on January 4, 2001.

John V. Wells,

Acting Federal Railroad Administrator.

[FR Doc. 01–591 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 122800A]

Coral Reef Ecosystem Fisheries of the Western Pacific Region; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: On June 16, 1999, NMFS announced its intent to prepare an Environmental Impact Statement (EIS) for the draft fishery management plan for coral reef ecosystems in the U.S. exclusive economic zone (EEZ) waters of the Western Pacific Region. The Draft Environmental Impact Statement (DEIS) has been prepared and is available to the public. The scope of the DEIS includes all activities related to the conduct of the fishery to be authorized by and managed under the proposed Fishery Management Plan (FMP) for Coral Reef Ecosystems of the Western Pacific Region. NMFS is holding public hearings to solicit public input on the range of actions, alternatives, and impacts addressed in the DEIS. In addition to holding the public hearings, NMFS is also accepting written comments on the DEIS.

DATES: Written comments will be accepted through February 26, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations for these hearings.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in the DEIS/EIS should be sent to Kitty Simonds, Western Pacific Fishery Management Council, NMFS, 1164 Bishop Street, Room 1400, Honolulu, HI 96813. Comments also may be faxed to 808-522-8226. Comments will not be accepted if submitted via e-mail or the Internet. Public hearings will be held in Hawaii, Guam, American Samoa (AS), and the Commonwealth of the Northern Mariana Islands (CNMI). For specific meeting locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kitty Simonds 808-522-8220.

SUPPLEMENTARY INFORMATION: On June 16, 1999 (64 FR 32210), NMFS announced its intent to prepare an EIS for the draft fishery management plan for coral reef ecosystems in U.S. EEZ waters of the Western Pacific Region. NMFS has prepared the DEIS and made it available to the public.

Dates, Times, and Locations for Public Hearings

1. Agana (Hagatna), Guam: January 16, 2001, 8 to 10 p.m., Guam Fishermen's Cooperative Association, Hagatna Boat Basin, Agana (Hagatna), Guam.
2. Susupe Village, Saipan, CNMI: January 17, 2001, 8 to 10 p.m., Saipan Diamond Hotel, Hibiscus Room. No street address, Susupe Village, P.O. Box 66, CNMI.
3. Kahului, Maui, HI: January 19, 2001, 6 to 9 p.m., Lehi Kai Elementary School, 335 S. Papa Avene, Kahului, HI 96732; contact Kitty Simonds (see **ADDRESSES**) for further information.
4. Kaunakakai, Molokai, HI: January 22, 2001, 8 to 10 p.m., Mitchell Pauole Center, 90 Ainoa St., Kaunakakai, HI 96748.
5. Kona, Hawaii, HI: January 23, 2001, 8 to 10 p.m., King Kamehameha Hotel, 75-5660 Palani Road, Kona, HI 96740.
6. Hilo, Hawaii, HI: January 24, 2001, 8 to 10 p.m., Cooperative Extension Services, College of Agriculture, Conference Room B, 875 Komohana Street, Hilo, HI 96720.
7. Lihue, Kauai, HI: January 25, 2001, 6 to 9 p.m., Wilcox Elementary School, 4319 Hardy Street, Lihue, HI 96766; contact Kitty Simonds (see **ADDRESSES**) for further information.
8. Lanai, HI: January 26, 2001, 8 to 10 p.m., Lanai Airport Conference Room, Lanai, HI 96763.
9. Honolulu, Oahu, HI: January 29, 2001, 6 to 9 p.m., McCoy Pavilion, Ala Moana Regional Park, Ala Moana Boulevard, Honolulu, HI 96814; contact Kitty Simonds (see **ADDRESSES**) for further information.
10. Fagatogo, AS: February 5, 2001, 3 to 5 p.m., Department of Marine and Wildlife Resources (DMWR) conference room, Faratogo, AS. Phone contact c/o DMWR at 684-633-4456.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Kitty Simonds (see **ADDRESSES**), 808-522-8220 (voice) or 808-522-8226 (facsimile), at least 5 days prior to the meeting date.

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

Dated: January 3, 2001.

Bruce C. Morehead,

Acting Director, Office 0f Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–774 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 7
Wednesday, January 10, 2001

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.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 a.m. local time on January 19, 2001, at 2175 K Street, Second floor (Conference rooms of the Medical Society of the District of Columbia) Washington, DC. Topics will include:

1. Update on reactive chemical hazard investigation.

2. Update on CSB investigation into the February 23, 1999, fire that occurred at the fractionator tower in the 50 crude oil processing unit at the Tosco ''Avon'' refinery in Martinez, California.

3. Safety Bulletins: Management of Change—Discussion of Process for resolution of: (1) Condea Vista, Equilon, Sonat II; (2) Concept Sciences; (3) Independence Fireworks.

4. Data collection issues and developments.

5. Update on the CSB Hiring Plan Initiative.

6. Board Initiatives with other Federal agencies.

8. CSB budget for FY 2001.

9. Tentative date for next Board meeting.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202)–261–7600, or visit our website at: *http://www.csb.gov.*

Christopher W. Warner,
General Counsel.

[FR Doc. 01–780 Filed 1–5–01; 4:27 pm]

BILLING CODE 6350–01–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35.)

Agency: Bureau of Export Administration (BXA).

Title: Request For Special Priorities Assistance.

Agency Form Number: BXA–999.

OMB Approval Number: 0694–0057.

Type of Request: Extension of a currently approved collection of information.

Burden: 600 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 1,200 respondents.

Needs and Uses: The information collected on BXA–999 from defense contractors and suppliers, is required for the enforcement and administration of the Defense production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation System Regulations.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at MClayton@doc.gov.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: January 4, 2001.

Madeleine Clayton,
Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–718 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Special Comprehensive License

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before March 12, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington DC 20230, or via e-mail at MClayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The SCL Procedure authorizes multiple shipments of items from the U.S. or from approved consignees abroad who are approved in advance by BXA to conduct the following activities: servicing, support services, stocking spare parts, maintenance, capital expansion, manufacturing, support scientific data acquisition, reselling and reexporting in the form received, and other activities as approved on a case-by-case basis.

II. Method of Collection

Submitted on forms BXA–748P and BXA 752P.

III. Data

OMB Number: 0694–0089

Form Number: BXA–748P and BXA 752P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 27 hours per response.

Estimated Total Annual Burden Hours: 1,046.

Estimated Total Annual Cost: No start-up or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 4, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–625 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–33–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Report of Requests for Restrictive Trade Practice or Boycott— Single or Multiple Transactions

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before March 12, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230, or via e-mail at MClayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information obtained from this collection authorization is used to carefully and accurately monitor requests for participation in foreign boycotts against countries friendly to the U.S. which are received by U.S. persons. The information is also used to identify trends in such boycott activity and to assist in carrying out U.S. policy of opposition to such boycotts.

II. Method of Collection

Submitted on forms.

III. Data

OMB Number: 0694–0012.

Form Number: BXA 621–P or BXA 6051–P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1,574.

Estimated Time Per Response: 1 to 1.5 hours per response.

Estimated Total Annual Burden Hours: 3,307.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 4, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–626 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–806)

Electrolytic Manganese Dioxide From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: Based on a request by a Japanese producer, Tosoh Corporation, the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Japan. This review covers imports of electrolytic manganese dioxide from one producer/exporter during the period of review, April 1, 1999, through December 31, 1999.

We have preliminarily determined that sales by Tosoh Corporation have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of electrolytic manganese dioxide from Tosoh Corporation during the period of review.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Karin Ryerson or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3174 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan. On April 12, 2000, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period April 1, 1999, through December 31, 1999 (65 FR 19736). Tosoh Corporation, a Japanese producer, requested an administrative review on April 27, 2000. In response to this request, the Department published a notice of initiation of administrative review on June 2, 2000, in accordance with 19 CFR 351.213(b) (65 FR 35320. The Department is conducting this administrative review in accordance with section 751 of the Act.

On April 20, 2000, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping order on EMD from Japan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of this determination the Department revoked the antidumping order on EMD from Japan. The Department published the revocation in the **Federal Register** on May 31, 2000, with an effective date of January 1, 2000 (65 FR 34661). Therefore, the period covered by this administrative review is April 1, 1999, through December 31, 1999, rather than April 1, 1999, through March 31, 2000.

Scope of Review

Imports covered by this review are shipments of EMD from Japan. EMD is manganese dioxide (MnO2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc-chloride. EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Constructed Export Price

In calculating the price to the United States, we used constructed export price (CEP) as defined in section 772(b) of the Act because Tosoh Corporation makes its sales of the subject merchandise through an affiliated company in the United States. We calculated CEP based on the packed, delivered price to an unaffiliated purchaser in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA), H. Doc. 103–316, vol. 1, 822–825 (1994), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. Since we do not have any cost information to calculate CEP profit in this review, we determined pursuant to subsection 772(f)(2)(D), that the best available sources of profit information are the 1999 financial statements which the respondent and its U.S. affiliate submitted in their responses to our questionnaires. See Electrolytic Manganese Dioxide from Japan—Tosoh Corporation, Analysis Memo dated December 18, 2000. We made adjustments, where appropriate, for domestic inland freight, warehousing expenses, international freight, and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. In accordance with 19 CFR 351.401(i), we used the invoice date as the date of sale for the U.S. market.

Finally, in accordance with section 772(d)(1)(B) of the Act, we made an additional adjustment to CEP. Because of the business-proprietary nature of the adjustment, please see our December 18, 2000, Analysis Memo.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value, we compare the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Because the aggregate volume of home-market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating normal value. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade. We matched CEP to normal value at the same level of trade in the home market and made no level-of-trade adjustment (see Level of Trade discussion below).

We calculated monthly weighted-average normal values based on the packed, delivered prices of the foreign like product to unaffiliated purchasers in the exporting country. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. With respect to our comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value.

Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as that in the United States in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price for sales in the home market. See 19 CFR 351.412(c)(iii). For CEP sales, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether home-market sales are at a different level of trade than those in the United States, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh Corporation reported two channels of distribution (trading company/

distributor and end user) in the home market. We examined the differences in selling activities Tosoh Corporation reported in its responses to our requests for information. We found that the selling activities associated with sales to trading companies/distributors were not fewer and did not differ from activities associated with sales to end-users in terms of various selling activities. For example, Tosoh Corporation reported that under distribution channel 1, (sales to trading company/distributor) and channel 2 (sales to end users), it provided sales strategy and information on market potential and customers. In addition, Tosoh Corporation reported that it provided selling activities such as scheduling production and delivery, analyzing and producing orders, and pricing for both channels 1 and 2. According to the respondent's submission, there were no differences between the two channels in terms of technical service, administrative support, and freight/delivery to customer. Based on these sales activities, we found that the two home-market channels constitute one level of trade.

Because Tosoh Corporation made CEP sales in the United States, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act and pursuant to 19 CFR 351.412(c)(ii). As a result of our examination of the record, we found that the respondent's information did not indicate that there were significant differences between the selling activities associated with the home-market level of trade and those associated with the CEP level of trade. Moreover, the respondent indicated in its June 30, 2000, submission that it was not requesting a level-of-trade adjustment. Therefore, we have determined that the U.S. sale was made at the same level of trade as the home-market level of trade and, therefore, no level-of-trade or CEP-offset adjustment was necessary.

Preliminary Results of Review

As a result of our review, we preliminarily determine a weighted-average dumping margin of 0.00 percent for the period April 1, 1999, through December 31, 1999, for Tosoh Corporation.

Any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should specify the number of participants and provide a list of the issues to be discussed. Any hearing, if requested, will be held 40 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice.

Parties who submit arguments are requested to submit with the arguments (1) a table of contents, (2) a statement of the issue, (3) a list of authorities used, and (4) an executive summary of issues. Executive summaries should be limited to five pages total, including footnotes.

All memoranda to which we refer in this notice can be found in the public reading room located in the Central Records unit, room B–099 of the main Department of Commerce building.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the Customs Service to liquidate all appropriate entries without regard to antidumping duties.

Effective January 1, 2000, this order was revoked. (65 FR 26570, May 8, 2000). As a result, no cash deposits of estimated antidumping duties are required on imports of EMD from Japan after January 1, 2000.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 2, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–775 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–801]

Electrolytic Manganese Dioxide From Greece: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: Based on a request by a Greek producer, Tosoh Hellas A.I.C., the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece.

We have preliminarily determined that sales by Tosoh Hellas A.I.C. have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of electrolytic manganese dioxide from Tosoh Hellas A.I.C. during the period of review.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. On April 12, 2000, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period April

1, 1999, through December 31, 1999 (65 FR 19736). Tosoh Hellas A.I.C. (Tosoh), a Greek producer, requested a review on April 27, 2000. In response to this request, the Department published a notice of initiation of administrative review on June 2, 2000, in accordance with 19 CFR 351.213(b) (65 FR 35320. The Department is conducting this administrative review in accordance with section 751 of the Act.

On April 20, 2000, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping order on EMD from Japan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. As a result of this determination the Department revoked the antidumping order on EMD from Japan. The Department published the revocation in the **Federal Register** on May 31, 2000, with an effective date of January 1, 2000 (65 FR 34661). Therefore, the period covered by this administrative review is April 1, 1999, through December 31, 1999, rather than April 1, 1999, through March 31, 2000.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc-chloride. EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Constructed Export Price

In calculating the U.S. price, we used constructed export price (CEP) as defined in section 772(b) of the Act because Tosoh sells subject merchandise through an U.S. affiliated company in the United States. We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA), H. Doc 103–319 vol. 1, 822–825 (1994), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. In this review, since we do not have any cost information to calculate CEP profit, we determined, pursuant to subsection 772(f)(2)(D), that the best available sources of profit information are the 1999 financial statements which the respondent and its U.S. affiliate submitted in response to section A of our questionnaire. See Tosoh's Analysis Memorandum dated December 18, 2000 (Analysis Memo).

We made adjustments, where appropriate, for domestic inland freight, warehousing expenses, international freight, and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. Pursuant to 19 CFR 351.401(i), we used the shipment date as the date of sale for the U.S. market, in accordance with our standard practice, because the invoice date post-dates the date of shipment. See *Bulk Aspirin from the PRC*, 65 FR 33805 (May 25, 2000), accompanying decision memorandum at comment 15, and cases cited therein.

Finally, in accordance with section 772(d)(1)(B) and (C) of the Act, we adjusted CEP to reflect a rebate which Tosoh is contractually obligated to make to its customer based on the relationship of its price, after all previously described adjustments, and normal value. For further details see the December 18, 2000, Analysis Memo.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value, we compare the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Because the aggregate volume of home-market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating normal value. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade.

We calculated monthly, weighted-average normal values. Because identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with section 771(16)(B) of the Act.

Prices in the exporting country were based on packed, free-on-truck prices to the unaffiliated purchasers. Where applicable, we made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale in accordance with section 773 (a)(6)(C)(iii) of the Act and 19 CFR 351.410. With respect to our comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value.

Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as the U.S. sales in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market. See 19 CFR 351.412(c)(iii). For CEP sales, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether home-market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported that there was only one channel of distribution in the home market and, having determined that the same selling functions are provided to all home-market customers, we conclude that there is only one level of trade. Because all of Tosoh's U.S. sales were CEP sales, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act, pursuant to 19 CFR 351.412(c)(ii). Based on our analysis, we considered CEP sales which involve the same selling functions to constitute a single level of trade. Based on the record, we found that there were significant

differences between the selling activities associated with the home-market level of trade and those associated with the CEP level of trade. Therefore, we determined that CEP sales were at a different level of trade from the home-market sales. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, because home-market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home-market sales in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our December 18, 2000, Analysis Memo.

Preliminary Results of Review

As a result of our review, we preliminarily determine a weighted-average dumping margin of 0.00 percent for Tosoh for the period April 1, 1999, through December 31, 1999.

Any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should specify the number of participants and provide a list of the issues to be discussed. Any hearing, if requested, will be held 40 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice.

Parties who submit arguments are requested to submit with the arguments (1) a table of contents, (2) a statement of the issue, (3) a list of authorities used, and (4) an executive summary of issues. Executive summaries should be limited to five pages total, including footnotes.

Hearing requests should specify the number of participants and provide a list of the issues to be discussed. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the Customs Service to liquidate all appropriate entries without regard to antidumping duties.

Effective January 1, 2000, this order was revoked. (65 FR 26567, May 8, 2000). As a result, no cash deposit of estimated antidumping duties are required on imports of EMD from Japan after January 1, 2000.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 2, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–776 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of extension of time limit for preliminary results of administrative review.

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–3964, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

Background

On June 30, 2000, the Department of Commerce (the Department) received a request from Kawasaki Steel Corporation (''Kawasaki'') for an administrative review of the antidumping duty order on hot-rolled flat-rolled carbon-quality steel products from Japan. On July 31, 2000, the Department published a notice of initiation of this administrative review, covering the period of February 19, 1999 through May 31, 2000 (65 FR 46687).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Barbara E. Tillman to Joseph A. Spetrini, *Extension of Time Limit for the Administrative Review of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, dated January 3, 2001, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results of review until June 29, 2001. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: January 3, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III

[FR Doc. 01–778 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of administrative review.

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–1386 or (202) 482–3964, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreement Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

Background

On August 31, 1999, the Department of Commerce (the Department) received a request from petitioner, Nation Ford Chemical Company (NFC), to conduct an administrative review on Zhenxing Chemical Company. The Department also received a request for an administrative review on the same day from respondents Zhenxing Chemical Company, Yude Chemical Company, and PHT International, the U.S. importer. On October 1, 1999, the Department published a notice of initiation of an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of china, covering the period August 1, 1998 through July 31, 1999 (64 FR 53318). On September 14, 2000, the Department published its preliminary results of this administrative review (65 FR 55508).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Barbara E. Tillman to Joseph A. Spetrini, *Extension of Time Limit for the Administrative Review of Sulfanilic Acid from the People's Republic of China,* dated January 4, 2001, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results of review from January 12, 2001 to March 13, 2001.

Dated: January 3, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–779 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 1998–1999 (twelfth) administrative review, partial rescission of the review, and determination not to revoke the order in part.

SUMMARY: We have determined that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1998, through May 31, 1999. Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculation of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled ''Final Results of the Review.'' Based on these final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

China National Machinery Import & Export Corporation, Wafangdian Bearing Group Corp. Import & Export Company, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we find that none of these companies qualify for revocation. Accordingly, we are not revoking the order with respect to the subject merchandise produced and exported by these four companies.

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Jarrod Goldfedder, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2239 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations are to 19 CFR part 351 (2000).

Background

On July 7, 2000, the Department published the *Preliminary Results.*[1] The period of review (POR) is June 1, 1998, through May 31, 1999. This review covers the following exporters (referred to collectively as the respondents): Wafangdian Bearing Group Corp. Import & Export Company (Wafangdian), Zhejiang Machinery Import & Export Corp. (ZMC), Wanxiang Group Corporation (Wanxiang), China National Machinery Import & Export Corporation (CMC), Liaoning MEC Group Co. Ltd. (Liaoning), Luoyang Bearing Corp. (Group) (Luoyang), Premier Bearing & Equipment Ltd. (Premier), Tianshui Hailin Import and Export Corporation/ Hailin Bearing Factory (Hailin), Weihai Machinery Holding (Group) Co., Ltd. (Weihai), Zhejiang Changshan Changhe Bearing Corp. (''ZCCBC''), and Zhuzhou Torch Spark Plug Co., Ltd. (Torch).

We invited parties to comment on our preliminary results of review. By August 17, 2000, we received case briefs from the Timken Company (petitioner), as well as from CMC, Liaoning, Wanxiang, Hailin, Weihai, Premier, ZMC, Luoyang, Wafangdian and Torch. By August 21, 2000, each of these parties (with the exception of Torch) also submitted rebuttal briefs. At the request of certain interested parties, we held a public hearing on August 31, 2000.

The Department has conducted this administrative review in accordance with section 751 of the Act.

[1] *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part,* 65 FR 41944 (July 7, 2000) (*Preliminary Results*).

Scope of Review

Merchandise covered by this review includes tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Rescission of Review in Part

As stated in the *Preliminary Results,* ZCCBC reported no shipments of subject merchandise to the United States during the POR other than those shipments already examined by the Department as part of ZCCBC's new shipper review.[2] Entry data provided by the Customs Service confirms that there were no POR entries from ZCCBC of TRBs other than those examined under the new shipper review. Therefore, consistent with the Department's regulations and practice,[3] we are rescinding this review with respect to ZCCBC.

As stated in the *Preliminary Results,* Torch shipped TRBs to an affiliated Canadian party during the POR. According to Torch, the TRBs were originally intended for shipment to Canada. However, they entered the United States and, according to Torch, were erroneously categorized as consumption entries. Torch has provided documentation demonstrating that the merchandise has not been sold to an unaffiliated party in the United States.

As noted in the *Preliminary Results,* in situations where an affiliated importer enters merchandise during a review period, but does not sell that merchandise during the POR, our normal practice is to liquidate the entries based on other sales of the merchandise made by the affiliated importer during the POR.[4] In this case, however, the company indicated that it did not intend to sell this merchandise in the United States. Thus, we stated our intent to liquidate Torch's merchandise in question without regard to any dumping liability if certain requirements were met. In a June 29, 1999, memorandum, ''Review of Zhuzhou Torch Spark Plug Company, Ltd.,'' we specified the proof required before we could reach a final determination of whether to liquidate the merchandise in question without regard to dumping liability. The importer, Undercar Canada, Inc., submitted the requisite information in letters dated May 15, September 8, and October 17, 2000.

We, therefore, find that Torch did not sell the merchandise in the United States and, thus, there is no basis to calculate a dumping margin for this merchandise. Accordingly, we are rescinding this review with respect to Torch, and will instruct the Customs Service to liquidate the merchandise in question without regard to any dumping liability.

Determination Not To Revoke Order, in Part

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (''NV'') in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

As noted in the *Preliminary Results,* pursuant to 19 CFR 351.222(e)(1), CMC, Wafangdian, Wanxiang, and ZMC requested revocation of the antidumping duty order, in part, based on an absence of dumping for at least three consecutive years. As noted below in the ''Suspension of Liquidation'' section, CMC, Wafangdian, and ZMC were found to have made sales below normal value in the instant review. As such, we find that CMC, Wafangdian, and ZMC do not qualify for revocation.

Wanxiang sold the subject merchandise at not less than normal value for a period of at least three consecutive years. We must determine, as a threshold matter, in accordance with 19 CFR 351.222(e)(1)(ii), whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. After consideration of the various comments that were submitted in response to the *Preliminary Results,* we determine that Wanxiang did not sell the subject merchandise in the United States in commercial quantities in each of the three years cited by Wanxiang to support its request for revocation. *See ''Analysis of Comments Received,* Comment 21,'' below. Therefore, we find that Wanxiang does not qualify for revocation of the order on TRBs under 19 CFR 351.222(e)(1)(ii).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memo*) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated January 3, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building. In addition,

[2] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review,* 64 FR 61837 (November 15, 1999).

[3] *See* 19 CFR 351.213(d)(3); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review,* 61 FR 46763 (September 5, 1996).

[4] *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administration {sic} Review,* 61 FR 46763 (September 5, 1996).

a complete version of the *Decision Memo* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memo* or in the referenced final calculation memoranda for particular companies:

All Companies

Use of Market Economy Steel Values—Comments 1 through 3
Valuation of Certain Steel Inputs—Comments 4, 5, 6, and 13
Valuation of Ocean Freight—Comment 11
Valuation of Pallets and Wooden Cases—Comment 10

For changes in the valuation of overhead, SG&A, and profit *see* comments 8 and 9 of the *Decision Memo.* In addition to those changes noted in the *Decision Memo,* we have also revised the calculation of all company-specific overhead costs by adding back into the direct costs (to which the surrogate overhead rate is applied) the value of scrap.

Wafangdian

We applied the *Sigma* cap to the inland freight expenses of Wafangdian's suppliers. *See* Comment 14 of the *Decision Memo.* We increased skilled and unskilled labor hours to account for downtime. *See* Comment 29 of the *Decision Memo.* We accounted for post-sale price adjustments relating to previous sales of defective merchandise. *See* Comment 27 of the *Decision Memo.* Finally, we used a different surrogate to value plastic bags. *See* Final Factors of Production Memorandum dated January 3, 2001.

Premier

We have applied partial facts available to fill certain data gaps in Premier's reporting of foreign inland freight. As partial facts available, we have used the average of the unit expenses across those sales for which such expenses were reported. *See* Comment 33 of the *Decision Memo.*

We have deducted Premier's reported constructed export price (CEP) credit expenses from U.S. price. For those CEP sales where Premier reported a negative expense, we added the absolute value of that amount to U.S. price. *See* Comment 34 of the *Decision Memo.*

Liaoning

We have used the corrected database submitted along with Liaoning's March 20, 2000 supplemental response. See Comment 36 of the *Decision Memo.*

ZMC

We are using surrogate steel values for ZMC instead of market economy steel values as we did in the *Preliminary Results. See Memorandum to the Case File; Calculations for Final Results for Premier* (January 3, 2001).

Wehai

We are using surrogate steel values for Weihai instead of market economy steel values as we did in the *Preliminary Results. See* Comment 38 of the *Decision Memo.*

Wanxiang

Based on verification findings, we made certain revisions to the calculation of SG&A labor.

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 1998, through May 31, 1999:

Manufacturer /exporter	Margin (percent)
Wafangdian	0.67
Wanxiang	0.00
CMC	0.82
ZMC	7.37
Liaoning	0.00
Hailin	0.00
Weihai	0.00
Luoyang	4.37
Premier	7.36

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Because certain importer-specific assessment rates calculated in these final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates (*i.e.,* less than 0.5 percent) no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.12 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance

with sections section 751(a)(1) and 771(i) of the Act.

Dated: January 3, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Market Economy Steel Values
Comment 2: Insignificant Imports from Market Economy Sources
Comment 3: Weight-Averaging Market Economy with Surrogate Steel Values
Comment 4: Cage Surrogate Steel Values
Comment 5: Roller Surrogate Steel Values
Comment 6: Excluding Certain Data from Surrogate Source Data
Comment 7: Labor Costs
Comment 8: Surrogate Calculations for Overhead, SG&A and Profit
Comment 9: Inclusion of Traded Goods in Overhead, SG&A and Profit
Comment 10: Surrogate Values for Pallets and Wooden Cases
Comment 11: Ocean Freight Expenses
Comment 12: Adjusting Surrogate Export Values for Duties
Comment 13: Adding Ocean Freight and Insurance to FOB Export Values
Comment 14: *Sigma* Cap and PRC Freight Expenses
Comment 15: Exchange Rates
Comment 16: Separate Rates Analysis of Suppliers
Comment 17: U.S. Credit Expenses for EP Sales
Comment 18: The Department Should Grant Revocations
Comment 19: Limiting Revocation to Certain Trading Companies
Comment 20: Limiting Revocation to Particular Models
Comment 21: Revocation with Respect to Wanxiang
Comment 22: CMC's Market Economy Steel Values
Comment 23: Accounting for CMC's Rejects
Comment 24: CMC's Negative Inventory Carrying Costs
Comment 25: Applying Adverse Facts Available to ZMC
Comment 26: Wanxiang's Surrogate Steel Values
Comment 27: Wafangdian's Price Adjustments
Comment 28: Wafangdian's Normal Value for Non-Specification Parts
Comment 29: Double-Counting of Wafangdian's Labor Inputs
Comment 30: Application of the PRC-wide Rate to Premier
Comment 31: Application of Total Adverse Facts Available to Premier
Comment 32: Department's Choice of FOP Data for Each of Premier's Inputs
Comment 33: Premier's Foreign Inland Freight
Comment 34: Deducting Premier's U.S. Credit Expenses in CEP Sales Situations
Comment 35: Adjusting Luoyang's Normal Value for U.S. Credit Expenses for EP Sales
Comment 36: Use of Liaoning's Correct Database
Comment 37: Adjusting Liaoning's normal value for U.S. Credit Expenses for EP Sales
Comment 38: Surrogate Steel Valuation for Weihai
Comment 39: Torch's Affiliated Sales and Transshipped TRBs

[FR Doc. 01–777 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010301A]

Endangered Species; Permits

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

ACTION: Receipt of application for a scientific research permit (1274); issuance of permits (1261, 1226); and modifications to existing permits (1178, 984).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Dr. Molly Lutcavage, of the New England Aquarium (NEA) (1274); NMFS has issued permit 1261 to Mr. Vincent A. Mudrak, of U.S. Fish & Wildlife Service (USFWS) (1261); NMFS has issued permit 1226 to Mr. Mike Clancy and Ms. Katherine Hattala, of New York State Dept of Environmental Conservation (NYSDEC) (1226); NMFS has issued modification #2 to permit 1178 to Dr. Michael Sissenwine, of Northeast Fisheries Science Center, NMFS (NMFS-NEFSC) (1178); and NMFS has issued modification #3 to permit 984 to Dr. Steve Ross, of Center for Marine Science Research, University of North Carolina at Wilmington (UNC-Wilmington)(984).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on February 9, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1226, 1261, 1178, 984, 1274: NMFS, Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone and fax: see above) e-mail: *Terri.jordan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*).

Fish

Shortnose sturgeon (*Acipenser brevirostrum*)

Application 1274:

NMFS has received an application from Dr. Molly Lutcavage of the New England Aquarium. Dr. Lutcavage requests authorization to satellite tag up

to eight (8) endangered leatherback turtles captured incidental to commercial fisheries. Dr. Lutcavage proposes to attach pop-up satellite transmitters to leatherback turtles using surgical bone screws instead of harnesses, and to look at whether tagging turtles with harnesses increases the likelihood of entanglement in commercial fisheries. This proposed permit continues research begun under permit #1053 issued by NMFS on July 14, 1997.

Permit 1261

Notice was published on August 17, 2000 (65 FR 50185) that Mr. Vincent A. Mudrak, of U.S. Fish & Wildlife Service applied for a scientific research permit (1261).

The applicant requests a five-year permit to maintain captively bred shortnose sturgeon for scientific research at the Warm Springs Hatchery operated by the US Fish and Wildlife Service. Research Activities include feeding studies, propagation studies and studies identified in the recovery plan for shortnose sturgeon. Permit 1261 was issued on December 29, 2000, authorizing take of listed species. Permit 1261 expires December 31, 2005.

Permit 1226

Notice was published on November 26, 1999 (64 FR 66458) that Mr. Mike Clancy and Ms. Katherine Hattalla of NYSDEC applied for a scientific research permit (1226).

As a requirement in the Atlantic States Marine Fisheries Commission's Atlantic Sturgeon Management Plan, New York State must initiate monitoring of juvenile Atlantic sturgeon in the Hudson River. While conducting this research it is a very likely and unavoidable event that shortnose sturgeon will be captured in the sampling gear deployed to capture Atlantic sturgeon. The NYSDEC is applying for a permit to handle and tag any shortnose sturgeon incidentally caught in their sampling gear. The NYSDEC will work in collaboration with the US Fish and Wildlife Service (permit #1051) to share biological and movement data regarding shortnose sturgeon residing in the Hudson River. Permit 1226 was issued on December 22, 2000, authorizing take of listed species. Permit 1226 expires October 31, 2005.

Permit 1178

The applicant currently possesses a 5-year scientific research permit to take listed sea turtles incidentally taken in foreign and domestic commercial fisheries operating in state waters and the Exclusive Economic Zone in the Northwest Atlantic Ocean. The work will be conducted by scientific observers aboard commercial fishing vessels. The following species and annual take numbers have been requested: 300 loggerhead (Caretta caretta), 85 leatherback (Dermochelys coriacea), 10 Kemp's ridley (Lepidochelys kempi), 10 hawksbill (Eretmochelys imbricata), and 10 green (Chelonia mydas) turtles. The applicant has authorization to measure, photograph, flipper tag, scan for PIT tags, resuscitate (if necessary) and release turtles taken incidentally in foreign and domestic commercial fisheries. Further, the applicant has authorization to bring to shore, when feasible, dead sea turtles for necropsy. Necropsy will only be performed by personnel currently permitted to conduct such research. This research supports the NMFS' mission of assessing the impacts of commercial fisheries on marine resources of interest to the United States.

Modification #2 authorizes the collection of skin biopsies from turtles onboard vessels and animals too large to bring aboard commercial vessels. Modification #2 to Permit 1178 was issued on December 29, 2000. Permit 1178 expires December 31, 2003.

Permit 984

Notice was published on July 19, 2000 (65 FR 44760) that Dr. Steve Ross (UNC-Wilmington) had applied for a modification to 984. Permit 984 currently authorizes the take of shortnose sturgeon from rivers throughout the state of North Carolina. This permit authorizes capture in gillnets, handling, weighing, photographing, dorsal fin clipping for genetic material collection, external and internal tagging and release. Both Dr. Mary Moser of the National Marine Fisheries Service - Northwest Fisheries Science Center in Seattle, WA and Dr. Steven Ross are co-investigators.

Modification #3 removes Dr. Mary Moser from the permit and extends the expiration date of the permit to December 31, 2001. NMFS is also amending the permit to bring the special conditions current with other permits being issued for research on shortnose sturgeon. The take description has been modified into a table format. Items #1 & 2 in the take table were modified to increase the lethal take of eggs and larvae. The original permit authorized 25 eggs to be lethally taken and 25 returned to the wild, and 10 larvae to be lethally taken and 10 returned to the wild. The return of eggs and larvae to the wild after collection on a buffer pad is not feasible, so NMFS clarified this in the permit. Item #5 in the take table was modified to clearly denote that the 8,000 juvenile shortnose sturgeon transferred to Dr. Moser were terminated in 1999 per special condition #1b of modification #2 which was issued November 17, 1998. NMFS also clarified reporting contact mail and email addresses.

Modification #3 to Permit 984 was issued on December 29, 2000, authorizing take of listed species. Permit 984 expires December 31, 2001.

Dated: January 3, 2000.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–773 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122100B]

Marine Mammals; File No. 753-1599-00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Jim Darling, Ph.D., P.O. Box 384, Tofino, British Columbia, Canada VOR 2Z0, has been issued a permit to take humpback whales (*Megaptera novaeangliae*) and gray whales (*Eschrichtius robustus*) for purposes of scientific research.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for addressses where the documents may be reviewed.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Trevor Spradlin, 301/713-2289.

SUPPLEMENTARY INFORMATION: On August 29, 2000, notice was published in the **Federal Register** (65 FR 52411) that a request for a scientific research permit to take humpback whales and gray whales had been submitted by the above-named Jim Darling, Ph.D. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of

endangered and threatened species (50 CFR parts 222-226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249;

Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Honolulu, HI 96814-4700; phone(808)973-2935; fax 808)973-2941; and

Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562) 980-4108.

Dated: January 4, 2001.

Ann Terbush,

Chief, Permits Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–772 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 18 January 2001 at 10:00 a.m., in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statement should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, January 2, 2001.

Jeffrey R. Carson,

Assistant Secretary.

[FR Doc. 01–592 Filed 1–9–01; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Program for Caribbean Basin Countries; Correction

January 4, 2001.

In the document published in the **Federal Register** on December 28, 2000 (65 FR 82327), make the following corrections:

1. In the letter to the Commissioner of Customs, 3rd column, 3rd paragraph, 11th line, correct ''Categories 433, 443, 633 and 643'' to read ''Categories 433, 435, 443, 444, 633, 635, 643 and 644.''

2. In the same paragraph, line 17, immediately following ''(see 51 FR 21208),'' add ''and amended on December 9, 1999 to include goods covered under the Outward Processing Program (see 64 FR 69746).''

3. At the end of the same paragraph, line 28, immediately following ''described above'' add ''or entered under the Outward Processing Program (9802.00.8016) and of a type described above.''

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–627 Filed 1–9–01; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 12, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–889 Filed 1–8–01; 1:38 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, January 19, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–890 Filed 1–8–01; 1:38 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 26, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–891 Filed 1–8–01; 1:39 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form, and OMB Number: Police Record Check; DD Form 369; OMB Number 0704–0007.

Type of Request: Extension.

Number of Respondents: 125,000.

Responses Per Respondent: 1.

Annual Responses: 125,000.

Average Burden Per Response: 27 minutes.

Annual Burden Hours: 56,250.

Needs and Uses: This information is collected to provide the Armed Services with background information on an applicant. History of criminal activity, arrests, or confinement is disqualifying for military service. The respondents will be local and state law enforcement agencies. The DD Form 369, ''Police Record Check,'' is the method of information collection; responses are to reference any records on the applicant. The information will be used to determine suitability of the applicant for military service.

Affected Public: Individuals or households; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written Comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 3, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–632 Filed 1–9–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Change of Advisory Committee Meeting

SUMMARY: The Defense Science Board (DSB) Task Force on High Energy Laser Weapon Systems Applications originally planned to meet January 23–24, 2001; however, the meeting has been rescheduled for January 25–26, 2001. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201.

Dated: January 4, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–675 Filed 1–9–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiative Review Panel

AGENCY: Office of the Secretary, DoD.

ACTION: An executive/administration meeting for DoD Healthcare Quality Initiatives Review Panel has been scheduled for January 16, 2001.

SUMMARY: This notice set forth the meeting of the DoD Healthcare Quality Initiatives Review Panel. Notice of meeting is required under The Federal Advisory Committee Act.

DATES: January 16, 2001.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

Time: January 16th 8:00 am to 5:30 pm.

FOR FURTHER INFORMATION CONTACT: Contact Gia Edmonds at (703) 933–8325.

Dated: January 3, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–633 Filed 1–9–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on February 1, 2001 at Sandia National Laboratories, Albuquerque, New Mexico.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons security and use control.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. II, (1998)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: January 4, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–676 Filed 1–9–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents covers a wide variety of technical arts including: A drawbar that facilities engagement from a loaded shipsheet and an apparatus for tracking a human eye with retinal scanning display.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Appartus for Tracking the Human Eye with a Rentinal Scanning Display, and Method Thereof.

Inventor: Christopher C. Smyth.

Patent Number: 6,120,461.

Issued Date: September 19, 2000.

Title: Method of Maneuvering a Slipsheeted Load and Drawbar Devise Therefor.

Inventor: Jeffrey D. Nickel and John J. Salser.

Patent Number: 6,120,238.

Issued Date: September 19, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving

Ground, MD 21005–5055 tel: (401) 278–5028; fax: (401) 278–5820.

SUPPLEMENTARY INFORMATION: None.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 01–767 Filed 1–9–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: A method for determining the trajectory of a projectile.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Method of Passive Determination of Projectile Miss Distance.

Inventors: David B. Hills and Jonathan A. Bornstein.

Patent Number: 6,125,308.

Issued Date: September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 01–768 Filed 1–9–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Supplement to the 1992 Final Environmental Impact Statement on Modified Water Deliveries to Everglades National Park (MWD Project) To Address a Change in Design of the Levee 67 and Levee 29 Water Conveyance Features Within Water Conservation Area 3 (WCA 3), Including a Combined Operational Plan for the MWD and Canal 111 (C–111) Projects

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent (amendment).

SUMMARY: Reference the previous Notice of Intent published in the Federal Register of September 24, 1999 (V.64, No. 185: pages 51740–51741). The congressionally authorized MWD Project consists of structural modifications and additions to the existing C&SF Project required to improve water deliveries for ecosystem restoration of Everglades National Park (Park). The authorized plan calls for construction of six water control structures in Levee 67 (L–67) and its adjacent canal, which partition WCA 3 into two basins, WCA 3A and WCA 3B and two recently constructed structures in L–29. At the request of the local sponsor, the South Florida Water Management District (SFWMD), the Corps will be revaluating the design of the water conveyance features and addressing the need for water seepage control for WCA 3B. The authorized C–111 Project consists of Water Pumping Stations and associated canals and water detention areas within the C–111 Basin immediately south of the MWD Project limits down to tidewater. This amendment provides for the addition to the SEIS of a Combined Operational Plan for the MWD and C–111 Projects.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232; Attn: Mr. Elmar Kurzbach, 904–232–2325.

SUPPLEMENTARY INFORMATION: 1. Alternatives to be evaluated involve combinations of gated water control structures, passive structures (fixed-crest weirs), levee removal, and canal filling to convey water from WCA 3A into WCA 3B and from WCA 3B into Northeast Shark River slough and operation of the overall system down to tidewater. Seepage control alternatives involve combinations of new operational and structural elements such as pump stations.

2. A Scoping letter and public Scoping Meeting will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

3. The Draft SEIS will analyze issues related to recreational fishing access, WCA 3B tree island flooding, introduction of poor quality water, Everglades National Park ecosystem restoration, and agricultural and residential flood protection.

4. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Policy Act.

5. The Draft SEIS is expected to be available for public review in the 3rd quarter CY 2001.

Dated: December 20, 2000.

James C. Duck,

Chief, Planning Division.

[FR Doc. 01–770 Filed 1–9–01; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Environmental impact Statement (DEIS) for a Flood Damage Reduction Study, Kansas Citys, Missouri and Kansas

AGENCY: U.S. Army Corps of Engineers, Kansas City District, DoD.

ACTION: Notice of intent.

SUMMARY: the Kansas Citys, Missouri and Kansas, Local Flood Protection Project is an existing flood damage reduction project comprised of 7 existing levee units: Argentine Levee Unit; Armourdale Levee Unit; Birmingham Levee Unit; Central Industrial District (CID) Levee Unit; East Bottoms Levee Unit; Fairfax-Jersey Creek Levee Unit; and the North Kansas City Levee Unit. The purpose of this study is to consider the economic, environmental, and social impacts that may occur as a result of various alternatives being considered in a flood damage reduction study, concerning flood protection provided by the existing Kansas Citys, Missouri and Kansas, Local Flood Protection Project to determine if increases in flood protection are warranted, under the authority of Section 216 of the 1970 Flood Control Act, Kansas City, Missouri and Kansas City, Kansas.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed study and DEIS can be answered by the Project Manager, Ronald G. Jansen, P.E., telephone number (816) 983–3258, Formulation Section, Planning Branch, U.S. Army Corps of Engineers, 700 Federal Building, 601 E. 12th Street, Kansas City, Missouri 64106–2896.

SUPPLEMENTARY INFORMATION: 1. The Kansas City District (KCD), Corps of Engineers, is undertaking a Flood Damage Reduction Study, to update and verify data on the existing level of flood protection, of the Kansas Citys, Missouri and Kansas, Local Flood Protection Project, to determine if any increases in protection are warranted, under the authority of section 216 of the 1970 Flood Control Act.

2. The Kansas Citys, Missouri and Kansas, Local Flood Protection Project is an existing flood damage reduction project which provides local flood protection for the metropolitan areas of Kansas City, Missouri and Kansas City, Kansas. The project is comprised of 7 existing levee units: Argentine Levee Unit located in Kansas City, Wyandotte County, Kansas; Armouradale Levee Unit located in Kansas City, Wyandotte County, Kansas; Birmingham Levee Unit located in Kansas City, Clay County, Missouri; Central Industrial District (CID) Levee Unit located in Kansas City, Wyandotte County, Kansas and Kansas City, Jackson County, Missouri; East Bottoms Levee Unit located in Kansas City, Jackson County, Missouri; Fairfax-Jersey Creek Levee Unit located in Kansas City, Wyandotte County, Kansas; and the North Kansas City Levee Unit located in Kansas City and North Kansas City, Clay County, Missouri. The project extends over the lower 9.5 miles of the Kansas River and on the Missouri River from 6.5 miles upstream to 9.5 miles downstream. The existing project consists principally of levees, floodwalls, bridge and approach alterations, and channel modification and alteration. The project provides protection to a 32-square-mile area of heavily urbanized floodplain at the confluence of the two rivers.

3. KCD's study will evaluate the no action alternative as well as various structural and non-structural alternatives to determine:

a. Flood damage reduction costs and benefits;

b. regional social and economic impacts; and,

c. environmental impacts and mitigation measures.

Reasonable alternatives KCD will examine include the feasibility of various structural and non-structural measures to reduce flood damage within areas protected by the existing Kansas Citys, Missouri and Kansas, Local Flood Protection Project. Structural alternatives will involve minor increases in height of the existing levee to protect, in most instances, existing urban development.

4. Scoping Process.

a. A public workshop will be held at Kansas City in Spring 2001. The exact date, time, and location of the workshop will be announced when the details are finalized. Additional workshops will be held as the study progresses to keep the public informed. Coordination meetings will be held as needed with affected/concerned local, State, and Federal governmental entities.

These workshops and meetings, as well as any meetings which were previously held regarding this project, will serve as the collective scoping process for preparation of the DEIS. No formal ''scoping'' meeting will be held.

Draft documents forthcoming from the study will be distributed to Federal, State, and local agencies, as well as interested members of the general public, for review and comment.

b. Significant issues to be analyzed in depth include evaluations of:

(1) level of flood protection provided by the existing flood protection project;

(2) costs and benefits associated with alternatives that increase the flood protection level of the existing flood protection project,

(3) impacts to fish and wildlife resources,

(4) recreation,

(5) cultural resources,

(6) navigation and

(7) water supply.

c. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as per regulations of the Council of Environmental Quality (Code of Federal Regulations parts 40 CFR 1500–1508), and other applicable laws, regulations, and guidelines.

5. The anticipated date of availability of the DEIS for public review is August 2002.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 01–769 Filed 1–9–01; 8:45 am]

BILLING CODE 3710–KN–M

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Green Book Flood Control Project, Upper Portion of the Green Brook SubBasin of the Raritan River Basin Middlesex, Somerset and Union Counties, State of New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New York District, announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), in accordance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA and the Department of the Army, USACE Procedures for Implementing NEPA of New Jersey. Flood protection methods for the three study areas of the Green Brook Sub-basin; the Upper Portion, the Lower Portion and the Stony Brook Portion; were previously evaluated in the USACE 1980 Environmental Impact Statement and the USACE May 1997 Final General Reevaluation Report and Supplemental Environmental Impact Statement. Action within the Upper Portion of the Sub-basin was deferred until this time based on a degree of public concern regarding previously proposed flood control plans for the Upper Portion. The USACE has initiated a Reformulation Study to evaluate reasonable solutions to flooding problems in the Upper Portion previously identified in the May 1977 GRR. In accordance with USACE policies, the Reformulation Study will evaluate a range of alternatives including nonstructural measures, channel modifications, flood control tunnels, surface diversions, and detention structures.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft EIS can be answered by Ms. Megan B. Grubb, (212) 264–5759, U.S. Army Engineer District, New York Planning Division, Attn: CENAN–PL–EA, 26 Federal Plaza, New York, NY 10278–0090.

SUPPLEMENTARY INFORMATION:

Background

The Green Book Sub-basin of the Raritan River Basin has been subject to frequently severe and sometimes

devastating flooding from storms ranging from local thunderstorms to tropical storms. After devastating flood events in 1971 and 1973, a basin wide flood protection study was initiated. The basin wide study led to the development of the USACE 1980 Feasibility Report and Final Environmental Impact Statement for Flood Control, Green Brook Sub-basin. These USACE documents evaluated flood control plans for three areas of the basin, Lower Portion, Upper Portion and Stony Brook Portion. The Water Resources Development Act of 1986 ''adopted and authorized to be prosecuted by the Secretary (of the Army) * * *'' Plan A of the 1980 Feasibility Study, which provided basin-wide flood protection with a 500-year level of protection. The USACE prepared a May 1997 Final General Reevaluation Report and Supplemental Environmental Impact Statement (SEIS) [**Federal Register**: October 9, 1997 (Volume 62, Number 196)] which affirmed that the authorization remained appropriate for the Green Brook Sub-basin based on current problems, needs, and planning and design criteria. During the public coordination process for the May SEIS, concern was expressed over potential environmental and social impacts of the proposed plan in the Upper Portion of the basin. As a result, the USACE and the project's local sponsor agreed to proceed with construction in the Lower and Stony Brook Portions of the basin, but to defer action on the Upper Portion of the basin. The USACE has initiated a Reformulation Study to evaluate reasonable solutions to flooding problems in the Upper Portion previously identified in the May 1997 GRR. In accordance with USACE policies, the Reformulation Study will evaluate a range of alternatives including nonstructural measures, channel modifications, flood control tunnels, surface diversions, and detention structures.

EIS Scope

The intended EIS will evaluate the potential environmental impacts associated with the proposed flood control alternatives for the Upper Portion of the Green Brook Sub-basin of the Raritan River Basin, Middlesex, Somerset and Union Counties, State of New Jersey.

Public Involvement

The USACE intends to schedule an interagency meeting in February 2001 to discuss the scope of the EIS and data gaps. Two public scoping meetings are anticipated to be scheduled in March 2001. Scoping documents will be made available at least one month before scheduled public scoping meeting dates at the following locations:

Berkley Heights Public Library, 290 Plainfield Avenue, Berkley Heights, New Jersey.

Fanwood Public Library, North Avenue and Tilloston road, Fanwood, New Jersey.

North Plainfield Library, 6 Rockview Avenue, North Plainfield, New Jersey.

Plainfield Public Library, 8th and Park Avenue, Plainfield, New Jersey.

Scotch Plains Public Library, 1927 Bartle Avenue, Scotch Plains, New Jersey.

South Plainfield Public Library, 2840 Plainfield Avenue, South Plainfield, New Jersey.

Watchung Public Library, 12 Stirling Road, Watchung, New Jersey.

The public will have an opportunity to provide written and oral comments at the public scoping meetings. Public scoping meeting places, dates and times will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. Written comments may also be submitted via mail and should be directed to Ms. Megan B. Grubb at the address listed above in the **FOR FURTHER INFORMATION CONTACT** section. The USACE plans to issue the draft EIS in the Spring of 2002. The USACE will announce availability of the draft in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity submit comments, which will be addressed in the final EIS.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 01–766 Filed 1–9–01; 8:45 am]

BILLING CODE 3710–06–M

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 February 9, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 Lauren_Wittenberg@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: January 4, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Partnership Grants Program of Title II of the Higher Education Act.

Frequency: Annually, biennially.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden

Responses: 697; *Burden Hours:* 954.

Abstract: The purpose of this evaluation is to assess the impact, strengths and weaknesses of the Partnership Grants Program, one of the three programs authorized in Title II of the Higher Education Amendments of 1998. This program is designed primarily to increase collaboration between schools of arts and sciences

and schools of education, increase the role of K–12 educators in the design and implementation of effective teacher education programs, and increase the intensity and quality of clinical experiences for prospective teachers. The evaluation will measure the impact of grants in helping colleges of education, colleges of arts and sciences, school districts and other partners to work more closely together to improve the content and structure of the professional education offered to prospective teachers.

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 Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@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. 01–653 Filed 1–9–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition To Prevent High-Risk Drinking and Violent Behavior Among College Students

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Correction Notice; Notice of Final Priorities and Selection Criteria for Fiscal Year (FY) 2001 and Subsequent Years.

SUMMARY: The Assistant Secretary published a notice of final priorities and selection criteria for this competition in the **Federal Register** on December 27, 2000 (65 FR 82224–82226). In that notice of final priorities and selection criteria (page 82225, column 1), Absolute Priority #2 should read ''Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies to Prevent Violent Behavior Among College Students.''

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E252, Washington, DC 20202–6123. Telephone: (202) 205–5471. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use these final priorities and selection criteria, we invite applications through a notice in the **Federal Register.** A notice inviting applications under this competition was previously published in the **Federal Register** on December 27, 2000 (65 FR 82222).

Program Authority: 20 U.S.C. 7131.

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* or *http://www.ed.gov/news.html.* To use PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at (888) 293–6498; or in the Washington, DC area at (202) 512–1530.

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

(Catalog of Federal Domestic Assistance Number 84.184H Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students)

Dated: January 5, 2001.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–737 Filed 1–9–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.162A]

Emergency Immigrant Education Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

Emergency Immigrant Education Program

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience unexpectedly large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: March 16, 2001.

Deadline for Intergovernmental Review: May 15, 2001.

Applications Available: January 9, 2001.

Available Funds: $150 million.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 17 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, 81, 82, 85, 86, 97, 98, 99; and (b) 34 CFR Part 299.

Application Procedures

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Emergency Immigrant Education Program, CFDA 84.162A, is one of the programs included in the pilot project. If you are an applicant under the Emergency Immigrant Education Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its

success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any favorable consideration or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

- We may request that you give us original signatures on all other forms at a later date. You may access the electronic grant application for the Emergency Immigrant Education Program at: *http://e-grants.ed.gov*

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements: March 16, 2001.

SUPPLEMENTARY INFORMATION: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382 enacted October 20, 1994) (20 U.S.C. 7544 and 7545). In order to receive an award under this program, an SEA must provide a count, taken during February 2001, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. (20 U.S.C. 7544(b)(2)). Under section 7501(7) of the Act, the term ''immigrant children and youths'' means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. (20 U.S.C. 7601(7)).

FOR APPLICATIONS OR INFORMATION CONTACT: Ki Lee, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5632, Switzer Building, Washington DC 20202–6510. Telephone (202) 205–8730. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

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To use PDF, you must have Adobe Acrobat Reader , which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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

Program Authority: 20 U.S.C. 7541–7549.

Dated: January 5, 2001.

Arthur M. Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 01–736 Filed 1–9–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Building Energy Standards Program: Determinations Regarding Energy Efficiency Improvements in the 1998 and the 2000 International Energy Conservation Codes for Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Department of Energy (DOE or Department) today determines that the 1998 version of the International Code Council (ICC) International Energy Conservation Code (IECC) would achieve greater energy efficiency in low-rise residential buildings than the 1995 version of the Council of American Building Officials Model Energy Code (MEC). Also, DOE determines that the 2000 version of the IECC would achieve greater energy efficiency than the 1998 IECC. As a result of these determinations, in accordance with the provisions of the Energy Policy Act of 1992, States are required to file certification statements to DOE about how their own residential building codes compare to the IECC codes regarding energy efficiency. This Notice provides guidance to States on how the codes have changed from previous versions, how to submit certifications, and how to request extensions of the deadline to submit certifications.

DATES: Certifications or requests for extensions of deadlines with regard to the 1998 and the 2000 International Energy Conservation Codes are due at DOE on or before January 10, 2003.

ADDRESSES: Certifications or requests for extensions of deadlines should be directed to the Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Research and Standards, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Envelopes or packages should be labeled, ''State Certification of Residential Building Codes Regarding Energy Efficiency''.

FOR FURTHER INFORMATION CONTACT: Christopher Early, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Phone: 202–586–0514, FAX: 202–586–4617.

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I. Introduction

A. Statutory Requirements

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for the Building Energy Standards Program. 42 U.S.C. 6831–6837. ECPA, as amended, provides that when the 1992 Model Energy Code, or any successor to that code, is revised, the Secretary of the Department of Energy must determine, not later than 12 months after the revision, whether the revised code would improve energy efficiency in residential buildings and must publish notice of the determination in the Federal Register. 42 U.S.C. 6833 (a)(5)(A). If the Secretary determines that the revision would improve energy efficiency then, not later than two years after the date of the publication of the affirmative determination, each State is required to certify that it has compared its residential building code regarding energy efficiency to the revised code and make a determination whether it is appropriate to revise its code to meet or exceed the provisions of the successor code. 42 U.S.C. 6833(a)(5)(B). State determinations are to be made: (1) After public notice and hearing; (2) in writing; (3) based upon findings included in such determination and upon evidence presented at the hearing; and (4) available to the public. 42 U.S.C. 6833(a)(5)(C). In addition, if a State determines that it is not appropriate to revise its residential building code, the State is required to submit to the Secretary, in writing, the reasons, which are to be made available to the public. 42 U.S.C. 6833(a)(5)(C).

B. Background

A previous **Federal Register** notice, 59 FR 36173, July 15,1994, announced the Secretary's determination that the 1993 MEC is an improvement over the 1992 MEC. Another **Federal Register** notice, 61 FR 64727, December 6, 1996, announced the Secretary's determination that the 1995 MEC is an improvement over the 1993 MEC.

The Council of American Building Officials (CABO) has published the MEC since its first printing in 1983 through 1995. CABO was established in 1972 to provide a uniform approach and focus on certain building code matters for the three regional model code organizations in the United States. In 1994, the three regional organizations agreed to the formation of the International Code Council, or ICC. ICC's main task is to develop and maintain a single set of comprehensive and coordinated building codes for the United States, and potentially other nations, to replace regional codes.

CABO transferred all rights and responsibilities of the MEC to the ICC, to better coordinate MEC requirements with the other international codes and to recognize the MEC's national scope. The ICC renamed the MEC as the International Energy Conservation Code (IECC) and first published it in 1998. The 1998 IECC contains all of the text of the 1995 MEC, plus all revisions approved for inclusion in the MEC during the 1995, 1996, and 1997 code maintenance cycles. Similarly, the 2000 IECC contains all of the text of the 1998 IECC, plus all revisions approved for inclusion in the 2000 IECC during the 1998 and 1999 code maintenance cycles. Therefore, the Department has determined that the 1998 IECC is the successor to the 1995 MEC and the 2000 IECC is the successor to the 1998 IECC and both should be the subject of a Secretarial determination as required by ECPA, as amended. Today's notice provides the Secretary's determination on the 1998 IECC and the 2000 IECC.

C. DOE's Determination Statement

There are many differences between the 1995 MEC and the 1998 IECC that affect energy efficiency. Some changes directly improve energy efficiency. Many other changes to the 1998 IECC make the code simpler and easier for designers, builders, and code compliance officials to understand and use. Since the Department feels that buildings are more likely to contain all the energy efficiency features required by the code when the code is easy to use and interpret, these code changes tend to promote energy efficiency. Two changes are negative: they will not improve energy efficiency. Nevertheless, the beneficial changes in the 1998 IECC outweigh the negative impacts. Therefore, DOE has concluded that the 1998 IECC improves energy efficiency over the 1995 MEC in low-rise residential buildings.

There are also differences between the 1998 IECC and the 2000 IECC that affect energy efficiency. Some changes improve energy efficiency. Two changes have a small negative impact. Thus, DOE has concluded that the 2000 IECC will improve energy efficiency over the 1998 IECC.

II. Discussion of Changes in the 1998 IECC Compared with the 1995 MEC

A. Major Changes in the 1998 IECC That Improve Energy Efficiency

1. Solar Heat Gain Coefficient for Glazed Products in Certain Climates

Solar Heat Gain Coefficient (SHGC) is a measure of the ability of a glazed product, such as a window, to screen out incoming solar radiation by virtue of the type of glass used in the window. Glass with a low SHGC prevents much of the incident solar radiation from entering the residences to elevate indoor temperatures. Solar heating of indoor environments is a particular problem in southern regions of the United States, increasing cooling loads and energy consumption.

The 1995 MEC has no requirements for a specific SHGC for any glazed product. The 1998 IECC limits SHGC to a maximum of 0.4 for those residential buildings located in climates having fewer than 3500 annual Heating Degree

Days (HDD). Setting the maximum SHGC for glazing products to 0.4 in climates below 3500 HDD recognizes that low SHGC glazing is an effective cooling load reduction strategy in those parts of the country needing significant air conditioning. Bureau of Census data from 1992 indicates that approximately 40% of all new housing starts were in the 0–3500 HDD climate region. Therefore, this one change has the potential to positively impact a substantial portion of the new housing market.

2. U-Factor for Replacement Windows

The 1998 IECC includes a new table of prescriptive criteria for insulation (R-values) and fenestration (U-factors) for certain additions and window replacements to single family residential buildings. The U-factors for replacement windows improve energy efficiency. U-factors describe heat gain and loss through windows. More stringent U-factors are required in colder climates to prevent heat loss.

Under the 1998 IECC, when a window in an existing building is replaced in its entirety, including frame, seal, and glazing, the replacement unit must meet the U-factor requirement. The 1995 MEC does not address the subject of replacement windows in residential structures, thus allowing any window to be installed, irrespective of its U-factor. While the 1995 MEC does not preclude the possibility of installing a replacement window with good thermal performance (low U-factor), the 1998 IECC effectively assures that a reasonably performing window will be installed in existing buildings.

Because this new prescriptive criteria will reduce conductive heat losses from replacement windows, it will improve energy efficiency in existing residential buildings. The potential for energy savings from replacement windows is substantial. Recent residential housing surveys performed by DOE indicate that approximately 3.5 million American households replace at least some of their windows each year.

B. Minor Changes in the 1998 IECC That Improve Energy Efficiency

1. Air Infiltration for Manufactured Door and Windows

The MEC and the IECC both require that manufactured doors and windows be limited in their rate of air infiltration in accordance with the industry's manufacturing standards. The requirement applies to the unit as it comes from the factory, and not to potential infiltration around the frame of the unit when actually installed.

The 1998 IECC lowers allowable rates of air infiltration compared to the 1995 MEC. Since lower air infiltration decreases heating and cooling energy consumption, this change improves energy efficiency in residential construction.

2. Heat Traps for Water Heaters

The 1995 MEC has no requirements for heat traps, while the 1998 IECC does. A heat trap is a prefabricated device installed in the water heater inlet/outlet pipe at the time of manufacture, or an ''S''-shaped pipe trap fabricated during installation. It prevents cooling of hot water from ''thermosyphoning'' effects. Thermosyphoning occurs when a water heater is installed at a lower elevation (in a basement, for example) than the distribution piping of the residence. Water heated in the tank rises, due to increased buoyancy, into the distribution piping. The distribution piping has a large, often uninsulated surface area from which to radiate heat to the surrounding air and surfaces. Thus, the hot water cools before it is used, wasting energy. Heat traps help to prevent this unwanted heat loss by preventing hot water from rising above the horizontal level of the top of the hot water heater. This code change improves energy efficiency slightly.

3. Use of Compliance ''Tools''

Over the last several years, various aids for demonstrating compliance with some of the MEC requirements have been developed by several organizations, including DOE. These compliance aids include workbooks, technical manuals, worksheets, forms, and computer software. The aids provide a standardized interpretation of the code requirements. Some of the tools have become the primary means for demonstrating compliance with the MEC because of their simplicity, ease of use, and standardized approach.

The 1995 MEC is silent on the use of specific code compliance tools. The 1998 IECC includes the following provision:

> Compliance with specific provisions of this code shall be determined through the use of computer software, worksheets, compliance manuals, and other similar materials when they have been approved by the building official as meeting the intent of this code.

Thus the 1998 IECC explicitly recognizes the availability and use of various compliance tools. ''Approved by the building official'' means that the official has accepted the tool(s) as being adequate for demonstrating compliance with the code. The Department feels that inclusion in the 1998 IECC of language to encourage use of compliance tools promotes enforcement of the code, resulting in improved energy efficiency in buildings.

4. Tables for Compliance by Prescriptive Specification

The 1995 MEC has criteria for the thermal performance of the roofs, ceilings, walls, floors, foundations, and other construction elements which enclose the heated or cooled spaces of residential buildings. There are several methods for determining the insulation requirements and thermal performance of windows, doors, and skylights that will meet the basic performance criteria. Building designers must understand how to apply the compliance methods to arrive at the accurate R-values and U-factors. An incorrect interpretation and application of a MEC compliance path could result in a building that is less efficient than the MEC actually requires.

The IECC provides several new tables of required R-values for installed insulation and U-factors for glazing assembles (windows and skylights). The tables are presented as a function of residential building type (single-family dwelling, or multi-family dwelling building less than four stories in height), location by heating degree day, and window area as a percentage of the overall wall area. A set of rules for interpreting and applying the tables are also included in the IECC. This prescriptive compliance path provides a simple and technically accurate solution for identifying the critical R-values and U-factors.

The new tables add no new requirements and are not mandatory but they are a simpler option. To the extent that the other methods have a greater potential for misinterpretation and miscalculation, the availability of the prescriptive specification tables will help to assure that floors, ceilings, walls, and windows are properly designed and meet energy efficiency requirements under the code, thus promoting energy efficiency.

5. Insulation of Skylight Shafts

Sometimes skylights are installed in sloped roofs and separated from the living space by an attic space and flat ceiling. To transfer the light to the living space, an enclosed shaft, either vertical or sloped, is built between the skylight frame and the horizontal ceiling surface. These shafts are often overlooked entirely when evaluating thermal performance of the building. Even when recognized, the question remains whether the shaft should be treated as a vertical (or near vertical) wall, which has one insulation requirement, or as

part of the ceiling assembly, which has a different insulation requirement.

In principle, both the 1995 MEC and the 1998 IECC require that the surfaces of the skylight shaft be insulated, because the shaft separates the conditioned living space from the unconditioned space of the attic. The 1995 MEC, however, does not explicitly mention skylight shafts. The 1998 IECC specifically imposes the requirement to insulate those skylight shafts that are over 12 inches deep. The IECC will therefore help to assure that this construction feature is not overlooked and is adequately insulated.

6. Access Openings in Floors, Walls, and Ceilings

In both the MEC and IECC, the floor and wall have to meet an overall thermal performance value. If there are several different types of floors in one residential building, the area-weighted average of each floor's thermal performance must comply with the overall performance required by the code.

Houses with crawlspace foundations normally comply with the energy code by insulating the floor between the crawlspace and the conditioned area. Most building codes require an access hatch to get to the under-floor space and the access hatch is often built into the floor. When computing the insulating performance of the entire floor assembly, the 1995 MEC is silent on the subject of access openings. The 1998 IECC specifically states that access doors or hatches are a sub-element of the floor assembly when performing the computation. This will prevent access hatches from being omitted from the calculations. Since access hatches are often uninsulated, their inclusion in insulation calculations will require increased insulation and improve energy efficiency slightly.

C. Changes in the 1998 IECC That Decrease Energy Efficiency

1. Prescriptive Thermal Envelope Criteria for Certain Additions

The 1998 IECC contains a new table of insulation R-values and fenestration U-factors for certain residential additions. It is an alternative compliance path that can be used in place of the other compliance methods in the code. No such table exists in the 1995 MEC. To qualify for the additions table in the 1998 IECC, the addition must be less than 500 square feet in floor area and must have a fenestration area no more than 40% of the gross wall and roof area of the addition. The new table was derived from table 502.2.4(3), ''Prescriptive Building Envelope Requirements Type A–1 Residential Buildings, Windows Averaging 15 Percent of Exterior Wall Area.'' Houses with more fenestration typically use more energy. For that reason, the code has more stringent energy efficiency requirements for houses with higher ratios of window area to wall area.

Houses with larger areas of fenestration have more stringent standards for windows and insulation in both the 1995 MEC and the 1998 IECC. The new compliance table allows additions with window area up to 40% of exterior wall area to be constructed to the less energy efficient fenestration and insulation code requirements specified for buildings with window area only 15% of exterior wall area.

Although residential construction improvements are a multi-billion-dollar per year industry, no reliable data exists on the number of additions constructed and the amount of glazing installed. It is therefore difficult to estimate the specific impact that application of the IECC additions table would have on energy consumption in the United States. As an example of the possible impact, a 500 square foot addition with a window area equal to 26% of the wall area and complying with the additions table will experience an increase in total heating and cooling loads of 3–8%, depending on the geographic location, compared to an addition which meets the 1995 MEC. The presence of the ''additions table'' in the 1998 IECC will likely decrease energy efficiency in some residential construction.

2. Revised Default U-factors for Glazed Products

To evaluate whether installed glazed products comply with the overall thermal performance criteria of the MEC or the IECC, glazed products should be tested in accordance with procedures developed by the National Fenestration Rating Council (NFRC). The recognition of the NFRC test procedures for determining U-factor of glazed products first appeared in the 1995 MEC although neither the MEC nor IECC mandates NFRC testing. NFRC testing results in assigning a reliable, accurate U-factor to each glazed product. A high U-factor means a poorly performing product (high heat loss through the window or other glazed assembly); a low U-factor means a well-performing window (low heat loss).

The 1995 MEC contains tables which provide the MEC user with default U-factors that could be used if the glazed product had not actually been tested by using the NFRC procedure. These default tables were revised in the 1998 IECC. Over three-quarters of the revisions are lower U-factors. Effectively, many glazed products are re-graded as better energy performers because the product has a lower U-factor under the 1998 IECC than it had under the 1995 MEC.

The use of revised default U-factors could have a negative impact on energy efficiency. As an example, under the 1995 MEC, window Model ABC (unrated) could have had a default U-factor assigned and been included in the design of a particular residence. Under the 1998 IECC, assigning a lower default U-factor (efficiency ''improvement'') to this same window Model ABC in this same design may allow a slight decrease in efficiency in some other portion of the house (for example, reducing insulation in walls). The house would still comply with the 1998 IECC, but use more energy than the same house designed for the 1995 MEC.

We cannot estimate the magnitude and frequency of the negative impacts of using the IECC's revised default values, but there are significant numbers of windows which are still not NFRC-tested. Some manufacturers of inefficient glazed products may opt to withhold their test results (high U-factors) and use the default values instead. Use of these default values, in place of actual NFRC testing and rating of glazed products, may decrease energy efficiency in residential construction.

D. Conclusion

Most of the changes between the 1995 MEC and the 1998 IECC will improve energy efficiency in residential construction and make the code easier to use and interpret. Two changes will not improve energy efficiency but the benefits of the changes in the 1998 IECC outweigh the negative impacts. Therefore, the 1998 IECC improves energy efficiency in low-rise residential buildings.

III. Discussion of Changes in the 2000 IECC Compared with the 1998 IECC

A. Changes in the 2000 IECC That Improve Energy Efficiency and Compliance With the Code

1. Protection of Above-Grade Foam Insulation

The 2000 IECC has a new provision for protection of above-grade foam insulation from deterioration. Rigid foam insulation is often applied to the exterior, exposed surfaces of slab-on-grade foundations, basement walls, and, on rare occasions, crawl space foundations. As used in residential construction, all of these foundation types often extend above the ground.

Where the insulating foam is exposed to air it deteriorates from object impacts and chemical deterioration from sun, wind, and water which decreases its insulating ability.

The 2000 IECC requires protection of exposed insulation. While the new language does not mandate a specific material or technique, it does stipulate that the protective material be rigid, opaque, and weather-resistant. When applied, the protective material must cover all of the exposed insulation and extend at least 6 inches below the ground protecting it and keeping it from losing its insulating ability.

2. Solar Heat Gain Coefficient for Additions and Replacement Windows

The 1998 IECC institutes a limitation on the solar heat gain coefficient (SHGC) for glazed products in warm climates, sets maximum allowable U-factors for replacement windows, and provides thermal envelope criteria for certain additions under 500 square feet. The new requirements for additions and replacement windows were placed in a different chapter of the 1998 IECC than the SHGC requirement and so did not absolutely clarify that the SHGC requirement applies to replacement windows and additions. In warm climates replacement glazing and glazing in additions subject to the 1998 IECC could be installed without this important cooling load control feature.

The 2000 IECC has new, specific language that makes it clear that all replacement fenestration and fenestration in additions are subject to the SHGC requirement. This provision ensures energy efficiency improvement in residential buildings and additions in warm climates.

3. Construction Documents

The 2000 IECC clarifies the type of information that must be submitted on construction documents submitted for review with a request for a building permit. Plans must be drawn to scale and may be submitted in an electronic format. The exact location, nature, and extent of the work to be done must be clearly shown. U-factors of doors, windows, and skylights; R-factors of insulation; and U-factors of overall envelope assemblies must be clearly shown. This expanded provision helps inspectors determine IECC compliance at the plan review stage, thereby promoting energy savings.

4. Definition of Roofs and Skylights

The 1998 IECC and its predecessors have never explicitly stated whether a sloped wall is a wall or a roof, or whether a sloped window is a window or a skylight. This is important because walls typically have different insulation requirements from roofs and windows have different thermal requirements from skylights. The 2000 IECC revised the definition of ''roof assembly'' to include all roof or ceiling assemblies that are sloped less than 60 degrees from the horizontal. The revised definition also provides many more examples of residential construction that typically are considered a roof such as the roof of a bay window and sloped glazing that faces conditioned space. The definition also stipulates that any sloped assembly 60 degrees or greater from the horizontal is to be considered an exterior wall, which has different thermal performance requirements under the code. A skylight is newly defined as any glazed assembly with a slope of less than 60 degrees from the horizontal.

These clarifying definitions ensure that sloped walls and roofs are treated consistently in building energy efficiency calculations for IECC compliance, ensuring that the appropriate insulation requirements are applied.

5. Treatment of Partially Glazed Doors

The 1998 IECC has confusing and conflicting approaches toward treating partially glazed doors when evaluating compliance of wall assemblies. An expanded definition of glazing area in the 2000 IECC is more specific. If the door has a glazed area that is less than 50% of the overall door area then the actual glazed area must be used in compliance calculations. If the door has glazing amounting to more than 50% of the door area, the entire door is considered glazed in the calculations.

The new and revised definitions in the 2000 IECC help building designers and code officials ensure the code is properly applied.

6. Use of Prescriptive Specification Compliance Tables With Steel-Framed and Masonry Walls

Section II.A.2 describes the new tables for compliance by prescriptive specifications that were introduced into the 1998 IECC. The tables were developed for, and can be used only for wood-framed construction. Some other residential construction materials are gaining in popularity, such as steel framing in walls and masonry, concrete, and other high mass materials used in some above-grade load-bearing wall designs.

To extend the utility of the prescriptive tables, the 2000 IECC includes several new tables that address these wall construction techniques. The new tables are based on requirements existing elsewhere in the IECC; consequently, they add no new limitations. They make it easier for people to use the code which improves energy efficiency.

B. Changes in the 2000 IECC that Decrease Energy Efficiency

1. Increase in U-value for Replacement Skylights

The 2000 IECC increased the allowable U-value for replacement skylights from 0.35 and 0.40 (in climate zones with heating degree days greater than 4000) to 0.50. The IECC allows the change for the practical reason that typically even high preforming skylights cannot achieve the lower U-values. Skylights with higher U-values are less energy efficient because they allow heat to escape more easily. The effect of this modification on energy efficiency is relatively small because the U-value change is small. In addition, the change is appropriate since the more stringent requirement cannot be met. Overall, skylight replacements represent a small portion of building construction, thereby minimizing the impact of this change.

2. Simplified IECC Chapter for Some Buildings

Notwithstanding the many improvements made to the residential code since 1992 to promote understanding and reduce complexity of the code, many designers, builders, and code officials want to improve its ease of use. The response to this need appears in the 2000 IECC as new chapter 6, ''Simplified Prescriptive Requirements for Residential Buildings, Type A–1 and A–2.'' As a shorter and simpler alternative to the main portion of the IECC, it applies only to a limited set of buildings and offers them fewer compliance options for insulation and fenestration.

Chapter 6 is intended to be equivalent in overall energy efficiency for those residential types it covers. In becoming shorter, however, two minor energy efficiency requirements were left out. Lighting efficiency requirements for multi-family non-dwelling areas such as laundry rooms and outdoor areas, which are mandatory in section 505.2 of the 2000 IECC, are omitted from chapter 6. The number of buildings and area of lighting affected, however, are very small and therefore the impact on energy efficiency is small as well.

Also, the new chapter fails to include the maximum air leakage rates for windows that exists in section 502.1.4.1. Since most, if not all, windows are manufactured to easily meet the leakage

limits, the impact of the missing allowable leakage rates is negligible.

C. Conclusion

Most of the changes between the 1998 IECC and the 2000 IECC promote compliance with the code and help conserve energy in low-rise residential buildings. Although a few changes might cause marginal increases in energy consumption, they do not alter DOE's determination that the 2000 IECC improves energy efficiency.

IV. Filing Certification Statements with DOE

A. State Determinations

On the basis of today's DOE determinations, each State is required to determine the appropriateness of revising the portion of its residential building code regarding energy efficiency to meet or exceed the provisions of the ICC International Energy Conservation Code, 1998 edition and the 2000 edition. EPCA section 304 (a)(5)(B) and (C). If a State completes its determination on the 2000 IECC and certifies to DOE that it has done so, it does not have to do a separate determination for the 1998 IECC.

The determinations must be made not later than two years from the date of today's notice, unless an extension is provided. The State determination shall be: (1) Made after public notice and hearing; (2) in writing; (3) based upon findings and upon the evidence presented at the hearing; and (4) made available to the public. States have considerable discretion with regard to the hearing procedures they use, subject to providing an adequate opportunity for members of the public to be heard and to present relevant information. The Department recommends publication of any notice of public hearing in a newspaper of general circulation.

The Department recognizes that some States do not have a State residential code or do not have a code that applies to all residential building new construction. If local building codes rather than a State code regulate residential building design and construction, the State must determine whether it is appropriate for each of its units of general purpose local government to revise the provisions of its residential building code regarding energy efficiency to meet or exceed the 1998 IECC and 2000 IECC. States may base their determinations on reasonable preliminary determinations by units of general purpose local government. Each such State must still hold an adequate public hearing to review the information obtained from the local governments and to gather any additional data and testimony for its determination.

States should be aware that the Department considers high-rise (greater than three stories) multi-family residential buildings and hotel, motel, and other transient residential building types of any height as commercial buildings for energy code purposes. Residential buildings include one- and two-family detached and attached buildings, duplexes, townhouses, row houses, and low-rise multi-family buildings (not greater than three stories) such as condominiums and garden apartments.

States should also be aware that the determinations do not apply to Chapters 6 and 7 of the 1998 IECC and Chapters 7 and 8 of the 2000 IECC, which address commercial buildings as defined above. Therefore States must certify their evaluations of their State building codes for residential buildings with respect to all provisions of the IECC except for those chapters.

B. State Certifications to DOE

As a consequence of today's determination by DOE, Section 304(a)(5)(B) of ECPA, as amended, requires each State to certify to the Secretary of Energy that it has reviewed the provisions of its residential building code regarding energy efficiency and determined whether it is appropriate to revise the code to meet or exceed the 1998 IECC and the 2000 IECC. A certification to the 2000 IECC obviates the need for a certification to the 1998 IECC.

The certifications must be in writing and submitted within two years from the date of publication of this notice. If a State intends to certify that a residential building code already meets or exceeds the requirements of the 1998 IECC or 2000 IECC, it is appropriate for the State to explain the basis for the certification. The Department believes that it is appropriate for the chief executive of the State (the Governor) to designate a State official, such as the Director of the State energy office, State code commission, utility commission, or equivalent State agency having primary responsibility for residential building codes, to provide the certification to the Secretary. Such a designated State official could also provide the certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

A previous DOE determination (61 FR 64727, December 6, 1996) required States to file a certification statement regarding the 1995 MEC by December 6, 1998. States that have not submitted the certification but have made substantial progress in reviewing the energy efficiency provisions of their residential building codes with respect to the 1995 MEC may wish to complete their review and submit the certification before considering the 1998 IECC and 2000 IECC.

If a State certifies to the 1998 IECC, certification to previous versions, such as the 1995 MEC, is not required. Similarly, a certification to the 2000 IECC makes certifications to the previous versions of the code unnecessary.

When submitting any certification documents in response to this notice, the Department requests that the original documents be accompanied by one copy.

C. State Determination Not To Revise Its Residential Building Code

Section 304(a)(4) of ECPA, as amended, requires that if a State makes a determination that it is not appropriate to revise the energy efficiency provisions of its residential building code, the State must submit to the Secretary, in writing, the reasons for this determination. The statement of reasons should summarize the rationale for the State's conclusion. If local building codes are applicable in the absence of a State code, the State may rely on reasons provided by the units of general purpose local government. Upon receipt of the statement of reasons, the Department will place a copy in its Freedom of Information Reading Room in the Forrestal Building in Washington, D.C., so that members of the public may inspect it.

D. Requests for Extensions To Certify

Section 304(c) of ECPA, as amended, requires that the Secretary permit an extension of the deadline for complying with the certification requirements described above, if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. Such demonstrations could include: (1) A plan for response to the requirements stated in section 304; (2) a statement that the State has appropriated or requested funds (within State funding procedures) for a plan that would respond to the requirements of section 304; and (3) a notice of public hearing.

If a State has not met the December 6, 1998, deadline for certifying to the 1995 MEC, it should do so or file a request for extension immediately.

If a State intends to certify to the 1998 IECC or the 2000 IECC but cannot do so

within two years of the date of this notice, it must file a request for extension as soon as practicable but not later than the two year deadline. Such a request should include a statement regarding the State's intentions and estimated time frame to certify.

Issued in Washington, D.C., on January 4, 2001.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 01–742 Filed 1–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–83–000]

AES Medina Valley Cogen, L.L.C.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

January 2, 2001.

Take notice that on December 22, 2000, AES Medina Valley Cogen, L.L.C., with its principal office located at 1823 Neal Lane, Mossville, Illinois 61552, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Pursuant to a Tolling Agreement (Agreement) to be entered into by AES Medina Valley and Central Illinois Light Company (''CILCO''), AES Medina Valley will build, own, operate and maintain an approximately 40 MW (net) combined cycle gas cogeneration facility in Mossville, Illinois (Facility). The Facility will be connected at 13.8 kV to a substation owned by CILCO to deliver electric energy, and will provide steam heat service and chilled water service to CILCO for resale. The provision of steam heat service and chilled water service will be incidental to AES Medina Valley's EWG activities. CILCO will provide gas and water to the Facility. Contemporaneously with this Application, AES Medina Valley is filing the Agreement with the Commission pursuant to Section 205 of the Federal Power Act, and with the Illinois Commerce Commission (''ICC'') for approvals pursuant to their respective jurisdictional authority. AES Medina Valley is also requesting ICC approvals as required by the applicable provisions of the Public Utility Holding Company Act.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 23, 2001, and must be served on the applicant. 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 or on the Internet at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–646 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG01–13–000, MG–14–000, MG01–15–000, MG01–16–000, MG01–17–000]

Algonquin Gas Transmission Co., et al.; Notice of Filing

January 4, 2001.

Take notice that on November 22, 2000, Algonquin Gas Transmission Co., Algonquin LNG, Inc., East Tennessee Natural Gas Company, Texas Eastern Transmission Co., Maritimes and Northeast Pipelines, L.L.C. filed revised standards of conduct under Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.,*[2] and Order No. 599.[3]

Any person desiring to be heard or to protest any of the filings should file a motion to intervene or protest in each proceeding 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 to intervene or protests should be filed on or before January 19, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in each proceeding. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–636 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–200–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

January 4, 2001.

Take notice that on December 29, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective February 1, 2001.

CIG states it is making this filing to set forth a new daily Scheduled Imbalance Penalty, and a new Rate Schedule APAL–1 which will provide for a new interruptible automatic parking and lending service (APAL). CIG further states both the Scheduled Imbalance Penalty and the APAL Service are designed to address daily imbalances which represent a significant and ongoing gas management problem on CIG's system.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–645 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–18–000]

Iroquois Gas Transmission System, L.P.; Notice of Filing

January 4, 2001.

Take notice that on December 11, 2000, Iroquois Gas Transmission System, L.P. (Iroquois) filed revised standards of conduct under Order Nos. 497 *et seq.*.[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Iroquois states that it mailed copies of this filing to all customers and interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest in this proceeding 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 to intervene or protests should be filed on or before January 19, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in this proceeding. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–639 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 30,958 (December 4, 1992); Order 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–56–000]

Midwestern Gas Transmission Company; Notice of Petition

January 4, 2001.

Take notice that on December 21, 2000, Midwestern Gas Transmission Company (Midwestern), PO Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP01–56–000 a Petition for Exemption of Temporary Acts and Operations from Certificate Requirements pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure) 18 CFR 385.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (NGA) seeking approval to inactivate, on a temporary basis, a compressor unit at its Station 2110 located in Pike County, Indiana, all as more fully set forth in this petition which is on file with the Commission and open to pubic inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Specifically, Midwestern requests authority to inactivate, for a period of 18 to 24 months, one 1,100 horsepower turbine compressor unit (Unit 2110–B) at its Station 2110 on its Portland to Joliet Line (2100 Line), located in Pike County, Indiana. During the time period that the unit is idle, Midwestern will decide whether it is appropriate to apply for permanent abandonment or, alternatively, to replace the unit pursuant to section 2.55(b) of the Commission's regulations.

Midwestern avers that inactivating Unit 2110–B will not affect any current services on its system. In support of its position, Midwestern states that when Unit 2110–B is operating its 2100 Line has a certificated capacity of 678 MMSCFD and that the inactivation of Unit 2110–B will reduce the capacity of the 2100 Line by only 4 MMSCFD, Midwestern also points out that the average throughput of its system over the past two years has been 270

MMSCFD and that for the past three months the average throughput has been 396 MMSCFD.

Questions regarding the details of this proposed project should be directed to David E. Maranville, Counsel, Midwestern Gas Transmission Company, PO Box 2511, Houston, Texas 77252–2511, call (713) 420–3525.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 25, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules requires that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene, as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commissions web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–637 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG01–6–000, MG01–7–000, MG01–8–000, MG01–9–000 and MG01–10–000]

Panhandle Eastern Pipe Line Company, et al.; Notice of Filing

January 4, 2001.

Take notice that on October 26, 2000, Panhandle Eastern Pipe Line Company, Sea Robin Pipeline Company, Southwest Gas Storage Company, Trunkline Gas Company and Trunkline LNG Company filed revised standards of conduct under Order No. 637.[1]

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest in each proceeding 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 to intervene or protest should be filed on or before January 19, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in each proceeding. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–638 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–4–000]

Southeastern Natural Gas Company; Notice of Rate Election

January 4, 2001.

Take notice that on November 24, 2000, Southeastern Natural Gas Company (Southeastern), a local distribution company, filed, pursuant to Section 284.123(b)(ii), an election to use rates contained in its state transportation rate schedule for comparable services under its Section 284.224 blanket transportation certificate. Southeastern states that it has no current interstate customers, but would like to retain authorization to offer such services in the future at approved rates.

Southeastern included a copy of its October 6, 2000 filing with the Ohio Public Utilities Commission, in which the requested maximum rate for firm and interruptible intrastate transportation is $0.40 per Ccf.

[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 63 FR 10156 (February 25, 2000), FERC Statutes and Regulations 31,091 (February 9, 2000) (Order No. 637) and Order No. 637–A, FERC Statutes and Regulations 31,099 (May 19, 2000.)

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of Southeastern's Petition, Southeastern's rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must 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 motion must be filed with the Secretary of the Commission on or before January 19, 2001. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(a)(1)(iii) and the instruction on the Commission's web site at *http://www.ferc.fed.us.efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–642 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–19–000]

Southern Natural Gas Company; Notice of Filing

January 4, 2001.

Take notice that on December 12, 2000, Southern Natural Gas Company (Southern) filed revised standards of conduct under Order Nos. 497 *et seq.,*[1] Order Nos. 566 *et seq.,*[2] and Order No. 599.[3]

Southern states that it mailed copies of this filing to all shippers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest in this proceeding 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 to intervene or protests should be filed on or before January 19, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in this proceeding. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–640 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–477–000, RP01–18–000 and RP01–81–000]

Tennessee Gas Pipeline Company; Notice of Technical Conference

January 4, 2001.

Take notice that a technical conference to discuss the various issues raised by Tennessee's Order No. 637 filing in Docket No. RP00–477–000 and its proposed firm hourly transportation service in Docket No. RP01–81–000 will be held on Tuesday, January 23, 2001, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Parties protesting aspects of Tennessee's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–719 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–182–001]

Texas Eastern Transmission Corporation; Notice of Tariff Filing

January 4, 2001.

Take notice that on December 28, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sub First Revised Sheet No. 456A, to become effective on January 7, 2001.

Texas Eastern states that on December 7, 2000 in Docket No. RP01–182, Texas Eastern submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, revised tariff sheets to be effective on January 7, 2001, which permit customers to request service agreements electronically, to execute such contracts on line via the LINKr System, and modifies certain tariff provisions to expedite the net present value (NPV) contract request and contract execution processes.

Texas Eastern states that a subsequent review of the proposed tariff sheets has revealed that the revisions shown on First Revised Sheet No. 456A did not correctly reflect Texas Eastern's open season proposal as discussed in the last paragraph of page 2 of the December 7, 2000 filing letter. Texas Eastern states that the purpose of this filing is to correct such error by requesting the substitute revised tariff sheet, with a proposed effective date of January 7, 2001, be accepted in lieu of first Revised sheet No. 456A.

Texas Eastern states that a copy of this submission has been faxed to all intervenors in this proceeding to assure timely notice is received of this errata

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

correction and that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest said 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 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. 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–644 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–018]

TransColorado Gas Transmission Company; Notice of Tariff Filing

January 4, 2001.

Take notice that on December 28, 2000, pursuant to 18 CFR 154.7 and 154.203 and in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance, to be effective January 1, 2000, Eighteenth Revised Sheet No. 21 and Fourteenth Revised Sheet No. 22 to Original Volume No. 1 of its FERC Gas Tariff.

The tendered tariff sheets revised TransColorado's Tariff to reflect the amended negotiated-rate contract with Retex, Inc. as well as the deletion or expired contracts. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective January 1, 2001.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–643 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–353–001]

Panda Gila River, L.P.; Notice of Filing

January 4, 2001.

Take notice that on December 22, 2000, Panda Gila River, L.P. (Panda Gila River), tendered for filing an amendment to its First Revised FERC Electric Rate Schedule No. 1, filed with the Commission on November 2, 2000, in the above-referenced docket.

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, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 12, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–720 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

January 4, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No.:* D101–3–000.

c. *Date Filed:* December 21, 2000.

d. *Applicant:* R. Kim and Else R. Ireland.

e. *Name of Project:* Ireland Hydroelectric Project.

f. *Location:* On an Unnamed Stream (Wolf-Hannaman random ditch), tributary to the Bear River, Nevada County, California. (T. 14 N., R. 7 E, Mount Diablo Meridian). Project would not utilize federal lands or reservations.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. *Applicant Contact:* R. Kim and Else R. Ireland, 25855 Sweet Road, Grass Valley, California 95949, telephone (530) 268–2689, (530) 268–1364 (FAX), E-mail *kimireland@bigplanet.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: *diane.murray@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* February 12, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First street, NE., Washington, DC 20426. Comments

and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Please include the docket number (DI01–3–000) on any comments or motions filed.

k. *Description of Project:* The existing project consists of: (1) A four-foot-wide by 5-foot-long diversion structure; (2) a 400-foot-long penstock; (3) a powerhouse containing one generating unit, with a total rated capacity of 17 kW; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on 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 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings 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, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–641 Filed 1–9–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6930–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; 2001 Emergency Planning and Community Right-to-Know Act (EPCRA) and Risk Management Program (RMP) Implementation Status Questionnaire For Tribal Emergency Response Commissions (TERCs) and Their Duly Appointed Local Emergency Planning Committee(s) (LEPCs)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): 2001 Emergency Planning and Community Right-to-Know Act (EPCRA) and Risk Management Program (RMP) Implementation Status Questionnaire for Tribal Emergency Response Commissions (TERCs) and Their Duly Appointed Local Emergency Planning Committee(s) (LEPCs), EPA ICR No. 2004.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting public comments on specific aspects of the proposed information collection as described below.

DATES: Written comments must be submitted to the person and address listed below and postmarked on or before March 12, 2001. Unless adverse comments are received by EPA by the above date, EPA will proceed with its submittal of the ICR to OMB as indicated above.

ADDRESSES: United States Environmental Protection Agency, Region IX, ATTN: Sam Agpawa, EPCRA/CEPP Team, Superfund Division, 75 Hawthorne St. Mail stop: SFD–1–2, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Sam Agpawa at (415) 744–2342 or E-mail at *agpawa.sam@epa.gov*

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are emergency planning organizations or units of Federally recognized Indian tribes, reservations, rancherias and colonies, each of which may be considered a ''small entity,'' located within the state boundaries of Arizona, California and Nevada and including the Navajo Nation whose lands extend into New Mexico, Utah and Colorado. Therefore, establishing different requirements or exemptions from coverage is not practicable. However, EPA will make every effort to minimize the ''burden on persons who shall provide information.'' This will be accomplished by ensuring that the questionnaire is as concise as practicable, that the instructions clarify the respondent's burden, and that the survey questions are simple to answer with information that is readily available to the respondent either through the Agency or the Public domain.

The perception of burden is inherently reduced by the fact that participation in this information collection is voluntary, which will be clearly stated within the contents of the survey questionnaire, within any accompanying promulgation letter or at, and during, any EPA sponsored survey introductory event. The survey packet will be mailed, in accordance with protocol, to the principal officer of each tribal entity as listed in a comprehensive mailing roster developed by EPA Region IX.

Title: 2001 Emergency Planning and Community Right-to-Know Act (EPCRA) and Risk Management Program (RMP) Implementation Status Questionnaire for Tribal Emergency Response Commission(s) (TERCs) and Their Duly Appointed Local Emergency Planning Committee(s) (LEPCs).

Abstract: The Environmental Protection Agency, Region IX, Superfund Division, proposes to conduct a Regional survey of the Tribal Emergency Response Commissions (TERCs). The information collected in this survey will be used to assess the progress, status, needs, resources and activity level of TERCs. The information will be used by EPA Region IX staff to gain a better understanding of EPA Region IX tribes' actual implementation of EPCRA and RMP.

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as SARA title III, and Risk Management Program (RMP) under the Clean Air Act, 1990, section 112(r) and 40 CFR part 68, June 20, 1996, introduced fundamental changes in the regulation of chemical facilities and the prevention of and preparedness for chemical accidents. These laws and rules seek to improve emergency preparedness and reduce the risk of chemical accidents by providing information to citizens about the chemicals in their community.[1] EPCRA is premised on the concept that the more informed local citizens are about chemical hazards in their communities, the more involved they will be in prevention and preparedness activities. For this ''informational regulation'' to be effective, the public must receive accurate and reliable information, which is easy to understand and practical to use. EPCRA, in conjunction with the RMP requirements, sought to create partnerships between all levels of government, tribal governments, and the regulated tribal community to identify, prevent, plan, prepare and respond to hazardous material risks in our communities, including tribal lands, reservations, rancherias and colonies. The purpose of this survey is to obtain input from these organizations to improve Region IX's EPCRA and RMP programs.

The key obligations of each of the EPCRA partners include the following.[2] EPCRA regulations under the July 26, 1990 rule making, require that tribes establish a TERC and that the tribal leader appoint the membership of the TERC. The TERC is responsible for determining whether LEPCs will be appointed. If LEPCs are appointed, the TERC is responsible for determining the number of emergency planning districts within the tribal community, appointing a Local Emergency Planning Committee (LEPC) for each district, and supervising and coordinating the activities of LEPCs. Every facility on Tribal lands subject to EPCRA (including any Federal installation(s)) is required to submit annual chemical inventory reports to their TERC, LEPC and the tribal or cooperative local Fire Departments. Upon release of a hazardous substance into the environment, immediate notification must be made to the TERC and LEPC and, if a CERCLA hazardous substance, to the National Response Center (NRC) with written follow-up notification to the TERC and LEPC. Information on chemical inventories and releases is to be made available to the public upon request.[3]

The intent of section 112(r) of the Clean Air Act as amended 1990, is to prevent accidental releases to the air and mitigate the consequences of such releases by focusing prevention measures on chemicals that pose the greatest risk to the public and the environment. The section also mandates that EPA promulgate a list of regulated substances. Coupled with that listing, section 112(r) requires EPA to promulgate regulations and develop guidance to prevent, detect and respond to accidental releases. Stationary Sources covered by these regulations must develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program. It is the development of the latter that is of vital importance to all tribal communities as well as the public at large. Regardless of the lack of any stationary sources on or within a tribal community, that community must develop an emergency response and notification program that addresses any eventual emergency resulting from natural, accidental or intentional causes and disasters. It is the intention of the survey to help provide relevant information to EPA regarding the level of emergency response capabilities of respondent tribes. The information will be primarily used to assess and determine the extent of EPA guidance, training and technical assistance to tribes on a tribe-by-tribe basis. EPA's role has been to provide guidance and assistance to TERCs, LEPCs, emergency responders, the tribal community and the public as well as take enforcement action against those who violate EPCRA requirements. In keeping with EPA's Tribal Trust Responsibility , EPA has awarded grant monies to the Tribes and has provided technical, programmatic and legal support to various tribes. In particular, EPA Region IX has provided regulatory, CAMEO and other training to the Region's tribal emergency response programs and continues to support a variety of EPCRA and RMP related projects initiated by several tribal communities as part of the General Assistance and other similar grant programs.

The primary goals of the research effort described within this Notice are to: (1) Evaluate the status of Tribal Emergency Planning and response programs, TERCs, district LEPCs and respective tribal or cooperative emergency response parties; and (2) probe current TERC and LEPC practices and preferences regarding several important sets of issues—particularly including communications with tribal community citizens, proactive accident prevention efforts, and the effectiveness of selected EPA Region IX products and services including the expenditure of federal program resources, contractors, training, enforcement and grants. It is EPA's desire to improve its customer service and to meet the changing needs of hazardous material prevention and emergency response planning, which are influenced by new electronic capabilities and a rapidly expanding knowledge base of environmental issues.

An effort will be made to survey all Region IX's TERCs and LEPCs (approximately 145 tribes). Introductory letters will be sent to an inclusive list of tribal environmental officers. The letter will describe the purpose of the survey and request that the tribe participate by mailing either a complete hard copy or an electronic copy in an envelope provided by EPA Region IX. EPA Region IX will receive the written submissions and compile the data.

Tribes are cautioned that an agency may not conduct or sponsor (and a person is not required to respond to) a collection of information unless the document displays, in a clearly visible manner, a current and valid Office of Management and Budget (OMB) control number. OMB control numbers for EPA's regulations and notices are listed

[1] EPA Published a rule-making in the Federal Register on July 26, 1990 designating Indian Tribes and their chief executive officers as the implementing authority for EPCRA on all Indian Lands.

[2] Because of trival sovereignty, EPCRA guidelines include Indian tribes within the definition of states. They specify that the chief executive officer of the tribe, the tribal leader, will have the same responsibilities as a state governor for developing and implementing the chemical emergency response system.

[3] The Governor's Office of Emergency Services (OES) has traditionally served as point of contact for TERC in California under EPCRA.

in the Code of **Federal Register**, 40 CFR part 9 and 48 CFR Chapter 15.

The intended survey questionnaire was initially formulated by a voluntary Regional Tribal Operational Committee (RTOC) workgroup comprised of seven (7) members: Five (5) members from various Region IX tribes and two (2) EPA advisors.[4] Although the survey's concept, content and format was reviewed and approved by a Tribal coalition advisory group, the Regional Tribal Operational Committee (whose members are representative of federally recognized tribes in Region IX) on October 25, 2000, EPA encourages comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including 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. In instances where tribes lack computer access, responses will be requested in hard copy.

Burden Statement

It is estimated that there will be approximately 145 tribal respondents to the Questionnaire and survey described within this notice. In accordance with Federal Law, the agency is required to estimate any burden incurred by the respondents to maintain records, transmit or disclose information to parties other than the implementing agency. It is not anticipated that any third party or parties will be involved, thus, there will be no third party burden. Any estimate and identification of burden will rely on the voluntary response by each respondent. EPA estimates a total response burden of two (2) hours per participant. Labor costs for responding is estimated at $28.00 per hour, based on the ''Employer Cost for Employment Compensation'' (Bureau of Labor and Statistics, March 1999). There is no need for ''developing, acquiring or utilizing technology systems for the purpose of collecting, validating or verifying information,'' ''disclosing and providing information,'' ''adjusting the existing ways to comply with any previous applicable instructions or requirements,'' ''training personnel to be able to respond to a collection of information,'' ''searching data sources,'' nor a need for respondents to keep records.'' Burden activities include only a few steps: Reading or listening to instructions, reading or listening to survey questions and responding to survey questions. The average cost per respondent is estimated at $56.00.

No capital expenditures are needed by the respondent to complete the survey.

No operating and maintenance costs (on-going non-wage expenditures) are needed to complete the survey. Also, there are no capital or start-up costs.

To perform EPA's activities for the survey, EPA estimates that 80 hours of a federal employee at the Grade level GS–13, Step 1 level will be needed, at an hourly wage of $51.60. This estimate is based on the 2000 General Services Annual Pay Schedule divided by 2,080 hours per year and multiplied by 1.6 (standard government benefits multiplication factor). EPA estimates that the federal employee will work 4.6% of the employee's time on this project during the life of the survey (48 weeks) or approximately 88 hours (1,920 hours x .046), for an estimated cost to manage the project of $4,540.80.

EPA will be assisted in the survey by a contractor. The budget period is for 12 months. Funding covers: Survey design and planning; data collection and processing. EPA estimates that the contractor, Science Applications International Corporation, will require an estimated total of 183 labor hours and $10,000.

EPA estimates that 145 respondent tribes will voluntarily respond to the survey at a total burden of 290 hours and a total cost of $8120.00. It is estimated that the average respondent burden is two (2) hours per response at a total cost of $56.00 per response, including the time for reviewing, gathering and processing the information and completing and reviewing the collection of information. 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.

Dated: January 3, 2001.

Michael Feeley,

Deputy Director, Superfund Division, Region IX.

[FR Doc. 01–694 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–U

[4] The resulting questionnaire, with minor modifications, is similar to an earlier EPA survey distributed to state SERC's and LEPCs within EPA Regioin IX (as described in **Federal Register** document published on May 14, 1999, 64 FR 26405).

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225B; FRL–6763–7]

Diazinon; Receipt of Requests for Amendments and Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The companies that manufacture diazinon [*O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate] for formulation of pesticide products containing diazinon have asked EPA to cancel their manufacturing-use product registrations. In addition, these companies have asked EPA to cancel or amend their registrations for end-use products containing diazinon to delete all indoor and certain agricultural uses. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary cancellation were submitted to EPA on December 1, 2000. EPA intends to grant the requested cancellations and amendments to delete uses. EPA also plans to issue a cancellation order for the deleted uses and the canceled registrations at the close of the comment period for this announcement. Upon the issuance of the cancellation order, any distribution, sale, or use of diazinon products listed in this Notice will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

DATES: Comments must be received on or before February 9, 2001. Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided below and identified by docket control number OPP–34225B.

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–34225B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Ben Chambliss, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8174; fax number: (703) 308–7042; e-mail address: chambliss.ben@epa.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. The third part proposes existing stocks provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). 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 risk assessment for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/diazinon.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34225B. 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–34225B 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–34225B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this 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. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In separate letters dated December 1, 2000, both Syngenta Crop Protection,

Inc. and Makhteshim Agan of North America, Inc./Makhteshim Chemical Works, Ltd., manufacturers of technical diazinon and registrants of pesticide products containing diazinon, requested cancellation of all indoor and certain agricultural uses from their diazinon products to reduce the potential exposure to children associated with diazinon containing products. The letters also request that EPA cancel their registrations for technical and manufacturing-use pesticide products containing diazinon, conditioned upon issuance of replacement registrations which do not allow their use in formulation of end-use products for the deleted uses. EPA intends to act quickly on the requests, and to issue new registrations on or before January 15, 2001. In addition, these companies have asked EPA to cancel or amend their registrations for end-use products containing diazinon that are registered for only the deleted uses. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests from the registrants. With respect to the registration amendments, the companies have asked EPA to amend end-use product registrations to delete all indoor uses and certain agricultural uses which are in the list below:

1. *Indoor uses*: Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including food/feed handling establishments, greenhouses, schools, residences, museums, sports facilities, stores, warehouses and hospitals.

2. *Agricultural uses*: Alfalfa, bananas, Bermuda grass, dried beans, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, kiwi, lespedeza, parsley, parsnips, pastures, peppers, Irish potatoes, sheep, sorghum, spinach, squash (winter and summer), sweet potatoes, rangeland, strawberries, Swiss chard, tobacco, tomatoes, turnips.

Syngenta has also requested that ''lawns'' be removed from its commercial agricultural products listed in Table 3 below. (EPA Registrations 100–460, 100–461 and 100–784)

After these use cancellations become effective, diazinon technical and manufacturing use products may be formulated into end-use products registered for the following agricultural use sites only: Almonds, apples, apricots, beans (seed treatment only) except soybeans, beets, blackberries, blueberries, boysenberries, broccoli, cattle (non-lactating; ear tags only), Chinese broccoli, Brussels sprouts, cabbage, Chinese cabbage (bok choy and napa), cantaloupes, carrots, Casaba melons, cauliflower, cherries, collards, field corn (seed treatment only), sweet corn (including seed treatment), cranberries, Crenshaw melons, dewberries, endive (escarole), ginseng, grapes, honeydew melons, hops, kale, lettuce, lima beans (seed treatment only), loganberries, melons, muskmelons, mustard greens, Chinese mustard, nectarines, onions, peaches, pears, peas (seed treatment only), Persian melons, pineapples, plums, prunes, radishes, Chinese radishes, raspberries, rutabagas, sugar beets, walnuts, watercress (Hawaii only), and watermelons.

B. Requests for Voluntary Cancellation of Manufacturing-Use Products

Pursuant to FIFRA section 6(f)(1)(A), the registrants have submitted requests for voluntary cancellation of registrations for their manufacturing-use products conditioned upon issuance of replacement registrations which do not allow their use in formulation of end-use products for the deleted uses. The registrations for which cancellations were requested are identified in the following Table 1:

TABLE 1.— MANUFACTURING–USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Makhteshim Chemical Works, Ltd.	11678–6	DIAZOL Technical Stabilized
	11678-20	DIAZOL(Diazinon) Stabilized Oil Concentrate
Syngenta Crop Protection, Inc.	100–524	D●Z●N® DIAZINON MG 87% INSECTICIDE
	100–714	D●Z●N® DIAZINON MG 5%
	100–771	D●Z●N® DIAZINON MG 22.4% WBC
	100–783	D●Z●N® DIAZINON MG 56%

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30-day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. In this case, the registrants have requested that EPA waive the 180-day comment period. In light of this request, EPA is granting the request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested cancellations. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested cancellations at the close of the comment period for this announcement.

C. Requests for Voluntary Cancellation of End-Use Products

In addition to requesting voluntary cancellation of manufacturing-use products, Syngenta has submitted requests for voluntary cancellation of some of its registrations for end-use pesticide products containing diazinon. The end-use registrations for which cancellation was requested are identified in the following Table 2:

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Syngenta Crop Protection, Inc.	100–445	D●Z●N® DIAZINON 2D
	100–477	D●Z●N® HOME PEST CONTROL LIQUID

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	100–478	D●Z●N® HOME PEST CONTROL PRESSURIZED LIQUID
	100–625	D●Z●N® HOME PEST CONTROL—XP
	100–659	D●Z●N® 0.5% RTU
	100–685	D●Z●N® 1/2% EW
	100–686	D●Z●N® 1% EW
	100–687	D●Z●N® 5.0 EW

Syngenta has requested that EPA waive the 180-day public comment period under section 6(f)(1)(C)(ii) of FIFRA In light of this request, EPA is granting the request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested cancellations. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested cancellations at the close of the comment period for this announcement.

D. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, Syngenta and Makhteshim have also submitted requests to amend their other end-use registrations of pesticide products containing diazinon to delete the aforementioned uses from any product bearing such use. The registrations for which amendments to delete uses were requested are identified in the following Table 3:

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS CANCELLATION REQUESTS

Company	Reg. No.	Product
Makhteshim-Agan of North America, Inc.	66222–10	DIAZOL Diazinon 50W
	66222–9	DIAZOL Diazinon AG500
Syngenta Crop Protection, Inc.	100–460	D●Z●N® DIAZINON 50W
	100–461	D●Z●N® DIAZINON AG500
	100–463	D●Z●N® DIAZINON 4E
	100–469	D●Z●N® DIAZINON 14G
	100–784	D●Z●N® DIAZINON AG600 WBC
	100–785	EVICT™ INDOOR/OUTDOOR WBC

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. The registrants have requested that EPA waive the 180-day comment period. In light of this request, EPA is granting the request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested amendments to delete uses. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested amendments to delete uses at the close of the comment period for this announcement.

III. Proposed Existing Stocks Provisions

The registrants have requested voluntary cancellation of the diazinon registrations identified in Tables 1 and 2 and submitted amendments to terminate certain uses of the diazinon registrations identified in Table 3. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary cancellation and amendment. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term ''existing stocks'' will be defined, pursuant to EPA's existing stocks policy published in the **Federal Register** on June 26, 1991 (56 FR 29362) as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and /or 12(a)(1)(A) of FIFRA.

A. Manufacturing-Use Products

1. *Distribution or sale*. The distribution or sale of existing stocks of any manufacturing-use product identified in Table 1 will not be lawful under FIFRA as of the February 1, 2001, except for purposes of relabeling (consistent with the terms as outlined in the letter(s) of December 1, 2000), shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

2. *Use for producing other products*. The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any other product labeled for indoor use will not be lawful under FIFRA as of March 1, 2001. The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any other product labeled for the agricultural uses listed above will not be lawful under FIFRA as of June 1, 2001.

B. End-Use Products

1. *Distribution, sale or use of products bearing instructions for use on agricultural crops*. The distribution, sale or use of existing stocks by any person of any product listed in Table 2 or 3 that bears instructions for use on the above listed agricultural crops will not be lawful under FIFRA one year after the effective date of the use deletion or cancellation. Any use of such product until that date must be in accordance with the existing labeling of that product.

2. *Distribution, sale or use of products bearing instructions for use on indoor sites*. The distribution or sale of existing stocks by any person of any product listed in Table 2 or 3 that bears instructions for use at or on any indoor sites(except mushroom houses), shall not be lawful under FIFRA after April 1, 2001.

3. *Retail and other distribution or sale*. The retail sale of existing stocks of products listed in Table 2 or 3 bearing

instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002.

4. *Use of existing stocks*. EPA intends to permit the use of existing stocks of products listed in Table 2 or 3 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 29, 2000.

Linda S. Propst,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–466 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–988; FRL–6760–8]

Notice of Filing a Pesticide Petition to Establish 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–988, must be received on or before February 9, 2001.

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–988 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia L. Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@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–988. 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–988 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–988. 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: December 26, 2000.

James Jones,

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. 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.

E. I. DuPont de Nemours and Company (DuPont)

PP 0F6070

EPA has received a pesticide petition (PP 0F6070) from E. I. DuPont de Nemours and Company (DuPont), DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide famoxadone in or on the raw agricultural commodities(RACs) potatoes at 0.05 parts per million (ppm), cucurbit vegetable crop group (cucumbers, melons, and squash) at 0.7 ppm, fruiting vegetable crop group (tomatoes and peppers) at 1.0 ppm, and head lettuce at 15 ppm. 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

1. *Plant metabolism*. The plant metabolism of famoxadone is adequately understood in 3 distinct crops to support these tolerances: tomatoes, potatoes, and grapes. These studies showed no significant metabolites all (< 10% total radioactive residue (TRR)) in the RACs (tubers, tomato fruit, and grape berries). The only significant residue in any of the studies was the parent compound, famoxadone, occurring primarily as surface residues (grape berries, and tomato fruit). No residues were detected in potato tubers. Thus, the proposed tolerance expression is for the parent compound, famoxadone (DPX–JE874) only.

2. *Analytical method*. An analytical enforcement method is available for determining famoxadone plant residues in or on potatoes, cucurbit vegetables (cucumbers, melons, and squash), fruiting vegetables (tomatoes, peppers), and head lettuce using gas-liquid chromatography (GC) with nitrogen phosphorus detection (NPD). The method is applicable to high and medium moisture, oily and non-oily crops and related matrices. The limit of quantitation (LOQ) is 0.02 ppm.

The analytical enforcement for use on tomato processed fractions and also the RAC, tomato, utilizes column switching liquid chromatography with ultraviolet (UV) detection. The LOQ is 0.02 ppm.

The LOQ in each method allows monitoring of crops with famoxadone residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues*—i. *Cucurbit vegetables*. The magnitude and decline of residues of famoxadone were determined on cucumber, cantaloupe, and summer squash, the representative commodities for the cucurbit vegetable crop group. Seventeen field trials were conducted in 1997 and 1998.

DPX–KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as 7 broadcast applications, each at the maximum rate of 3 oz famoxadone/Acre, for a maximum seasonal use rate of 21 oz famoxadone/Acre. Applications were made approximately 5 days apart.

The target pre-harvest interval (PHI) was 3 days.

- Residues of famoxadone in cucumbers from 6 test sites ranged from <0.02 to 0.19 ppm.
- Residues of famoxadone in cantaloupe from 6 test sites ranged from 0.11 to 0.46 ppm.
- Residues of famoxadone in summer squash from 5 test sites ranges from <0.02 to 0.37 ppm.

ii. *Fruiting vegetables*. The magnitude and decline of famoxadone residues were determined on tomatoes, and peppers (bell and non-bell), the representative commodities for the fruiting vegetable crop group. Twenty–one residue trials were conducted in 1996 and 1997.

DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as nine broadcast applications at a maximum seasonal use rate of 18 oz famoxadone/Acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of famoxadone on peppers (bell and non-bell) from 9 test sites ranged from 0.10–

0.70 ppm. Residues of famoxadone on tomatoes from 12 test sites ranged from 0.06–0.48 ppm.

DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied to 1 site in California to determine the magnitude of residue in tomato and the extent of potential residue concentration in tomato processed fractions. DPX-KP481 50DF was applied in 9 broadcast applications at 2 oz famoxadone/Acre (1X) and 10 oz famoxadone/Acre (5X). Applications were made approximately 5 days apart. The target PHI was 3 days. When applied at 5X the maximum seasonal use rate, famoxadone residues decreased with washing and did not concentrate in puree, with respect to the unwashed raw agricultural commodity (RAC). Famoxadone residues concentrated in tomato paste derived from tomato, treated at the 5X rate by a factor of 1.3. The 1.3 concentration factor does not warrant a special tolerance for paste. At the 1X rate, the proposed tomato tolerance for the RAC, 0.7 ppm, is adequate to cover this level of concentration in the paste. A separate tolerance for paste does not need to be established.

iii. *Head lettuce*. Residue trials for head lettuce were conducted at 8 sites in 1997 and 1998. DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as 7 broadcast applications, each at the maximum rate of 3 oz famoxadone /Acre, for a maximum seasonal use rate of 21 oz famoxadone /Acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of famoxadone on head lettuce ranged from 0.64 to 14 ppm (with wrapper leaves) and 0.024 to 3.1 ppm (wrapper leaves removed).

iv. *Potato*. Residue trials for famoxadone were conducted at 16 sites in 1997. DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as 6 broadcast applications, each at 3 oz famoxadone/Acre, for a maximum seasonal use rate of 18 oz famoxadone/Acre. Applications were made approximately 5 days apart. The target PHI was 14 days. No quantifiable residues of famoxadone were seen in any potato sample above the LOQ (0.02 ppm).

DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied to 1 test site in Washington to determine the magnitude of residue in potato and the extent of potential residue concentration in potato processed fractions. DPX-KP481 50DF was applied 6 times as a broadcast spray, each at 15 oz famoxadone/Acre, for a total seasonal application rate of 90 oz ai/Acre (5X). When applied under these conditions, no quantifiable famoxadone residues were detected in unwashed or washed potatoes/culls, chips, or granule fractions. Thus no concentration occurred in these fractions. At the 5X rate, quantifiable residues were detected in wet potato peels at 0.033 0.035 ppm. The concentration factor was 1.12 (based on LOQ of 0.02 ppm). When adjusting the residues in wet peels from the seasonal 5X to the 1X rate (18 oz famoxadone/Acre), residues in peels are less than the LOQ. Therefore, the negligible residues in the peels (less than 2X the LOQ) are covered by the proposed tolerance for the RAC, 0.05 ppm, and no separate tolerance for potato peels need be established.

B. Toxicological Profile

1. *Acute toxicity*. A battery of acute toxicity tests with technical famoxadone places it in the following toxicity categories:

TOXICITY CATEGORIES

Acute toxicities	Test animals	Tolerances	Categories
Oral LD_{50}	Rat	>5,000 milligrams/kilograms (mg/kg)	Category IV
Dermal LD_{50}	Rabbit	>2,000 mg/kg	Category III
Inhalation LC_{50}	Rat	>5.3 mg/L	Category IV
Eye irritation	Rabbit	Transient redness; clear by 72 hours	Category III
Dermal irritation	Rabbit	Minimal irritation at 72 hours	Category IV
Dermal sensitization	Guinea pig	Not a sensitizer	

In an acute neurotoxicity test, famoxadone was not neurotoxic to rats. The no observed adverse effect level (NOAEL) was 1,000 mg/kg in males, based on systemic toxicity at 2,000 mg/kg. The NOAEL in females was 2,000 mg/kg, the highest dose tested (HDT).

2. *Genotoxicity*. Famoxadone was tested in a battery of assays to evaluate genotoxicity and chromosome aberrations with the following results. Based on the weight-of-evidence, famoxadone is not considered to be genotoxic or clastogenic.

Bacterial gene mutation	*Salmonella* and *E. Coli*	Negative
Mammalian gene mutation *in vitro*	CHO/HGPRT	Negative
Mammalian chromosome aberrations *in vitro*	chinese hampter ovary (CHO)	Positive without activation negative with activation
Mammalian chromosome aberrations *in vivo*	Mouse micronucleus	Negative
Unscheduled DNA synthesis *in vitro*	Primary rat hepatocytes	Negative
Unscheduled DNA synthesis *in vivo*	Primary rat hepatocytes	Negative

3. *Reproductive and developmental toxicity*. The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with famoxadone.

In a 2–generation rat reproduction study, the NOAEL for both adults and offspring was 200 ppm (11.3–17.5 mg/kg/day depending on gender and generation) based on clinical signs, decreased body weights (bwt), effects on nutritional parameters, and liver toxicity in adults and decreased weight of pups. Effects on pups occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams. There were no effects on

reproduction (mating, fertility, reproductive organs) up to and including the highest concentration tested, 800 ppm (44.7–71.8 mg/kg/day). In studies conducted to evaluate developmental toxicity potential, famoxadone was neither teratogenic nor uniquely toxic to the conceptus. In a rat developmental toxicity study, the maternal NOAEL was 250 mg/kg/day based on decreased weight gain and food consumption at 500 mg/kg/day. The fetal NOAEL was 1,000 mg/kg/day, the HDT. In rabbits, NOAEL for compound-related systemic toxicity was 1,000 mg/kg/day. There were no developmental effects at any dose level. Several rabbits had weight loss, decreased food consumption, clinical signs, fecal impactions, and subsequent abortion at 1,000 mg/kg/day. These effects were considered due to the physical properties of the dosing solution rather than systemic toxicity. Often fecal impaction preceded abortions.

4. *Subchronic toxicity*. Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In addition, the following subchronic feeding studies were conducted: A 90–day in rats to evaluate neurotoxicity and 28–day feeding studies in rats and mice to evaluate immunotoxicity. A 28–day dermal study was conducted in rats.

In a 90–day feeding study in rats, the NOAEL was considered to be 200 ppm (13 and 17 mg/kg/day) based on mild hepatotoxicity and mild regenerative hemolytic anemia in both sexes and decreased bwt in females at 800 ppm (52 and 66 mg/kg/day, in males and females respectively) and higher. An effect on weight gain in female rats at 17 mg/kg/day was considered spurious since it was not duplicated in any other rat studies including those of the same or longer duration.

In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity up to and including the highest concentration tested, 800 ppm (46.9 and 59.3 mg/kg/day for males and females, respectively). The NOAEL for systemic toxicity was 200 ppm (11.7 and 14.4 mg/kg/day in males and females, respectively) based on bwt and nutritional effects at 800 ppm.

In mice, the subchronic NOAEL was 350 ppm (62.4 and 79.4 mg/kg/day in males and females, respectively), based on hepatotoxicity and mild anemic effects at higher concentrations.

In a 90–day feeding study in dogs, the NOAEL was 40 ppm (1.3 mg/kg/day) in males. In females, 40 ppm (1.4 mg/kg/day) was a marginal effect level for lens lesions. At 300 ppm, lens lesions were observed in males and females upon ophthalmologic exam and confirmed by histopathology. These lesions were not considered relevant to human health and to acute risk assessment, since they did not occur in a 1–year primate study. Excluding lens lesions, the NOAEL was 300 ppm (10.0 and 10.1 mg/kg/day in males and females, respectively), based upon effects on body weight and foodconsumption, hemolytic anemia, and hyperkalemia with associated clinical signs at 1,000/600 ppm (23.8/21.2 and 23.3/20.1 mg/kg/day in males and females, respectively). The test concentration was lowered to 600 ppm after 5.3 weeks because of the signs related to hyperkalemia.

Famoxadone was tested in 28–day feeding studies in rats and mice, designed to evaluate immunotoxicity. The NOAEL in rats was 200 ppm (14 and 16 mg/kg/day in males and females, respectively) based on decreased bwt, bwt gain, food consumption, food efficiency, and increased spleen weights at 800 ppm (55 and 57 mg/kg/day for males and females, respectively). There was no effect in response to anti-sheep red blood cell (SRBC) challenge at any concentration tested. In mice, the NOAEL was 2,000 ppm (327 and 417 mg/kg/day in males and females, respectively) based on increased spleen weights and a minimal decrease in humoral response to SRBC. Famoxadone is not considered immunotoxic in rats and produced equivocal evidence of immunotoxicity in mice.

In a 28–day repeated dose dermal study, the NOAEL for male rates was 250 mg/kg/day based on changes in liver enzymes at 500 mg/kg/day. The NOAEL for female rats was 1,000 mg/kg/day, the HDT.

5. *Chronic toxicity*. Chronic studies with famoxadone were conducted on rats, mice, dogs, and monkeys to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies. Famoxadone was not oncogenic.

Famoxadone was not oncogenic in rats. The chronic NOAEL was 200 ppm (8.4 and 10.7 mg/kg/day in males and females, respectively) based on hepatotoxicity and anemia in both sexes and decreased bwt, bwt gain, and food efficiency in females at 400 ppm (16.8 and 23.0 mg/kg/day in males and females, respectively).

In mice, the chronic NOAEL was 700 ppm (95.6 and 130 mg/kg/day for males and females, respectively) based on hepatotoxicity in males and females and amyloidosis in females at 2,000 ppm (274 and 392 mg/kg/day in males and females, respectively). Famoxadone was not oncogenic in mice.

In a 1–year feeding study in dogs, the only effect observed was lens lesions at 300 ppm (8.8 and 9.3 mg/kg/day for males and females). The NOAEL for these lesions was 40 ppm (1.2 mg/kg/day in both sexes). Use of this NOAEL is considered very conservative since these lesions are not considered appropriate to human risk assessment based on the absence of this effect in a primate study.

In a 1–year gavage study, the NOAEL in cynomolgus monkeys was 100 mg/kg/day in both males and female based on slight hemolytic anemia in both sexes at the 1,000 mg/kg/day dose level. There were no other effects observed at any level.

6. *Animal metabolism*. Famoxadone was rapidly eliminated in the rat, primarily by fecal excretion and to a lesser extent in the urine. Absorption and metabolism of famoxadone was limited. There was no accumulation in organs or tissues. Parent famoxadone was the major component recovered. Hydroxylated parent compound and sulfated cleavage products were also recovered to a much lesser extent.

7. *Metabolite toxicology*. There are no metabolites of toxicological significance to mammals.

8. *Endocrine disruption*. Chronic, lifespan, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of famoxadone is negligible.

C. Aggregate Exposure

Famoxadone is a new fungicide with proposed uses on the commercial crops: Fruiting vegetables (tomatoes and peppers), cucurbit vegetables (cucumbers, melons, and squash), head lettuce, and potatoes. There are no residential uses for the famoxadone-containing fungicide.

1. *Dietary exposure*. The chronic reference dose (RfD) of 0.012 mg/kg/day is based on a NOAEL of 1.2 mg/kg/day for lens lesions from a 1–year dog feeding study and an uncertainty factor of 100. This is considered highly conservative because these lesions were not produced in a chronic monkey study. The acute NOAEL of 10.0 mg/kg bwt/day is based upon bwt effects occurring early in a 90–day dog study. Since bwt is not actually an acute effect, the acute NOAEL selected is highly conservative and it is likely that the

actual acute NOAEL is much higher than 10.0 mg/kg/day.

i. *Food*—a. *Chronic dietary exposure assessment*. Chronic dietary exposure, resulting from the proposed use of famoxadone on cucurbit vegetables, fruiting vegetables, head lettuce, potatoes, and imported grapes, is well within acceptable limits for all sectors of the population. The chronic module of the dietary exposure evaluation model (DEEM), Novigen Sciences, Inc., 1998 Version 6.4 (chronic) and 6.54 (acute)) was used to conduct the assessment with the anticipated RfD of 0.012 mg/kg/day. The analysis employed overall-mean field-trial values and conservatively assumed that 30% of the crops on the proposed label plus imported grapes would be treated with famoxadone.

For the general U.S. population, the estimated chronic dietary exposure to famoxadone is 0.000335 mg/kg/day, and utilizes 2.8%of the chronic RfD. The exposure for the potentially most highly exposed subgroup in the population, children 1–6 years, is 0.000487 mg/kg/day or 4.1% of the chronic RfD. The table below lists the results of this analysis, which indicate large margins of exposure for each population subgroup and very low probability of effects resulting from chronic exposure to famoxadone. Since the RfDs are well below 100%, the chronic dietary safety of famoxadone clearly meets the food quality protection act (FQPA) standard of reasonable certainty of no harm.

RESULTS OF CHRONIC DIETARY EXPOSURE ESTIMATE

Population Group	Maximum Dietary Exposure (mg/kg/day)	%RfD
U.S. population	0.000335	2.8
Non-nursing infants (<1–year)	0.000111	0.9
Children (1–6 years)	0.000487	4.1
Children (7–12 years)	0.000391	3.3
Females (13+ years)	0.000430	3.6

b. *Acute dietary exposure*. The acute dietary exposure to famoxadone (99th percentile) is 0.001848 mg/kg/day, or 1.85% acute RfD for the overall U.S. population. The exposure (99th percentile) of the most highly exposed subgroup in the population, children 1–6 years, is 0.002559 mg/kg/day or 2.56% RfD. The results of this analysis are given in the table below. All of the results are extremely reassuring, because they are based on several very conservative assumptions. Foods that were considered in exposure estimates were cucurbit vegetables, fruiting vegetables, head lettuce, imported grapes, and potatoes. Since the percent RfDs are well below 100%, the acute dietary safety of famoxadone clearly meets the FQPA standard of reasonable certainty of no harm.

RESULTS OF ACUTE DIETARY EXPOSURE ESTIMATE

Population Group	99th Percentile of Exposure		99.9th Percentile of Exposure	
	Exposure (mg/kg/day)	% RfD	Exposure (mg/kg/day)	% RfD
U.S. population	0.001848	1.85	0.006128	6.13
Non-nursing (<1–year)	0.000949	0.95	0.003667	3.67
Children (1–6 years)	0.002559	2.56	0.008944	8.94
Children (7–12 years)	0.002002	2.00	0.007364	7.36
Females (13–50 years)	0.001843	1.84	0.006072	6.07

ii. *Drinking water*. Famoxadone is highly unlikely to contaminate ground water resources due to its immobility in soil, low water solubility, high soil sorption, moderate soil half-life, and resulting low ground and surface water exposure. Both acute and chronic drinking water exposure analyses were calculated using EPA screening concentration in ground water ((SCI-GROW) for ground water and generic expected environmental concentration (GENEEC) for surface water). Results indicate that a reasonable certainty exists that famoxadone residues will not contribute significantly to the aggregate acute and chronic human risk.

The predicted concentration for famoxadone in ground water under worst case conditions was 0.0097 parts per billion (ppb). The predicted peak concentration for famoxadone in surface water in a small non-flowing pond, directly adjacent to treated fields (aerial application at the maximum rate), was 2.49 ppb. The 56–day average concentration predicted for the same pond scenario was 0.05 ppb.

The EPA uses drinking water levels of concern (DWLOC) as a surrogate measure to capture risk associated with exposure to pesticides in drinking water. The DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. A DWLOC will vary depending on the residue level in foods, the toxicity endpoint, drinking water consumption patterns, and body weights for specific subpopulations.

The chronic DWLOCs are 0.41 ppm for the U.S. population and 0.12 ppm for the most exposed population subgroup, children (1–6 years). The DWLOCs are substantially higher than the GENEEC 56–day estimated environmental concentration of 0.05 ppb for famoxadone in surface water or the Sci-Grow estimate of 0.0097 ppb famoxadone in ground water. Therefore, since the estimated famoxadone concentrations are well below the chronic DWLOCs, the chronic dietary safety of famoxadone residues from drinking water clearly meets the FQPA

standard of reasonable certainty of no harm.

Using the appropriate inputs, the acute DWLOCs are 3.3 parts per million (ppm) for the U.S. population, and 0.91 ppm for the most exposed population subgroup, children (1–6 years). The estimated maximum concentration of famoxadone in surface water (2.49 ppb, derived from GENEEC) or in ground water (0.0097 ppb, derived from Sci-Grow) is much lower than the acute DWLOC. Since the estimated famoxadone concentrations in ground and surface water are well below acute DWLOCs, the acute dietary safety of famoxadone residues from drinking water clearly meets the FQPA standard of reasonable certainty of no harm.

2. *Non-dietary exposure*. Famoxadone products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for famoxadone has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of famoxadone should be cumulative with those of any other chemical. Famoxadone is a member of a new class of fungicides that acts by inhibition of mitochondrial respiration. Famoxadone's biochemical mode of action on fungi and toxicological profile in animals appear to be unique.

Given the distinct chemical, biological and toxicological profile, famoxadone's low acute toxicity, absence of genotoxic, oncogenic, developmental or reproductive effects and low exposure potential, the expression of cumulative human health effects with any other natural or synthetic pesticide is not anticipated.

E. Safety Determination

1. *U.S. population*. Dietary and occupational exposure will be the major routes of exposure to the U.S. population. Ample margins of safety have been demonstrated for both situations. For the U.S. population, the chronic dietary exposure to famoxadone is 0.000335 mg/kg/day, which utilizes 2.8% of the RfD for the overall U.S. population, assuming 30% of the crops are treated. The acute dietary exposure to the U.S. population is 0.001848 mg/kg/day (99th percentile) or 1.85% of the RFD (99th percentile). At the 99.9th percentile, the acute dietary exposure for the U.S. population is 0.006128 mg/kg/day or 6.13% of the RfD.

Using only pesticide handlers exposure data base (PHED) data levels A and B (those with a high level of confidence), the margin of exposure (MOE) for occupational exposure are 2,665 to 5,329 for mixer/loaders, 34,418 for aerial applicators, and 1,096 for ground applicators. For flaggers, the MOE is 13,500. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of famoxadone including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. Chronic dietary exposure of the most highly exposed subgroup in the population, children 1–6, is 0.000487 mg/kg/day or 4.1% of the RfD. The acute dietary exposure of the most exposed subgroup, children 1–6, is 2.56% of the RfD (99th percentile). For non-nursing infants (<1–year), the acute dietary exposure is 0.95% RfD (99th percentile).

There are no residential uses of famoxadone and contamination of drinking water is extremely unlikely. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication of greater sensitivity of children, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to residues of famoxadone from all anticipated sources of dietary and non-occupational exposure. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no Codex, Canadian or Mexican tolerances exist for famoxadone.

[FR Doc. 01–576 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6932–1]

Woody Wilson Battery Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with Woodrow Wilson, Jr. and Woodrow Wilson, Sr. pursuant to 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the Woody Wilson Battery Superfund Site located in Ashley Heights, Hoke County, North Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: December 7, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–697 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404A–MI; FRL–6751–5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Michigan Approval of Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On November 1, 1999, the State of Michigan, through the Michigan Department of Community Health, submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Michigan provided a self-certification letter stating that its program is at least as protective of human health and the environment as the Federal program and it has the legal authority and ability to implement the appropriate elements necessary to receive EPA approval. In the **Federal Register** of April 20, 2000 (FRL–6494–6), EPA published a notice announcing receipt of the State's

application and requesting public comment and/or opportunity for a public hearing on the State's application. EPA did not receive any comments regarding any aspect of the Michigan program and/or application. Today's notice announces the approval of the Michigan application, and the authorization of the Michigan Department of Community Health's Lead-Based Paint Activities Program to apply in the State of Michigan, effective November 1, 1999, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Based upon the State's self-certification, Lead-Based Paint Activities Program authorization was granted to the State of Michigan effective on November 1, 1999.

FOR FURTHER INFORMATION CONTACT: David A. Turpin, Project Officer, Environmental Protection Agency, Region V, 77 W. Jackson Blvd., DT–8J, Chicago, IL 60604; telephone: (312) 886–7836; e-mail address: turpin.david@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 firms and individuals engaged in lead-based paint activities in Michigan. 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 or 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 PB–402404A–MI specifically referenced in this action, this notice, the State of Michigan authorization application, 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 from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region V Office, Environmental Protection Agency, Waste, Pesticides and Toxics Division, Pesticides and Toxic Substances Branch, Toxics Program Section, DT–8J, 77 West Jackson Boulevard, Chicago, IL 60604.

II. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled *Lead Exposure Reduction*. Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program. On August 29, 1996, EPA issued section 402/404 regulations (40 CFR part 745) governing lead-based paint activities in target housing and child-occupied facilities. States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (TSCA section 404(b), 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

Under these regulations, a State must demonstrate that it has the legal authority and ability to immediately implement certain elements, including legal authority for accrediting training providers, certification of individuals, work practice standards and pre-renovation notification, authority to enter, and flexible remedies. In order to receive final approval, the State must be able to demonstrate that it is able to immediately implement the remaining performance elements, including training, compliance assistance, sampling techniques, tracking tips and complaints, targeting inspections, follow up to inspection reports, and compliance monitoring and enforcement.

III. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

V. Submission to Congress and the General Accounting Office

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

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 21, 2000.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 01–577 Filed 1–9–01; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATES AND TIMES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 11, 2001, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4009, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—December 14, 2000 (Open and Closed)

B. Reports

—Corporate Approvals Report

C. New Business

1. Regulations

—Organization; General Provisions; Disclosure to Shareholders; National Charters [12 CFR parts 611, 618 and 620] (Proposed)

Dated: January 5, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–781 Filed 1–5–01; 4:58 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATION COMMISSION

FCC To Hold Open Commission Meeting Thursday, January 11, 2001

January 4, 2001.

The Federal Communications Commission will hold on Open Meeting on the subjects listed below on Thursday, January 11, 2001, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

* The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently, these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

Item No.	Bureau	Subject
1	Mass Media	Title: Implementation of Video Description of Video Programming (MM Docket No. 99–339). Summary: The Commission will consider a Memorandum Opinion and Order on Reconsideration concerning rules requiring broadcasters and video programming distributors to provide video description and make emergency information more accessible to the visually impaired.
2	Mass Media	Title: Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MM Docket No. 00–39). Summary: The Commission will consider issues regarding the conversion of broadcast television system from analog to digital, and DTV reception capability
3	Cable Services	Title: WHDT–DT, Channel 59, Stuart, Florida. Petition for Declaratory Ruling that Digital Broadcast Stations have Mandatory Carriage Rights (File No. CSR–5562–Z). Summary: The Commission will consider the cable carriage rights of DTV-only television stations.
4	Cable Services	Title: Carriage of Digital Television Broadcast Signals; and Amendments to Part 76 of the Commission's Rules (CS Docket No. 98–120); Implementation of the Satellite Home Viewer Improvement Act of 1999; and Local Broadcast Signal Carriage Issues (CS Docket No. 00–96); and Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals (CS Docket No. 00–2). Summary: The Commission will consider the carriage of digital broadcast television signals by cable operators and satellite carriers.
5	Wireless Tele-Communications	Title: The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010 (WT Docket No. 96–86). Summary: The Commission will consider a Fourth Report and Order and a Fifth Notice of Proposed Rule Making concerning various technical and operational rules and policies regarding the use by public safety entities of frequencies in the 764–776 MHz and 794–806 MHz bands.
6	Common Carrier	Title: Developing a Unified Intercarrier Compensation Regime Summary: The Commission will consider a Notice of Inquiry concerning intercarrier compensation to determine whether the current interconnection regime can be effectively reformed, or whether new regimes can address growing problems in competitive telecommunications markets.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: *its inc@ix.netcom.com.* Their Internet address is *http://www/itsdocs.com/*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these servicescall (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio*. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group.

[FR Doc. 01–842 Filed 1–8–01; 11:44 am]

BILLING CODE 6701–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–2]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled ''Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Loans,'' commonly known as the Monthly Interest Rate Survey or MIRS.

DATES: Interested persons may submit comments on or before March 12, 2001.

ADDRESSES: Address written comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, 202/408–2837, bakere@fhfb.gov, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Timothy D. Forsberg, Financial Analyst, Market Research and Systems Analysis Division, Office of Policy, Research and Analysis, 202/408–2968, forsbergt@fhfb.gov, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

The Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), first provided data concerning a survey of mortgage interest rates in 1963. No statutory or regulatory provision explicitly required the FHLBB to conduct the MIRS although references to the MIRS did appear in several federal and state statutes. Responsibility for conducting the MIRS was transferred to the Finance Board upon dissolution of the FHLBB in 1989. *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, *codified at* 12 U.S.C. 1437 note, and tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433 (Aug. 9, 1989). In 1993, the Finance Board promulgated a final rule describing the method by which it conducts the MIRS. *See* 58 FR 19195 (Apr. 13, 1993), *codified at* 12 CFR 906.3. Since its inception, the MIRS has provided the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

Statutory references to the MIRS include the following:

- Pursuant to their respective organic statutes, Fannie Mae and Freddie Mac use the MIRS results as the basis for the annual adjustments to the maximum dollar limits for their purchase of conventional mortgages. *See* 12 U.S.C. 1454(a)(2) and 1717(b)(2). The Fannie Mae and Freddie Mac limits were first tied to the MIRS by the Housing and Community Development Act of 1980. *See* Pub. L. 96–399, tit. III, sec. 313(a)–(b), 94 Stat. 1644–1645 (Oct. 8, 1980). At that time, the nearly identical statutes required Fannie Mae and Freddie Mac to base the dollar limit adjustments on ''the national average one-family house price in the monthly survey of all major lenders conducted by the [FHLBB].'' *See* 12 U.S.C. 1454(a)(2) and 1717(b)(2) (1989). When Congress abolished the FHLBB in 1989, it replaced the reference to the FHLBB in the Fannie Mae and Freddie Mac statutes with a reference to the Finance Board. *See* FIRREA, tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433.
- Also in 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable rate mortgages (ARMs) remain available. *See* FIRREA, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, *codified at* 12 U.S.C. 1437 note. At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits the Finance Board to substitute a substantially similar ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. *See* 12 U.S.C. 1437 note.
- Congress indirectly connected the high cost area limits for mortgages insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. *See* Pub. L. 103–327, 108 Stat. 2314 (Sept. 28, 1994), *codified at* 12 U.S.C. 1709(b)(2)(A)(ii).
- The Internal Revenue Service uses the MIRS data in establishing ''safe-harbor'' limitations for mortgages purchased with the proceeds of mortgage revenue bond issues. *See* 26 CFR 6a.103A–2(f)(5).
- Statutes in several states and U.S. territories, including California, Michigan, Minnesota, New Jersey, Wisconsin and the Virgin Islands, refer to, or rely upon, the MIRS. *See, e.g.,* Cal. Rev. & Tax Code 439.2 (value of owner-occupied single family dwellings for tax purposes); Cal. Civ. Code 1916.7 and 1916.8 (mortgage rates); Iowa Code 534.205 (1995) (real estate loan practices); Mich. Comp. Laws 445.1621(d) (mortgage index rates); Minn. Stat. 92.06 (payments for state land sales); N.J. Rev. Stat. 31:1–1 (interest rates); Wis. Stat. 138.056

(variable loan rates); V.I. Code Ann. tit. 11, sec. 951 (legal rate of interest).

The Finance Board uses the information collection to produce the MIRS and for general statistical purposes and program evaluation. Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs and initial fees and charges on mortgage loans. Other federal banking agencies use the MIRS results for research purposes. Information concerning the MIRS is regularly published on the Finance Board's website (fhfb.gov/mirs) and in press releases, in the popular trade press, and in publications of other federal agencies.

The likely respondents include a sample of 307 savings associations, mortgage companies, commercial banks and savings banks. The information collection requires each respondent to complete FHFB Form 10–91 on a monthly basis.

The OMB number for the information collection is 3069–0001. The OMB clearance for the information collection expires on April 30, 2001.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 307, with 12 responses per respondent. The estimate for the average hours per response is 1.0 hour. The estimate for the total annual hour burden is 3,684 hours (307 respondents × 12 responses/respondent x approximately 1.0 hour).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: December 28, 2000.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

[FR Doc. 01–733 Filed 1–9–01; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10 A.M., Wednesday, January 24, 2001.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Interim Final Rule: Amendments to Bank Meeting Regulation.
- Updated and Revised: Federal Housing Finance Board's Strategic Plan 2000–2005.
- Notice of Proposed Rulemaking—Technical Amendments: Affordable Housing Program.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 01–972 Filed 1–8–01; 3:52 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice

The Commission gives notice that it has requested that the parties to the below listed agreement provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. sections 1701 *et seq.* The Commission has determined that further information is necessary to evaluate the competitive impact of the proposed agreement. This action prevents the agreement from becoming effective as originally scheduled.

Agreement No.: 011677–002.

Title: United States Australasia Agreement.

Parties: P&O Nedlloyd Limited, Contship Containerlines Limited, CMA CGM, S.A., Australia New Zealand Direct Line, Hamburg-Sudamerikanischedampfschifffahrts-gesellschaft KG (Columbus Line), Wallenius Wilhelmsen Lines AS.

Dated: January 5, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–738 Filed 1–9–01; 8:45 am]

BILLING CODE 6730–01–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, N.W., 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.: 009548–055.

Title: U.S. Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference.

Parties: Farrell Lines, Incorporated, Turkon Container Transports & Shipping Inc., Waterman Steamship Corporation.

Synopsis: The proposed modification deletes all provisions of the conference agreement except for Articles 1, 2, 3, 4, 5.1(K) and 9, which are retained to conclude conference business through May 15, 2001. At that time, the entire agreement will expire.

Agreement No.: 011744.

Title: Slot Allocation Agreement.

Parties: Dole Ocean Cargo Express, King Ocean Central America S.A.

Synopsis: Under the proposed agreement, Dole Express will make available to King Ocean 30 FEUs of space per voyage in the trade between Port Everglades, Florida and Puerto Moin, Costa Rica.

Dated: January 5, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–739 Filed 1–9–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 2849F.

Name: Amex International, Inc.

Address: 1615 L Street, NW, Suite 340, Washington, DC 20036.
Date Revoked: December 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15703N.
Name: MSD Line,Inc.
Address: 2400 S. Wilmington Ave., Compton, CA 90220.
Date Revoked: November 24, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15678N.
Name: Nippon Concept (USA), Inc.
Address: 1500 Route 517, Suite 210, Hackettstown, NJ 07840.
Date Revoked: December 1, 2000.
Reason: Failed to maintain a valid bond.

License Number: 10858N.
Name: Omega Shipping (CA), Inc.
Address: 4379 Sheila Street, Los Angeles, CA 90023.
Date Revoked: November 15, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2023F.
Name: Pike Shipping Company, Inc.
Address: 2240 Peters Road, Harvey, LA 70058.
Date Revoked: December 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4537F.
Name: Robert S. Rullo d/b/a ABA Forwarding.
Address: 42 Harrison Avenue, North Plainfield, NJ 07060.
Date Revoked: December 4, 2000.
Reason: Surrendered license voluntarily.

License Number: 2556F.
Name: SDV Logistics (Texas), Inc.
Address: 17401 Aldine Westfield, Houston, TX 77073.
Date Revoked: November 1, 2000.
Reason: Surrendered license voluntarily.

License Number: 14226N.
Name: Stallion Freight USA, LLC.
Address: 5451 W. 104th Street, Los Angeles, CA 90045.
Date Revoked: November 26, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14846N.
Name: Visawood Freight International Inc. d/b/a Visawood Container Line.
Address: 182–30 150th Road, #204, Jamaica, NY 11413.
Date Revoked: November 26, 2000.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–740 Filed 1–9–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Daniel C. Powers, Betsy Powers, and Pamela Powers Hollis, all from Manchester, Tennessee; to acquire additional voting shares of Coffee County Bancshares, Inc., Manchester, Tennessee, and thereby indirectly acquire additional voting shares of Coffee County Bank, Manchester, Tennessee.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Citizens National Bank of Bossier City, Employee Stock Ownership Plan (KSOP), Bossier City, Louisiana; to acquire additional voting shares of Citizens National Bancshares of Bossier, Inc., Bossier City, Louisiana, and thereby indirectly acquire additional voting shares of Citizens National Bank, Bossier City, Louisiana.

Board of Governors of the Federal Reserve System, January 5, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–760 Filed 1–9–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 2001.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Park National Corporation, Newark, Ohio; to merge with Security Banc Corporation, Springfield, Ohio, and thereby indirectly acquire 100 percent of the voting shares of Security National Bank and Trust Company, Springfield, Ohio, and Citizens National Bank of Urbana, Urbana, Ohio.

Applicant also has applied to acquire Third Savings and Loan Company, Piqua, Ohio, and thereby engage in permissible savings association activities pursuant to § 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, January 4, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–616 Filed 1–9–01; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Board of Governors

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Tuesday, January 16, 2001.

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: January 5, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–782 Filed 1–5–01; 4:59 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is cancelled because of low usage: SF 81A, Space Requirements Worksheet.

DATES: Effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: December 21, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 01–665 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Order/Notice to withhold income for child support.

OMB No.: 0970–0154.

Description: Public Law 104–193, The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, section 324—Use of Forms in Interstate Enforcement requires the Federal Office of Child Support Enforcement (CSE) agencies and courts/tribunals must use to collect child support payments from an obligor's employer.

The form, which promotes standardization expired 12/31/2000 and we are taking this opportunity to make revisions to reflect the Uniform Interstate Family Support Act (UIFSA) and the mandate the use for IV–D and non IV–D direct withholding cases. The 2-page form provides a detailed legal description of the established order, support amounts, and remittance information an employer needs to withhold payments from obligor who owes child support.

Respondents: State, Local, and Tribal Governments Annual Burden Estimates.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Order/Notice	54	1	.1666	9
Estimated Total Annual Burden Hours				9

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 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, NW
Washington, DC 20503
Attn: Desk Office for ACF

Dated: January 4, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–634 Filed 1–9–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0861]

Determination of Regulatory Review Period for Purposes of Patent Extension; Synvisc Hylan G–F 20 (4,713,448)®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Synvisc Hylan G–F 20 (4,713,448)® and is publishing this notice of that determination as required by law. FDA has made the determination because of

the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Synvisc Hylan G–F 20 (4,713,448)®. Synvisc Hylan G–F 20 (4,713,448)® is indicated for the treatment of pain in osteoarthritis (OA) of the knee in patients who have failed to respond adequately to conservative nonpharmacologic therapy and to simple analgesics (e.g., acetaminophen). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Synvisc Hylan G–F 20 (4,713,448)® (U.S. Patent No. 4,713,448) from Biomatrix, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Synvisc Hylan G–F 20 (4,713,448)® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Synvisc Hylan G–F 20 (4,713,448)® is 2,949 days. Of this time, 1,783 days occurred during the testing phase of the regulatory review period, while 1,166 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* July 14, 1989. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective July 14, 1989.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* May 31, 1994. FDA has verified the applicant's claim that the premarket approval application (PMA) for Synvisc Hylan G–F 20 (4,713,448)® (PMA P940015) was initially submitted May 31, 1994.

3. *The date the application was approved:* August 8, 1997. FDA has verified the applicant's claim that PMA P940015 was approved on August 8, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 396 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 12, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 9, 2001. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30. Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information 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. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 20, 2000.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 01–681 Filed 1–9–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0613]

Determination of Regulatory Review Period for Purposes of Patent Extension; Synvisc Hylan G–F 20 (5,143,724)®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Synvisc Hylan G–F 20 (5,143,724)® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public

Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Synvisc Hylan G–F 20 (5,143,724)®. Synvisc Hylan G–F 20 (5,143,724)® is indicated for the treatment of pain in osteoarthritis (OA) of the knee in patients who have failed to respond adequately to conservative nonpharmacologic therapy and to simple analgesics (e.g., acetaminophen). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Synvisc Hylan G–F 20 (5,143,724)® (U.S. Patent No. 5,143,724) from Biomatrix, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Synvisc Hylan G–F 20 (5,143,724)® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Synvisc Hylan G–F 20 (5,143,724)® is 2,949 days. Of this time, 1,783 days occurred during the testing phase of the regulatory review period, while 1,166 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* July 14, 1989. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective July 14, 1989.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* May 31, 1994. FDA has verified the applicant's claim that the premarket approval application (PMA) for Synvisc Hylan G–F 20 (5,143,724)® (PMA P940015) was initially submitted May 31, 1994.

3. *The date the application was approved:* August 8, 1997. FDA has verified the applicant's claim that PMA P940015 was approved on August 8, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 396 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 12, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period, by July 9, 2001. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30. Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information 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. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 20, 2000.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 01–683 Filed 1–9–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The 2001 FDA Science Forum—Science Across the Boundaries

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Office of Science is announcing the following meeting entitled ''The 2001 FDA Science Forum—Science Across the Boundaries.'' The science forum is FDA's key scientific meeting that seeks to communicate and promote scientific issues relating to scientific development and associated regulatory concerns. The 2001 forum is designed to bring FDA scientists together with representatives from industry, academia, government agencies, consumers groups, international constituents, and the public to explore science across the boundaries of these groups.

Date and Time: The science forum will be held on Thursday, February 15, 2001, from 8:30 a.m. to 5 p.m., and Friday, February 16, 2001, from 8:30 a.m. to 4:30 p.m.

Location: Washington Convention Center, 900 Ninth St. NW., Washington, DC 20001.

Contact: AOAC International, Fulfillment Department, 301–924–7077, e-mail: fulfillment@aoac.org, or Donna L. Mentch, Food and Drug Administration, Office of Science (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340, e-mail: dmentch@oc.fda.gov.

Registration: Attendees may register from 7 a.m. to 5 p.m. on February 15, 2001, and from 8 a.m. to 1 p.m. on February 16, 2001. Registration and program information are also available at http://www.aoac.org/meetings1/fdascienceforum.html. Attendance will be limited; therefore, interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: Speakers and panelists will address emerging issues in privacy and confidentiality, modeling and simulation, leveraging and partnerships across FDA boundaries, and laboratory accreditation.

A poster session featuring all areas of FDA regulatory science will be presented to provide an opportunity for interested scientists to engage in information exchange with FDA scientists. The session topics to be discussed include the following:

1. Health Informational Privacy: Individual Right or Public Good;
2. Modeling and Simulation for Transdisciplinary Collaboration: The Boeing 777 Story;
3. Perspectives on Confidentiality, Conflict of Interest, and Privacy Issues Surrounding the Advancing Science of Gene Therapy;
4. Modeling and Simulation Across Pharmaceutical Boundaries;
5. Privacy and Confidentiality Issues in Registries and in Outcomes/Epidemiology Research;
6. Modeling and Simulation in Clinical Product Development for the New Millennium;
7. Scientific, Privacy, and Ethical Issues Surrounding the Advancing Science Genetic Predisposition for Breast Cancer;
8. Modeling and Simulation: The Path to the Future;
9. Scientific Training Outside the Boundaries;
10. Next Generation Leveraging;
11. Public Health Preparedness for Bioterrorism: Why Leveraging is Essential;
12. Partnering Across the Boundaries;
13. Global Partnering: Mutual Recognition Agreements and How They Affect You.

The science forum is cosponsored by FDA's Office of Science Coordination and Communication, AOAC International, and FDA's Chapter of Sigma Xi, The Scientific Research Society.

If you need special accommodations due to a disability, please contact the AOAC International at least 3 weeks in advance.

Dated: January 4, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–629 Filed 1–9–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices 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 January 29, 2001, 8 a.m. to 5 p.m.

Location: Marriott Washingtonian Center, Salons A, B, and C, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Elisa D. Harvey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an endometrial ablation device.

Procedure: On January 29, 2001, from 9 a.m. to 5 p.m., the meeting is open to the public. 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 January 19, 2001. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. and between approximately 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before January 19, 2001, 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.

Closed Committee Deliberations: On January 29, 2001, from 8 a.m. to 9 a.m., the meeting will be closed to the public to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future device issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–682 Filed 1–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10021]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: New collection;

Title of Information Collection: Collection of data on Hospital Outpatient Encounters from Medicare+Choice Programs;

Form Number: HCFA–10021 (OMB approval #: 0938–NEW);

Use: HCFA requires hospital outpatient encounter data from Medicare+Choice organizations to develop and implement a risk adjustment payment methodology as required by the Balance Budget Act of 1997;

Frequency: Monthly;

Affected Public: Business or other for-profit, Not-for-profit institutions;

Number of Respondents: 300;

Total Annual Responses: 12,600;

Total Annual Hours Requested: 60,375.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web

Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–672 Filed 1–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1500]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5;

Form Number: HCFA–1450 (OMB approval #: 0938–0247);

Use: This standardized form is used in the Medicare/Medicaid program to apply for reimbursement of covered services by all providers that accept Medicare/Medicaid assigned claims;

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions;

Number of Respondents: 46,708;

Total Annual Responses: 147,343,290;

Total Annual Hours Requested: 1,854,070.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–673 Filed 1–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–179]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection;

Title of Information Collection: Transmittal and Notice of Approval of State Plan Material and Supporting Regulations in 42 CFR 430.10–430.20 and 440.167;

Form Number: HCFA–179 (OMB approval #: 0938–0193);

Use: Form HCFA–179 is used by State agencies to transmit State plan material to HCFA for approval prior to amending their State plans;

Frequency: On occasion;

Affected Public: State, local or tribal government;

Number of Respondents: 56;

Total Annual Responses: 56;

Total Annual Hours Requested: 560.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–674 Filed 1–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0296]

Notice of OMB Approval

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, obtained approval (OMB approval number 0938–0781) of the HCFA R 0296 form, Home Health Advanced Beneficiary Notice.

HCFA published a **Federal Register** notice on September 26, 2000, 65 FR 57821, seeking emergency OMB clearance, pursuant to the Paperwork Reduction Act, of a uniform Home Health Advance Beneficiary Notice (HHABN). Following a public comment period, and revision of the proposed uniform HHABN, HCFA submitted the revised HHABN to OMB. On December 1, 2000, OMB gave emergency clearance to a revised uniform HHABN. Pursuant to a **Federal Register** notice published by HCFA on October 6, 2000, 65 FR 59858, use of the uniform HHABN becomes mandatory not later than 90 days following OMB approval, which is March 1, 2001. (The uniform HHABN and related documents are posted on HCFA's website at *http://www.hcfa.gov/medlearn/refhha.htm).*

Dated: December 27, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–671 Filed 1–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–33]

Notice of Proposed Information Collection: Comment Request; HUD Conditional Commitment/Direct Enforcement Statement of Appraised Value

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 12, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1142 (this is not a toll-free number) for copies of the proposed forms and other available.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1955 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluation whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Conditional Commitment/Direct Endorsement Statement of Appraised Value.

OMB Control Number, if applicable: 2502–0494.

Description of the Need for the Information and Proposed Use: This request for OMB review involves a reinstatement of a previously approved information collection, Form HUD 29800.5B, Conditional Commitment/Direct Enforcement Statement of Appraised Value (OMB control number 2502–0494). Section 203 of the National Housing Act (Public Law 479, 48 Stat. 1256, 12 U.S.C. 1701 *et seq.*) authorizes the Secretary of the Department of Housing and Urban Development to insure mortgages on single family homes, including proposed and existing construction, when requested by FHA approved mortgagees. Form HUD 92800.5B serves as the mortgagee's conditional commitment/direct endorsement of FHA mortgage insurance on the property. The form provides for a statement of the property's appraised value and other required FHA disclosures to the homebuyer, including specific conditions which must be met before a firm commitment for mortgage insurance can be endorsed by HUD.

Agency Form Numbers, if Applicable: HUD–92800.5B.

Estimation of the Total Numbers of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: The estimated number of respondents is 1,200,000, the total annual responses are 1,200,000, and the total annual hours of response are estimated at 140,000 hours based on approximately .12 hours per response.

Status of the Proposed Information Collection: Reinstatement, with change, of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: January 3, 2001.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–630 Filed 1–9–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4638–N–01]

Notice of Certain Operating Cost Adjustment Factors

AGENCY: Office of the Secretary, HUD.

ACTION: Publication of Fiscal Year (FY) 2001 Operating Cost Adjustment Factors (OCAFs) for Section 8 rent adjustments at contract renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) Projects assisted with Section 8 Housing Assistance Payments.

SUMMARY: This notice establishes factors used in calculating rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3000; (This is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

I. Operating Cost Adjustment Factors (OCAFs)

Section 514(e)(2) of the FY 1998 HUD Appropriations Act requires HUD to establish guidelines for rent adjustments based on an operating cost adjustment (OCAF) factor. The legislation requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted.

Additionally, section 524 of the Act gives HUD broad discretion in setting OCAFs—referring simply to ''operating cost factors established by the Secretary.'' The sole exception to this grant of authority is a specific requirement that application of an OCAF shall not result in a negative rent adjustment. OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service.

An analysis of cost data for FHA-insured projects showed that their operating expenses could be grouped into nine categories: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis.

States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the State level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using dated State-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (*e.g.,* the most current local wage data are for 1996). The data sources for the nine cost indicators selected used were as follows:

Labor Costs—6/99 to 6/00 Bureau of Labor Statistics (BLS), ''Employment Cost Index, Private Sector Wages and Salaries Component at the National Level.''

Employment Benefit Costs—6/99–6/00 (BLS), ''Employment Cost Index, Employee Benefits at the National Level.''

Property Taxes—6/99–6/00 (BLS), ''Consumer Price Index, All Items Index.''

Goods, Supplies, Equipment—6/99–6/00 (BLS), ''Producer Price Index, Finished Goods Less Food and Energy.''

Insurance—6/99–6/00 (BLS), ''Consumer Price Index, Tenant and Household Insurance.''

Fuel Oil—Energy Information Agency, Petroleum Marketing Annual 1999, Table 18, ''Prices of No.2 Distillate to Residences by PAD District and Selected States,'' (Petroleum Administration for Defense District (PADD) average changes were used for the States with too little fuel oil consumption to have values.)

Electricity—Energy Information Agency, Electric Power Annual Volume 1, 1999, Table 22 ''Retail Sales of Electricity, Revenue and Average Revenue per Kilowatt-hour (and RSEs) by U.S. Electric Utilities to Ultimate Consumers by Census Division and State, 1998–1999—Residential.''

Natural Gas—Energy Information Agency, Natural Gas Annual, 1999, Table 22, ''Average Price of Natural Gas Delivered to Residential Consumers by State, 1995–1999 (Preliminary).''

Water and Sewer—6/99–6/00, (BLS), ''Consumer Price Index—Detailed Report.''

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant State-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from June 1999 to June 2000, the wage increase component of the Virginia OCAF for FY 2001 would be 2.0 percent ($4\% \times 50\%$). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the FY 2000 OCAF for Virginia. These types of calculations were made for each State for each of the nine cost components, and are included as the Appendix to this Notice.

II. MAHRA OCAF Procedure

The Multifamily Assisted Housing Reform and Affordability Act of 1997, Title V of Pub. L. 105–65 (approved October 7, 1997), 42 U.S.C. 1437f (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, created the Mark-to-Market Program to reduce the cost of Federal housing assistance, enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the Stewart B. McKinney Homeless Assistance Act (McKinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities; or (3) comparable market rents for the market area.

III. Findings and Certifications

Environmental Impact

This notice sets forth rate determinations and related external administrative requirements and

procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

(Catalog of Federal Domestic Assistance Number. The Catalog of Federal Domestic Assistance Number for this program is 14.187)

Dated: January 5, 2001.

Andrew Cuomo,

Secretary.

[FR Doc. 01–771 Filed 1–9–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Restoration Plan and Environmental Assessment

AGENCY: Fish & Wildlife Service, Department of the Interior.

ACTION: Notice of availability

SUMMARY: The U.S. Fish & Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a Natural Resource Trustee (Trustee), announces the release for public review of the Draft Restoration Plan and Environmental Assessment (RP/EA) for Operable Unit 3 (OU–3) of the Asbestos Dump Superfund Site, Morris County, New Jersey. The Draft RP/EA describes the DOI's proposal to restore natural resources injured as a result of chemical contamination at the Asbestos Dump Superfund Site.

DATES: Written comments must be submitted on or before February 26, 2001.

ADDRESSES: Requests for copies of the Draft RP/EA may be made to: Clay Stern, U.S. Fish & Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232.

Written comments or materials regarding the Draft RP/EA should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Clay Stern, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232. Interested parties may also call 609/383–3938, x27 or send e-mail to clay_stern@fws.gov for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*), * * * ''[Trustees] may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages.'' Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the Trustees can determine the proper compensation to the public for injury to natural resources. At Operable Unit 3 of the Asbestos Dump Superfund Site in Morris County, New Jersey, DOI was the sole natural resources trustee involved in the federal government's settlement with the National Gypsum Corporation (NGC). The Service, acting on behalf of the DOI, determined that contamination at OU–3 had degrated and injured trust resources within the Great Swamp National Wildlife Refuge. The injuries resulted from the deposition of asbestos containing materials, and mercuric and lead based compounds at the 5.58 acre site.

As part of a Consent Decree between the United States and NGC for response and restoration claims, DOI settled with NGC for natural resource damages. The settlement of approximately $3.6 million was designated for restoration, replacement, or acquisition of the equivalent natural resources injured by the release of contaminants at the site.

The Draft RP/EA is being released in accordance with section 111(i) of CERCLA, 42 U.S.C. 9611(i) and NEPA. The Draft RP/EA describes several natural resource restoration, acquisition, and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative is to use the settlement funds in a combination of projects aimed to restore, enhance, and protect in perpetuity, fish and wildlife habitat within the Great Swamp Watershed. Details regarding the proposed projects are contained in the Draft RP/EA.

Interested members of the public are invited to review and comment on the Draft RP/EA. Copies of the Draft RP/EA are available from the Service's New Jersey Field Office at 927 North Main Street, Pleasantville, New Jersey, 08232, or at the Great Swamp National Wildlife Refuge Headquarters, 152 Pleasantville, New Jersey, 08232, or at the Great Swamp National Wildlife Refuge Headquarters, 152 Pleasant Plains Road, Basking Ridge, New Jersey, 07920. Additionally, the Draft RP/EA is available for review at the Long Hill Township Library, 91 Central Avenue, Stirling, New Jersey, 07980, and the Harding Township Town Hall, located at the corners of Blue Mill Road and Sand Spring Road, New Vernon, New Jersey, 07976. All comments received on the Draft RP/EA will be considered and a response provided either through revision of this Draft RP/EA and incorporation into the Final Restoration Plan and Environmental Assessment, or by letter to the commentor.

Author

The primary author of this notice is Clay Stern, U.S. Fish & Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232.

Authority

The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*).

Dated: January 3, 2001.

G. Adam O'Hara,

Acting Regional Director, Region 5, U.S. Fish & Wildlife Service.

[FR Doc. 01–593 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Florida International University (FIU). The USGS, working with the High-Performance Database Research Center (HPDRC) and the National Aeronautics and Space Administration (NASA) Regional Applications Center (RAC), co-located in the Computer Science Department of FIU, will perform joint

research and development in seamless database development and the public display and dissemination of seamless satellite, aerial, and other geo-spatial data over the Internet for scientific and commercial uses. Any other organization interested in pursing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Chief, Systems and Technology, U.S. Geological Survey, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; telephone (703 648–5084, facsimile (703) 648–4706; internet blowell@usgs.gov.

FOR FURTHER INFORMATION CONTACT: Brent H. Lowell, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: December 28, 2000.

John A. Kelmelis,

Acting Associate Director for Geography.

[FR Doc. 01–618 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications for Funding Assistance Under the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program (CAP) for Fiscal Year (FY) 2001

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for the NSDI Cooperative Agreements Program awards for fiscal year 2001, with performance to begin in August 2001.

SUMMARY: The purpose of the NSDI Cooperative Agreements Program is to facilitate and foster partnerships, alliances and technology within and among various public and private entities to assist in building the NSDI. The NSDI consists of technologies, policies, organizations and people necessary to promote cost-effective production, ready availability, and greater utilization of high quality geospatial data among a variety of sectors, disciplines and communities.

The FY 2001 NSDI Cooperative Agreements Program will fund projects in five categories of activities (1) metadata implementation assistance, (2) metadata trainer assistance, (3) clearinghouse integration with web mapping, and (4) U.S. and Canadian framework collaborative projects. Applications may be submitted by Federal agencies, State and local government agencies, educational institutions, private firms, non-profit foundations, and Federally acknowledged or state-recognized Native American tribes or groups. Applications from Federal agencies will not be competed against applications from other sources. Authority for this program is contained in the Organic Act of march 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The program announcements and application forms for the FY 2001 NSDI Cooperative Agreements Program are expected to be available on or about January 15, 2001. Applications must be received on or before March 15, 2001.

ADDRESSES: Copies of Program Announcement #00HQPA0004 for the NSDI Cooperative Agreements Program, may be obtained by writing to Patricia Masterson, U.S. Geological Survey, Office of Federal Acquisition and Grants, National Assistance Programs Branch, MS 205G, 12201 Sunrise Valley Drive, Reston, VA 20192. Requests must be in writing; verbal requests will not be honored. Copies of each Program Announcement will be available through the Internet at *www.usgs.gov/contracts/index.html and www.fgdc.gov*.

FOR FURTHER INFORMATION CONTACT: For the NSDI Cooperative Agreements Program contact Ms. Patricia Masterson, U.S. Geological Survey, Office of Federal Acquisition and Grants, National Programs Assistance Branch, Mail Stop 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7356, fax (703) 648–7359, email *pmasters@usgs.gov*.

SUPPLEMENTARY INFORMATION: Under the NSDI Cooperative Agreements Program a total of $1,000,000 is available for award.

2001 NSDI Cooperative Agreement Program Categories:

Category 1: ''Don't Duck Metadata:'' Metadata Implementation and Creation Assistance. The objectives for this category are the documentation of geospatial data through metadata creation and serving that documentation on the Internet through a NSDI clearinghouse. Under this category funds are provided for organizations needing assistance in receiving metadata training and in metadata creation.

Category 2: ''Don't duck Metadata:'' Metadata Trainer Assistance. Funding in this category is for those organizations and individuals that can provide training assistance to other organizations in becoming skilled and knowledgeable in metadata creation.

Category 3: Clearinghouse Integration with Web Mapping provides funding to extend existing Clearinghouse Nodes with OpenGIS Consortium (OGC) Web Mapping Specification capabilities in a consistent way. These specifications allow map servers to create and send standard map images over the internet as GIF, PNG or JPEG in a manner that lets client software overlay and display multiple maps from multiple servers. Funding will be provided to assist organizations extending their existing Clearinghouse nodes with OGC-compliant web mapping service capability.

Category 4: Canadian/U.S. Framework Collaborative Project will support collaborative framework projects between organizations in the U.S. and Canada to coordinate, create, maintain and share basic geospatial data to support decision-making. The information content of the framework includes the data themes of geodetic control, digital orthoimagery, elevation, transportation, hydrography, governmental units, and cadastral data. The FGDC in partnership with the GeoConnections of Natural Resources Canada will fund lead organizations in their respective countries in collaborative cross-border projects.

Dated: January 3, 2001.

Hedy J Rossmeissl,

Senior Program Advisor, U.S. Geological Survey.

[FR Doc. 01–617 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

National Park Service Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting Cancellation

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Saturday, January 27, 2001 in Point Reyes, California will be cancelled.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco

and San Mateo Counties. Members of the Commission are as follows: Mr. Richard Bartke, Chairman; Ms. Amy Meyer, Vice Chair; Ms. Susan Giacomini Allan, Mr. Douglas Siden, Mr. Michael Alexander, Mr. Dennis J. Rodoni, Ms. Lennie Roberts, Ms. Yvonne Lee, Mr. Fred Rodriguez, Mr. Trent Orr, Mr. Redmond Kernan, Ms. Betsey Cutler, Mr. Gordon Bennett, Ms. Anna-Marie Booth, Mr. John J. Spring, Dr. Edgar Wayburn, Mr. Doug Nadeau.

Dated: December 28, 2000.

Mary G. Scott,

Acting General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 01–620 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 30, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 25, 2001.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Coconino County

USFS Fort Valley Experimental Forest Station Historic District, ⅓ mi. W. of Jct. US 180 and Bader Rd., Flagstaff, 01000002

ARKANSAS

Pulaski County

Doe Branch Post Office, 32100 Kanis Rd., Ferndale, 01000003

FLORIDA

Leon County

Tookes House, 412 West Virginia Ave., Tallahassee, 01000004

Seminole County

Ritz Theater, 201 S. Magnolia Ave., Sanford, 01000005

LOUISIANA

Lincoln Parish

James, T.L., Building, 106 W. Mississippi, Ruston, 01000006

St. Mary Parish

Albania Plantation House, 1842 LA 182 E., Jeanerette, 01000007

St. Tammany Parish

Cousin, Francois, House, (Louisiana's French Creole Architecture MPS) 58148 Gwin Rd., Slidell, 01000008

MISSOURI

Cole County

Porth, Dr. Joseph P. and Effie, House, 631 W. Main St., Jefferson City, 01000009

Grundy County

Plaza Hotel, 715 Main St., Trenton, 01000010

Howell County

Elledge Arcade Buildings, 28 Court Sq. and 2 Elledge Arcade, West Plains, 01000011

Smith, W.J. and Ed, Building, 109–113 Washington Ave., West Plains, 01000012

West Plains Bank Building, 107 Washington Ave., West Plains, 01000013

Jackson County

Tromanhauser, Norman, House, 3603 W. Roanoke Dr., Kansas City, 01000014

NORTH CAROLINA

Johnston County

Watson—Sanders House, 2810 Brogden Rd., Smithfield, 01000015

Orange County

Hogan, Thomas and Mary, House, 9118 Hillsborough Rd., Carrboro, 01000016

Rowan County

Granite Quarry School, 706 Dunn's Mountain Rd., Granite Quarry, 01000017

RHODE ISLAND

Newport County

Boyd's Windmill, Prospect Ave., Middletown, 01000018

Providence County

Mathewson Farm, 544 Greenville Ave., Johnston, 01000019

SOUTH DAKOTA

Minnehaha County

Farley—Loetscher Company Building, 701–705 E. 8th St., Sioux Falls, 01000020

[FR Doc. 01–619 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Correction; Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Agate Fossil Beds National Monument, National Park Service, Harrison, NE and Scotts Bluff National Monument, National Park Service, Gerring, NE

AGENCY: National Park Service, Interior.

ACTION: Correction.

SUMMARY: The National Park Service published a notice of inventory completion in the **Federal Register** on May 23, 2000 for Native American human remains and associated funerary objects from Agate Fossil Beds National Monument and Scotts Bluff National Monument. The notice incorrectly listed one human skull as likely representing the remains of a Native American individual and one deer bone associated with these remains as an associated funerary object. Based on additional information provided by an August 2000 bioanthropological analysis of this skull, the Agate Fossil Beds National Monument superintendent determined that the human remains are not Native American and, therefore, the deer bone associated with these remains is not an associated funerary object.

Correction

In the **Federal Register** of May 23, 2000, FR Doc. 00–12852, page 33350, in the second column, the paragraph beginning ''In 1968, human remains representing eight individuals'' is corrected as follows to reflect changes in the number of human remains and associated funerary objects:

In 1968, human remains representing seven individuals were donated to Agate Fossil Beds National Monument by Margaret Cook. No known individuals were identified. The 10 associated funerary objects consist of 1 soil burial matrix containing numerous glass beads, 6 shell buttons and button fragments, 1 brass bell, 1 collection of cloth and leather fragments and 1 collection of plant seeds.

In the **Federal Register** of May 23, 2000, FR Doc. 00–12852, page 33350, in the third column, the paragraph beginning ''Through the physical anthropological examinations'' is corrected by deleting the following sentence:

The physical anthropological examinations also determined that one of the individuals described above is likely Native American.

In the **Federal Register** of May 23, 2000, FR Doc. 00–12852, beginning on page 33350 in the third column and ending on page 33351 in the first column, the following sentences are corrected to reflect changes in the number of human remains and associated funerary objects:

Based on the above-mentioned information, the Agate Fossil Beds National Monument and Scotts Bluff National Monument superintendents determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent 18 individuals of Native American ancestry. The Agate Fossil Beds National Monument and Scotts Bluff National Monument superintendents also determined that, pursuant to 43 CFR 10.2(d)(2), the 15 associated funerary objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

This correction has been sent to officials of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Indian Tribe, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Trbe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Northwestern Band of Shoshoni Nation of Utah (Washakie); Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Pawnee Indian Tribe of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Yankton Sioux Tribe of South Dakota.

Dated: January 1, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–649 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting and Ecosystem Roundtable Amendments Subcommittee Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on January 25, 2001 to discuss the 2002 Ecosystem Restoration Program Implementation Plan, project selection process, and other issues. The Amendments Subcommittee will also meet on January 25, 2001 to discuss proposed contract modifications for several ongoing ecosystem restoration projects. These meetings are open to the public. Interested persons may make oral statements to the Ecosystem Roundtable and Amendments Subcommittee or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 1 p.m. on Thursday, January 25, 2001. The Ecosystem Roundtable Amendments Subcommittee meeting will be held from 2 p.m. to 4 p.m. on Thursday, January 25, 2001.

ADDRESSES: The Ecosystem Roundtable and Amendments Subcommittee will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Terry Mills, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan that addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and program.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public

inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: January 4, 2001.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 01–658 Filed 1–9–01; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 26, 2000, and published in the **Federal Register** on October 13, 2000, (65 FR 60976), B.I. Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of B.I. Chemicals, Inc. to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated B.I. Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 11, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–753 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application Correction

In the **Federal Register** (FR Doc. 00–30294) Vol. 65, No. 229 at page 70936, dated November 28, 2000, Cerilliant Corporation, 14050 Summit Drive, Suite 121, PO Box 80189, Austin, Texas 78708–0189, made application to the Drug Enforcement Administration to be registered as an importer for certain basic classes of controlled substances.

The listing of controlled substance should not have included marihuana (7350) or tilidine (9750). Therefore, the above listed controlled substances are hereby deleted from Cerilliant Corporation's application for registration as an importer.

The listing of controlled substance should have included etorphine (9056). Therefore, etorphine (9056) is hereby added to Cerilliant Corporation's application for registration as an importer.

The firm plans to import small quantities of the listed controlled substance for the manufacture of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 14, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–758 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 6, 2000, Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–747 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 26, 2000, Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methyphenidate to make finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–750 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Management of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 7, 2000, National Center for Development of Natural Products, The University of Mississippi, 135 Cox Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to bulk manufacture for product development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 5, 2000.

John H. King,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 01–756 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 20, 2000, Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture medication for the treatment of AIDS wasting syndrome and as an antiemetic.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 5, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–757 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 12, 2000, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–748 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 5, 2000, published in the **Federal Register** on September 25, 2000, (65 FR 57622), Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501) and fentanyl (9801), basic classes of

controlled substances listed in Schedule II.

The firm planned to import phenylacetone for the production of amphetamine and fentanyl for seed material for the manufacture of fentanyl base.

One registered bulk manufacturer of fentanyl requested a hearing to deny the proposed registration of Noramco Inc., to import fentanyl. Noramco Inc. requested by letter that its application to import fentanyl be withdrawn. Therefore, Noramco Inc.'s application to import fentanyl is hereby withdrawn.

No comments or objections have been received related to the importation of phenylacetone. DEA has considered the factors in title 21, United States Code, Section 823(a) and determined that the registration of Noramco Inc., is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco Inc., to ensure that the company's registration is consistent with the public interest. The investigations included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance phenylacetone (8501) but their application to import fentanyl (9801) is hereby withdrawn.

Dated: December 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–754 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 25, 2000, Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Meperidine (9230)	II

The firm plans to manufacture bulk products for distribution to its customers.

Any other such applicants and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–749 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 11, 2000, Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal of the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer or cocaine (9041), a basis class of controlled substance listed in Schedule II.

The firm plans to manufacture of a derivative of cocaine in gram quantities for validation of synthetic procedures.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention, DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 4, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–751 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the code of Federal Regulations (CFR), this is notice that on October 13, 2000, Orpharm, Inc., 4815 Dacoma Street, Houston, Texas 77092, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Levo-alphacetylmethadol (9648)	II

The firm plans to manufacture methadone and methadone-intermediate for production of LAAM, and to manufacture methylphenidate for a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy assistant Administrator, Office of Diversion Control, Drug enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 12, 2001.

Dated: December 21, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–755 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 14, 2000, and published in the **Federal Register** on August 23, 2000, (65 FR 51332), Roxane Laboratories, Inc., 1809 Wilson Road, P.O. Box 16532, Columbus, Ohio 43216–6532, made application by renewal to the Drug Enforcement Administration to be registered as an importer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to import cocaine to manufacture topical solutions for distribution to customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roxane Laboratories, Inc. to import cocaine is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roxane Laboratories, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 11, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–752 Filed 1–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 2, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), on or before February 9, 2001.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Benefit Accuracy Measurement.

OMB Number: 1205–0245.

Affected Public: State, Local, or Tribal Govt.; Federal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms.

Number of Respondents: 52.

Total Number of Responses: 47,160.

Estimated Time Per Respondent: 4,917 Hours.

Total Burden Hours: 255,694.

Total annualized capital/startup costs: $336,300.

Total annual costs (operating/maintaining systems or purchasing services): $106,000.

Description: The Department of Labor requests approval to revise the Benefit Accuracy Measurement (BAM) program (formerly known as Benefits Quality Control or BQC) to (1) measure the accuracy of denied claims for Unemployment Compensation (UC) as part of the existing BAM program, which currently includes only paid UC claims; and (2) include interstate claims in the BAM samples of paid claims.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Former Federal Employees Handbook No. 391.

OMB Number: 1205–0179.

Affected Public: State, Local, and Tribal Govt.; Federal Government; Individuals or households.

Form No.	Number of respondents	Frequency	Total responses	Average minutes per response	Est. total burden hours
ETA–931	78,000	On Occasion	78,000	.05	65
ETA–931A	19,500	On Occasion	19,500	.05	16
ETA–933	78,000	On Occasion	78,000	.05	104
ETA–934	3,760	On Occasion	3,760	.05	3
ETA–935	20,680	On Occasion	20,680	.05	17
ETA–936	9,400	On Occasion	9,400	.05	8
ETA–939	75	On Occasion	75	1.75	2

Form No.	Number of respondents	Frequency	Total responses	Average minutes per response	Est. total burden hours
ETA–8–32	53	Twice	106	.08	.14
Total	209,468		209,521	.10	216

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Federal law (U.S.C. 8501–8509) provides unemployment insurance protection to former or partially unemployed Federal civilian employees. The forms continued throughout the Handbook are used in conjunction with the provision of this benefit assistance.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–729 Filed 1–9–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; State Alien Labor Certification Activity Report

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the State Alien Labor Certification Activity Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 12, 2001.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9037, State Alien Labor Certification Activity Report, should be directed to Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210 ((202) 693–3010 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

Alien labor certification programs administered by the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) require State Employment Security Agencies (SESAs) to initially process applications for permanent and temporary labor certifications filed by U.S. employers on behalf of alien workers seeking to be employed in the U.S. SESAs are also responsible for issuing prevailing wage determinations, reviewing employer-provided wage surveys or other source data, conducting housing inspections of facilities offered to migrant and seasonal workers, and conducting and monitoring recruitment activities seeking qualified U.S. workers for the jobs employers are attempting to fill with foreign workers. The SESAs perform these functions under a reimbursable grant that is awarded annually. The information pertaining to these functions is collected on the Form ETA 9037 and will be used by Departmental staff to manage alien labor certification programs in the SESAs. The Department will be able to monitor the number of applications that the State has received, processed, and forwarded to ETA Regional offices, and the number of prevailing wage determinations issued to employers under the permanent and temporary labor certification programs, as well as the H–1B program for nonimmigrant professionals in specialty occupations. The information on workload will be used for formulating budget estimates for both State and Federal workloads, and for monitoring a State's performance against the Grant Statement of Work and Work Plan. Without such information, the budget workload figures will be estimates and the allocation of funding to the SESAs will not reflect the true workload in a State.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to the State Alien Labor Certification Activity Report.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: State Alien Labor Certification Activity Report.

OMB Number: 1205–0319.

Agency Number: Form ETA 9037.

Recordkeeping: Semi-Annually.

Affected Public: State governments.

Total Responses: 108.

Average Time Per Response: 2 hours.

Total Burden Cost (Capital/Startup): 0.

Total Burden Cost (Operating/Maintaining): $50 per response.

Comment Language: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also be become a matter of public record.

Signed at Washington D.C. this 22nd day of December 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 01–727 Filed 1–9–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; State Alien Labor Certification Activity Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Attestations by Facilities Temporarily Employing H–1C Nonimmigrant Aliens as Registered Nurses. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 12, 2001.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9081, Attestations by Facilities Temporarily Employing H–1C Nonimmigrant Aliens as Registered Nurses, should be directed to Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210 ((202) 693–3010 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required due to amendments creating a new H–1C nonimmigrant classification for aliens temporarily employed as registered nurses in the U.S. under section 212(m) of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA). The amendments by the Nursing Relief for Disadvantaged Areas Act of 1999, pertain to a health care facility's: Qualification to employ H–1C nurses; payment of a wage which will not adversely affect wages and working conditions of similarly employed registered nurses; payment of wages to aliens at rates paid to other registered nurses similarly employed by the facility; taking timely and significant steps designed to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant nurses; absence of a strike/lockout or lay off of nurses; notice to workers of its intent to petition for H–1C nurses; percentages of H–1C nurses to be employed at the facility; and placement of H–1C nurses within the facility.

Facilities must submit attestations to the Department of Labor (Department) as a condition for petitioning the Immigration and Naturalization Service for H–1C nonimmigrant nurses. Within the Department, the attestation process is administered by the Employment and Training Administration, while investigations and enforcement regarding the attestations is handled by the Employment Standards Administration.

The INA further requires that the Department make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to employers' seeking to use H–1C nonimmigrant aliens as registered nurses.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Attestations by Facilities Temporarily Employing H–1C Nonimmigrant Aliens as Registered Nurses.

OMB Number: 1205–0415.

Agency Number: Form ETA 9081.

Recordkeeping: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Responses: 1.

Average Time Per Response: 1 hour.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $25 per response.

Comment Language: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also be become a matter of public record.

Signed at Washington D.C. this 22nd day of December, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 01–728 Filed 1–9–01; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice set forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability (NCD).

Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

Quarterly Meeting Dates: February 5–6, 2001, 8:30 a.m. to 5 p.m.

LOCATION: Landmark Resort Hotel, 1501 South Ocean Boulevard, Myrtle Beach, South Carolina; 843–448–9441.

CONTACT INFORMATION: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

Agency Mission: NCD is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Accommodations: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

Language Translation: In accordance with Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to this meeting.

Multiple Chemical Sensitivity/Environmental Illness: People with multiple chemical sensitivity/environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at the meeting. Smoking is prohibited in the meeting room and surrounding area.

Open Meeting: In accordance with the Government in the Sunshine Act and NCD's bylaws, this quarterly meeting will be open to the public for observation, except where NCD determines that a meeting or portion thereof should be closed in accordance with NCD's regulations pursuant to the Government in the Sunshine Act. A majority of NCD members present shall determine when a meeting or portion thereof is closed to the public, in accordance with the Government in the Sunshine Act. At meetings open to the public, NCD may determine when non-members may participate in its discussions. Observers are not expected to participate in NCD meetings and unless requested to do so by an NCD member and recognized by the NCD chairperson.

Agenda: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on January 8, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–971 Filed 1–8–01; 3:53 pm]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Nuclear Management Company, LLC, Duane Arnold Energy Center; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–49, issued to Nuclear Management Company, LLC (the licensed operator) and IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative (the licensed owners), for operation of the Duane Arnold Energy Center, located in Linn County, Iowa.

Environmental Assessment

Identification of the Proposed

The proposed action would revise Facility Operating License No. DPR–49 to reflect the change in one of the licensee's names from IES Utilities Inc., to Interstate Power and Light Company.

The proposed action is in accordance with IES Utilities Inc.'s application for license amendment dated June 14, 2000, adopted by Nuclear Management Company, LLC, by letter to the NRC dated October 5, 2000.

The Need for the Proposed Action

The proposed action is needed to have the license accurately reflect the new legal name of the licensee. The proposed action will reflect the results of plans by the Alliant Energy Corporation (AEC, owner of IES Utilities Inc.) to merge and consolidate another utility it owns, Interstate Power Company, with IES Utilities Inc. (IES), and change the name of the surviving corporation, IES, to Interstate Power and Light Company.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed change to the license and concludes that there will be no impact on the status of the operating license (OL) or the continued operation of the plant, since the proposed change is solely administrative in nature. The proposed change updates the OL so that references to the licensee's name will be consistent with the new corporate name, Interstate Power and Light Company, of the licensee.

The proposed change is administrative in nature and will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, the NRC concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. The proposed change is administrative in nature and does not involve any physical features of the plant. Thus, the proposed change does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement Relating to the Operation of Duane Arnold Energy Center,'' dated March 1973.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Iowa State official, Mr. D. Fleeter of the Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application dated June 14, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 3rd day of January 2001.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–731 Filed 1–9–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting to Solicit Stakeholder Input on the Use of Risk Information in the Nuclear Materials Regulatory Process: Case Studies on Gas Chromatographs, Static Eliminators and Fixed Gauges

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is developing an approach for using risk information in the nuclear materials and waste regulatory process. As part of this effort, the NRC staff is conducting case studies on a spectrum of activities in the nuclear materials and waste arenas, including the regulation of gas chromatographs, fixed gauges, and static eliminators. The purpose of the case studies is to illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner, and to establish a framework for using a risk-informed approach in the materials and waste arenas by testing a set of draft screening criteria, and determining the feasibility of safety goals.

NRC staff is in the initial phase of the case studies on gas chromatographs, fixed gauges, and static eliminators. The purpose of this meeting is to: (1) Communicate to stakeholders the status of these case studies; (2) receive feedback and comments from stakeholders before continuing with the case studies; and (3) solicit from stakeholders comments or insights regarding the use of risk information in the NRC's regulation of gas chromatographs, fixed gauges, and static eliminators. The tentative agenda for the meeting is as follows:

1. Opening remarks.
2. Provide background information and general discussion on case studies.
3. Present status of case study on gas chromatographs and receive feedback and comments from meeting attendees.
4. Present status of case study on static eliminators and receive feedback and comments from meeting attendees.
5. Present status of case study on fixed gauges and receive feedback and comments from meeting attendees.
6. Receive general comments, feedback, and insights from meeting attendees with regard to the case studies and to using risk information in the NRC's regulation of gas chromatographs, fixed gauges, and static eliminators.
7. Closing remarks.

The meeting is open to the public; all interested parties may attend and provide comments. Persons who wish to attend the meeting should contact Marissa Bailey no later than January 29, 2001.

DATES: The meeting will be held on February 9, 2001, from 9 a.m. to 4 p.m., in the U.S. Nuclear Regulatory Commission Auditorium, 11545 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marissa Bailey, Mail Stop T–8–A–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7648; Internet: MGB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The NRC staff's case study approach, the draft screening criteria, and the case study areas under consideration are described in the ''Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies'' which has been published in the **Federal Register** (65 FR 66782, November 7, 2000). Copies of this plan are also available on the Internet at *http://www.nrc.gov/NMSS/IMNS/riskassessment.html.* Written requests for single copies of this plan may also be submitted to the U.S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Risk Task Group, Mail Stop T–8–A–23, Washington, DC 20555–0001.

Dated at Rockville, MD, this 4th day of January, 2001.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–732 Filed 1–9–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 18, 2000, through December 29, 2000. The last biweekly notice was published on December 27, 2000 (65 FR 81907).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 9, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first Floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: October 20, 2000.

Description of amendment request: The proposed amendment revises the Technical Specification (TS) surveillance interval for emergency diesel generator (EDG) maintenance from annually to 2 years. This interval is in conformance with guidelines of the Fairbanks Morris Owner's Group and the EDG manufacturer.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes do not affect the ability of the Emergency Diesel Generators (EDGs) to mitigate the consequences of an accident, including the loss of coolant accident coupled with loss of offsite power accident, which would be considered the most demanding on EDG System and components. A reduction in the number of diesel outages will also reduce the possibility of introducing problems resulting from human error or foreign material intrusion. Extending the maintenance interval should reduce the two-year unavailability from about 2% to about 1.4%. This is an approximate 30% reduction in unavailability. An extension of the outage inspection frequency to 24 months will result in increased EDG availability to mitigate the consequences of a potential accident. When this program is taken in its entirety, the extended maintenance intervals, coupled with the defined enhancements, is judged to result in an overall increase in Emergency Diesel Generator availability and reliability. The surveillance testing requirements of Technical Specifications Section 4.6.1a&b will continue to verify the operability and reliability of the EDG System. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

The Emergency Diesel Generator System is not an accident initiator. The operation, testing, and design of the Emergency Power System (including the Emergency Diesel Generators) is not being changed. The maintenance inspection interval is being expanded from annual to two years and will improve availability and enhance reliability. Plant design requires the full load capability of one Emergency Diesel Generator to support accident loads and the respective emergency electrical busses. Performance of the maintenance inspection on the extended interval will not have an adverse affect on the ability of the Emergency Diesel Generators to meet the design response criteria or contribute to the occurrence or the consequences of an accident. The proposed changes do not involve any physical design or operation changes that could create a malfunction extending beyond an individual Emergency Diesel Generator, nor does it increase the potential for a common-mode Emergency Diesel Generator failure. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The change of the maintenance inspection frequency and the detailed programmatic changes that implement the Fairbanks Morse Owners Group recommendations, will increase the availability and reliability of the Emergency Diesel Generators. Based on improving the availability and reliability, the margin of safety will actually be enhanced. The amount of time the Emergency Diesel Generators are out-of-service during on-line maintenance will decrease, thereby reducing the number of plant operating hours that the unit is exposed to a single mode failure. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

Based on the analysis provided herein, the proposed change meets the requirements of 10 CFR 50.92(c) and involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

NRC Section Chief: Marsha Gamberoni.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: September 14, 2000 as supplemented on December 21, 2000.

Description of amendment request: The proposed amendment incorporates the changes described below into the Technical Specifications (TSs) for Calvert Cliffs Unit 2. Calvert Cliffs Nuclear Power Plant, Inc. (the licensee) also requested an exemption for Calvert Cliffs Unit 2 from the requirements of 10 CFR 50.46, 10 CFR 50.44, and 10 CFR Part 50, Appendix K.

The exemption and TS change will allow a lead fuel assembly (LFA) with a limited number of fuel rods clad with advanced zirconium-based alloys to be inserted into the core during the next Unit 2 refueling outage, scheduled to begin in March 2001. This LFA was approved to be inserted into Unit 1 Cycle 15. Because of concerns with corrosion performance, all of the Anikuloy, Alloy C, and Zr–2P clad rods were removed from this LFA and replaced with OPTIN and Alloy E rods from another LFA. Due to the length of time needed to perform this activity and the duration of the Unit 1 outage, it was not possible to reinsert this LFA into Unit 1 for Cycle 15 operation. Therefore, the licensee is requesting approval to insert this assembly into Unit 2 for Cycle 14 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Supporting analyses indicate that since the LFA will be placed in a non-limiting location, the placement scheme and the similarity of the advanced alloys to zircaloy-4 will assure that the behavior of the fuel rods with these alloys are bounded by the fuel performance and safety analyses performed for the zircaloy-4 clad fuel rods currently in the Unit 2 Core. Therefore, the addition of these advanced claddings does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with existing equipment, change the equipment's function, or change the method of operating the equipment. The proposed change does not affect normal plant operations or configuration. Since the proposed change does not change the design, configuration, or operation, it could not become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

Supporting analyses indicate that since the LFA will be placed in a non-limiting location, the placement scheme and the similarity of the advanced alloys to zircaloy-4 will assure that the behavior of the fuel rods with these alloys are bounded by the fuel performance and safety analyses performed for the zircaloy-4 clad fuel rods currently in the Unit 2 Core. Therefore, the addition of these advanced claddings does not involve a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Marsha Gamberoni.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 20, 2000.

Description of amendment request: The amendments would revise the Technical Specification 3.7.10, ''Control Room Area Ventilation System (CRAVS).'' The primary purpose of the request is to eliminate the requirement for the CRAVS high chlorine protection function. Duke Energy Corporation (the licensee) indicated that a chlorine detection system with safety related detectors and automatic CRAVS intake isolation capability is no longer needed at Catawba. In addition, the licensee is also requesting NRC approval to allow the use of non-safety related detectors and to delete the automatic intake isolation capability. Finally, the amendments would also revise the Bases for the CRAVS to more clearly describe the system function and to make other clarifying changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Neither the CRAVS, nor its automatic control room intake isolation function on a high chlorine condition is capable of initiating any accident. The CRAVS is responsible for maintaining an acceptable environment in the control room during normal operation and accident conditions. The CRAVS will continue to function as designed to provide this environment in accordance with all applicable TS. Following implementation of this amendment, Catawba plans to pursue elimination of the automatic intake isolation capability. This will not affect the system's ability to maintain an acceptable control room environment during and following an accident. No other design changes to the system are being made. It has been shown that the quantity of gaseous chlorine used at Catawba is less than the threshold stated in applicable Regulatory Guides. Hence, there is no control room habitability issue due to chlorine. Therefore, there will be no impact on any accident probabilities or consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. The elimination of the automatic intake isolation capability will not introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators and does not impact any safety analyses.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this amendment. The performance of the CRAVS in response to normal and accident conditions will not be impacted. There is no risk significance to this proposed amendment, as no reduction in system or component availability will be incurred. No safety margins will be impacted.

Based upon the preceding discussion, Duke has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: December 11, 2000.

Description of amendment request: The proposed amendment would modify the existing Minimum Critical

Power Ratio (MCPR) Safety Limit contained in Technical Specification 2.1.1.2. Specifically, the change modifies the MCPR Safety Limit value, as calculated by Global Nuclear Fuel, by increasing the limit for two recirculation loop operation from 1.09 to 1.10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Per the Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR) Section 4.2.1, the fuel system design bases are provided in the General Electric Standard Application for Reactor Fuel (GESTAR II). The Minimum Critical Power Ratio (MCPR) Safety Limit is one of the limits used to protect the fuel in accordance with the design basis. The NRC-approved MCPR Safety Limit calculations establish margin to the onset of transition boiling. The basis of the MCPR Safety Limit calculation remains the same, ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling. These NRC-approved calculations were used to determine the proposed limit, therefore there is not an increase in the probability of transition boiling. Also, the change does not result in any physical plant modifications or physically affect any plant components. Therefore, no individual precursors of an accident are affected. As a result, there is no increase in the probability of occurrence of a previously analyzed accident.

The fundamental sequences of accidents and transients have not been altered. The Safety Limit MCPR is established to avoid fuel damage in response to anticipated operational occurrences. Compliance with a MCPR safety limit greater than or equal to the calculated value will ensure that less than 0.1% of the fuel rods will experience boiling transition. This in turn ensures fuel damage does not occur following transients due to excessive thermal stresses on the fuel cladding. The MCPR Operating Limits are set higher (*i.e.,* more conservative) than the Safety Limit such that potentially limiting plant transients prevent the MCPR from decreasing below the MCPR Safety Limit during the transient. Therefore, there is no impact on any of the limiting USAR Appendix 15B transients. The radiological consequences remain the same as previously stated in the USAR. Therefore, the consequences of an accident do not increase over previous evaluations in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit basis is preserved, which is to ensure that transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the limiting postulated transient. The value is calculated in accordance with GESTAR II. The GESTAR II analyses have been accepted by the NRC as comprehensive for ensuring that fuel designs will perform within acceptable bounds. The MCPR Safety Limit is one of the limits established to ensure the fuel is protected in accordance with the design basis. The function, location, operation, and handling of the fuel remain unchanged. No changes in the design of the plant or the method of operating the plant are associated with this revised safety limit value. Therefore, no new accident precursors are created due to this change. As a result, no new or different kind of accident from any previously evaluated is created.

3. The proposed change does not involve a significant reduction in a margin of safety.

This change revised the PNPP MCPR Safety Limit value. The new MCPR Safety Limit value does not alter the design or function of any plant system, including the fuel. The new MCPR Safety Limit value was calculated using NRC-approved methods described in GESTAR II. The MCPR Safety Limit value is consistent with GESTAR II, the NRC Safety Evaluation of GESTAR II, and the Technical Specification Bases (Section 2.1.1.2) for the MCPR Safety Limit. Use of these methods satisfies the fuel design safety criteria that less than 0.1% of the fuel rods are predicted to experience transition boiling if the safety limit is not violated. Therefore, enforcing the new value for the MCPR Safety Limit does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendment request: October 23, 2000.

Description of amendment request: The proposed license amendments would revise Table 3.3–5, Accident Monitoring Instrumentation, and Table 4.3–4, Accident Monitoring Instrumentation Surveillance Requirements. The revision would delete reference to the containment hydrogen monitors from the Accident Monitoring Instrumentation. Additionally, the proposed amendments would delete Technical Specification (TS) 3/4.6.5, Combustible Gas Control—Hydrogen Monitors, and TS 3/4.6.6, Post Accident Containment Vent System.

In addition, the licensee requested an exemption from the requirements of 10 CFR 50.44, ''Standards for Combustible Gas Control Systems in Light-Water-Cooled Power Reactors and 10 CFR Part 50, Appendix E, Section VI, ''Emergency Response Data System.'' The purpose of the exemption is to remove the requirements for hydrogen-control systems from the Turkey Point (TP) Units 3 and 4 design basis. Moreover, the licensee's submittal requested a change to the Confirmatory Order dated March 14, 1983, and revised by NRC letter dated October 5, 2000, confirming TP Units 3 and 4 commitments related to NUREG–0737, post-TMI requirements. Specifically, the licensee requests deletion of the commitment to NUREG–0737, Item II.F.I, Item 6, Containment Hydrogen Monitor requirements. The exemption request and the revision to the Confirmatory Order will be evaluated separately from the proposed license amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The Containment Combustible Gas Control System is composed of two hydrogen monitors, the Post-Accident Containment Vent System, and a leased hydrogen recombiner. Hydrogen control components are not considered to be accident initiators. Therefore, this change does not increase the probability of an accident previously evaluated.

The Containment Combustible Gas Control System is provided to ensure that the hydrogen concentration is maintained below 4.0% so that containment integrity is not challenged following a design basis Loss Of Coolant Accident (LOCA). Existing analysis show that the hydrogen concentration will not reach 4.0% for at least 12 days after a design basis LOCA. Containment failure due to hydrogen combustion without the Post-Accident Containment Vent System and backup hydrogen recombiner is not credible based on the results of the Turkey Point Units 3 and 4 Individual Plant Examination study. Therefore, this change does not increase the consequences of accidents previously evaluated.

Removal of the existing requirements for hydrogen control will reduce the consequences of postulated accidents by eliminating Post-Accident Containment Vent System releases, and by eliminating potential unfiltered release paths during operation of the hydrogen recombiner.

Removal of the existing requirements for hydrogen control will also allow elimination of the Emergency Operating Procedure (EOP) steps for hydrogen control and hence simplify migration through the EOPs. This would have a positive impact on public health risk by reducing the probability of operator error during potential accidents and hence reduce the core damage frequency. In addition, approval of these amendment requests will minimize the potential for actuation of the Post-Accident Containment Vent System and/or the backup hydrogen recombiner during severe accidents. The changes described in this request result in an overall decrease in risk.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This proposed change does not change the design or configuration of the plant beyond the containment Combustible Gas Control System. Hydrogen generation following a design basis LOCA has been evaluated in accordance with regulatory requirements. Deletion of the containment Combustible Gas Control System from the technical specifications does not alter the hydrogen generation processes post-LOCA. The consideration of hydrogen generation will no longer be included in the design basis of Turkey Point Units 3 and 4. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The Containment Combustible Gas Control System is provided to ensure that the hydrogen concentration is maintained below 4.0% so that containment integrity is not challenged following a design basis Loss Of Coolant Accident (LOCA). Existing analysis show that the hydrogen concentration will not reach 4.0% for at least 12 days after a design basis LOCA. Containment failure due to hydrogen combustion without the Post-Accident Containment Vent System and backup hydrogen recombiner is not credible based on the results of the Turkey Point Units 3 and 4 Individual Plant Examination study. Therefore, this change does not result in a reduction in a margin of safety.

The changes proposed in these amendment requests result in a reduction in risk. Removal of the existing requirement for a containment Combustible Gas Control System will, by eliminating the EOP steps for hydrogen control, result in lower operator error probabilities. In addition, approval of these amendment requests will minimize the potential for actuation of the Post-Accident Containment Vent System and/or the backup hydrogen recombiner during severe accidents. Therefore, this change involves an increase in safety, not a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania

Date of amendment request: November 30, 2000.

Description of amendment request: The proposed amendment would change the name in the license of GPU Nuclear Corporation to GPU Nuclear, Inc.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The NRC has previously determined that similar amendments reflecting this name change have involved no significant hazards consideration. See 62 Fed. Reg. 4341, 4350 (1997) and 62 Fed. Reg. 59912, 59915 (1997).

Consistent with these prior NRC determinations, GPU Nuclear has determined that the License Amendment involves no significant hazards considerations as defined in 10 CFR 50.92.

1. The proposed changes to the Saxton License do not involve a significant increase in the probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously analyzed in the safety analysis report. The changes have no impact on plant operations or the release of radioactive materials.

2. The proposed changes to the Saxton License will not create the possibility for an accident or malfunction of a different type than any previously evaluated in the safety analysis report because no plant configuration or operation changes are involved.

3. The changes will not involve a significant reduction in the margin of safety as defined in the basis of any technical specification for Saxton because no change to operational limits will be made.

The NRC staff has reviewed the analysis of the licensees and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Branch Chief: Ledyard B. Marsh.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: December 5, 2000.

Description of amendment request: The proposed amendment would reformat the Technical Specifications to be more consistent with the proposed Improved Standard Technical Specifications applicable to permanently shutdown and defueled facilities. The proposed changes also modify the specifications to better reflect the decommissioned status of Millstone Nuclear Power Station, Unit 1. Other changes relocate requirements out of the Technical Specifications to other controlled license basis documents, consistent with the Improved Standard Technical Specifications and Nuclear Regulatory Commission (NRC) guidance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Administrative Changes (''A.x'' Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves reformatting, renumbering, and rewording the existing Technical Specifications. The reformatting, renumbering, and rewording process involves no technical changes to the existing Technical Specifications. As such, this change is administrative in nature and does not impact initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed)

or changes in methods governing normal plant activities. The proposed change will not impose any new or eliminate any old requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analyses assumptions. This change is administrative in nature. Therefore, the change does not involve a significant reduction in a margin of safety.

Technical Changes—More Restrictive (''M.x'' Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, NNECO has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed change does impose different requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increases the margin of plant safety. As provided in the discussion of the change, each change in this category is by definition, providing additional restrictions to enhance plant safety. The change maintains requirements within the safety analyses and licensing basis. Therefore, this change does not involve a significant reduction in a margin of safety.

''Generic'' Less Restrictive Changes: Relocating Details to Other Plant Controlled Documents (''LA.x'' Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, NNECO has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates certain details from the Technical Specifications to the TRM [Technical Requirements Manual] or the Millstone [Nuclear Power Station (Millstone),] Unit 1 Northeast Utilities Quality Assurance Program (NUQAP). The TRM will be maintained in accordance with 10 CFR 50.59. The NUQAP is subject to the change control provisions 10 CFR 50.54(a). Since any changes to the TRM or NUQAP will be evaluated per the requirements of 10 CFR 50.59 or 10 CFR 50.54(a) respectively, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of the information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the details to be transposed from the Technical Specifications to the TRM, or the NUQAP documents are the same as the existing Technical Specifications. Since any future changes to these details in the TRM or NUQAP will be evaluated per the requirements of 10 CFR 50.59 or 10 CFR 50.54(a) respectively, no reduction (significant or insignificant) in a margin of safety will be allowed.

Relocated Specifications (''R.x'' Labeled Comments/Discussions

In accordance with the criteria set forth in 10 CFR 50.92, NNECO has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates requirements and surveillances for structures, systems, or components (SSCs) that do not meet the criteria for inclusion in Technical Specifications as defined in 10 CFR 50.36. The affected SSCs are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected SSCs will be relocated from the Technical Specifications to an appropriate administratively controlled document which will be maintained pursuant to 10 CFR 50.59. In addition, the affected SSCs are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant activities. The proposed change will not impose or eliminate any requirements and adequate control of existing requirements will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the relocated requirements and surveillances for the affected SSCs remain the same as the existing Technical Specifications. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will be permitted.

Specific Less Restrictive Changes (L.1 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. This change modifies the Applicability of LCO 3.1.1 from ''Whenever irradiated fuel is stored in the Fuel Storage Pool'' to ''During movement of irradiated fuel assemblies in the Fuel Storage Pool.'' This is consistent with the conditions addressed and assumed in the analysis of a fuel handling accident. Required Action A.2 is also deleted since, with the corresponding change to the Applicability, it is no longer required. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves modifying the Applicability of LCO 3.1.1 to correspond directly with the conditions to which the LCO applies. LCO 3.1.1 provides assurance that adequate pool water level is maintained to ensure that the assumptions of the design basis fuel handling accident are met. The design basis accident assumes a non-mechanistic failure of the fuel pins in four assemblies. The analysis assumes that a water level below that required by LCO 3.1.1.

If fuel handling is not occurring, the fuel pool water level does not satisfy the criteria for inclusion in the Technical Specifications as a parameter assumed as an initial condition of the safety analysis. Therefore this change merely aligns the LCO Applicability with the safety analysis assumptions.

Aligning the Applicability directly with the conditions that must exist for a design basis accident to occur does not affect the probability or consequences of an accident previously evaluated. Rather, it ensures that the previously evaluated accident probability and consequences are unchanged. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed change will merely align the Applicability of an existing LCO with the conditions that exist when the limit of the LCO is credited in the safety analysis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because the change merely aligns the Applicability of LCO 3.1.1 with the conditions that exist when the limit of the LCO is credited in the safety analysis. Therefore, the change does not involve a significant reduction in a margin of safety.

Specific Less Restrictive Changes (L.2 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The proposed change removes a restriction from Section 4.1, Site Location, which restricts the sale or lease of portions of the site other than to the listed organizations. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves removing an administrative restriction on the ownership and ability to lease portions of the site to organizations other than those listed. Removing this restriction will not affect the probability of an accident previously evaluated, since these restrictions are not related to any precursor or contributor to the causes for any accident previously evaluated. Removing the restrictions will similarly not increase the consequences of an accident previously evaluated, since the proposed change does not result in a transfer of ownership or grant of lease of the described property. Any such activity would be subjected to a review in accordance with the requirements of 10 CFR 50.59, since the ownership and physical description of the plant are described in the Defueled Safety Analysis Report. The evaluation performed at that time would ensure that no increase in the consequences of an accident previously evaluated. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed change merely removes an administrative requirement that limits the ability to sell or lease portions of the site. These controls are not associated with any onsite activity that could result in a new or different kind of accident. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety, because it does not result in any change to the plant or the way it is operated. The proposed change merely removes an administrative restriction on the ability to lease or sell portions of the site. Since the site description is provided in the Defueled Safety Analysis Report, any such activity would be subject to a review in accordance with the requirements of 10 CFR 50.59. This review would ensure that there is no reduction in margin of safety associated with any future proposed changes. Therefore, this change does not involve a significant reduction in a margin of safety.

Specific Less Restrictive Changes (L.3 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The proposed change removes a limit associated with the storage of fuel in the new fuel storage facility. With the permanent shutdown and defueled condition of the plant, and the removal of all un-irradiated fuel from the site, the new fuel storage facility will no longer be used and this restriction is no longer required. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves removing restrictions on k_{eff} in the new fuel storage facility. Fuel can no longer be stored in the new fuel storage facility because all un-irradiated fuel has been removed from the site, and radiological considerations prevent the placement of irradiated fuel in the new fuel storage facility. The design basis accident for Millstone, Unit No. 1 is the postulated Fuel Handling Accident described in the Defueled Safety Analysis Report. The postulated accident involves irradiated fuel located in the spent fuel storage pool. Therefore, this requirement provides no useful information and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed change will not impose any new requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety, because the requirements that are proposed for elimination do not affect the design or operation of the facility since the plant was permanently shutdown, defueled, and all un-irradiated fuel has been removed from the unit. Since the proposed change has no affect on the facility and merely removes unnecessary information from the Technical Specifications, the change does not involve a significant reduction in a margin of safety.

Specific Less Restrictive Changes (L.4 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The proposed change involves removing the requirement for a Shift Manager who is qualified as a Certified Fuel Handler and is responsible for the control room command function. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves removing the requirement for a Shift Manager who is qualified as a Certified Fuel Handler and who is responsible for the control room command function. Millstone, Unit No. 1 has been shutdown for over four years, and there are no remaining postulated or credible accidents that require a complex immediate response from operating personnel. The required response to postulated and credible accidents at the facility are a small subset of those that were required when the facility was in operation. Based on this, there is no longer a need for a specific position designation for the individual who will exercise the control room command function.

In addition, the requirement for a Certified Fuel Handler to fulfill the Shift Manager responsibility is no longer appropriate because for extended periods no fuel handling operations will be conducted. Fuel Handling activities are deliberate pre-planned evolutions. There are no postulated or credible accidents that would result in the need to perform an unplanned fuel movement. Plant procedures and other administrative controls will continue to ensure that Certified Fuel Handler responsibilities are fulfilled by appropriately

qualified individuals when activities dictate the need.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities because qualified individuals will continue to be available to perform required functions. The proposed change will not impose any new or eliminate any old requirements associated with any structure, system or component. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety, because qualified individuals will continue to be available to perform activities required to ensure the safe storage of irradiated fuel and control of radioactive materials. The proposed changes will eliminate unnecessarily burdensome requirements that were developed to address the requirements of an operating facility but which no longer apply at a permanently shutdown and defueled facility such as Millstone, Unit No. 1. Therefore, the change does not involve a significant reduction in a margin of safety.

Specific Less Restrictive Changes (L.5 Labeled Comments/Discussions)

DOC L.5 is not used.

Specific Less Restrictive Changes (L.6 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The proposed change removes an administrative requirement for notification to be made to the NRC prior to changes to acceptance criteria for chemistry control of the Fuel Storage Pool. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Removing the requirement for prior notification of the NRC cannot have any effect on the probability or consequence of an accident previously evaluated, since the requirement to perform this notification is not associated or related in any way to the probability or consequences of any accident.

The consequence of an accident previously evaluated are not affected since no change to the way the fuel storage pool is monitored, is proposed. Notification of the NRC does not affect the consequences of any previously evaluated accident. The proposed change merely reduces the administrative burden associated with maintaining the program in compliance with the Technical Specifications.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed changes will not impose any new or eliminate any old requirements. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes will not reduce a margin of safety because they merely remove administrative burden associated with implementing the Fuel Storage Pool Program by eliminating a requirement for notification to the NRC of proposed changes to acceptance criteria to be used. Therefore, the change does not involve a significant reduction in a margin of safety.

Specific Less Restrictive Changes (L.7 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The proposed change merely adds the option to use electronic dosimetry. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves adding the explicit option to utilize electronic dosimetry as a means of monitoring occupational radiation exposure. The means of monitoring occupational dose are unrelated to the probability or consequences of any accident previously evaluated. The means of measuring occupational exposures is merely a limit on the technology that may be utilized to perform a measurement required by [F]ederal regulations. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of plant systems, structures or components (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed change will not impose any new or eliminate any old requirements related to the safe storage of irradiated nuclear fuel or the control of radioactive materials. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety, because the means of measuring the occupational exposure of workers is unrelated to the margin of safety of the facility. The means of measuring occupational exposures is merely a limit on the technology that may be utilized to perform a measurement required by [F]ederal regulations.

Specific Less Restrictive Changes (L.8 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. This change will extend the surveillance Frequency from once every 24 hours to once every [seven] days. The proposed Frequency is consistent with the reduced decay heat load and the lack of available mechanistic failures that could lead to sudden or unanticipated reduction in spent fuel pool inventory. The associated Bases are modified to reflect the proposed interval. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves extending the Frequency interval of SR [Surveillance Requirement] 3.1.1 to correspond with the conditions of the facility. SR 3.1.1 provides assurance that adequate pool water level is maintained to ensure that the assumptions of the design basis fuel handling accident are met. There are no longer any credible mechanisms that could lead to an unanticipated or undetected reduction in spent fuel pool inventory. The proposed [seven] day Frequency is consistent with the decay heat load calculations, potential maximum evaporation rates, and the large volume of water available over the spent fuel in the storage pool.

Aligning this SR directly with the conditions that exist in the facility does not affect the probability or consequences of an accident previously evaluated. Rather, it continues to ensure that the previously evaluated accident probability and consequences are unchanged. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed change will merely align the Frequency of an existing SR with the conditions in the facility. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because the change merely aligns the Frequency of performance of SR 3.1.1 with the conditions that exist in the plant. Therefore, the change does not involve a significant reduction in a margin of safety.

Specific Less Restrictive Changes (L.9 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. This change modifies the spent fuel storage rack limit on K_{eff} from less than or equal to 0.90 to less than or equal to 0.95. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves modifying the k_{eff} limit that the spent fuel storage racks are designed and maintained to. The current and proposed limit are established to provide a significant margin of assurance that the spent fuel cannot be made critical while stored in the racks and under design basis accident conditions.

Changing the limit on k_{eff} from 0.90 to 0.95 does not significantly affect the assurance that the spent fuel racks will maintain the fuel in a sub-critical configuration. Both limits are substantially below the limit of 1.0, and provide adequate assurance of safety. The proposed change therefore does not affect the probability or consequences of an accident previously evaluated. Rather, it continues to ensure that the previously evaluated accident probability and consequences are unchanged. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed change will merely increase the limit on k_{eff} so that it is consistent with industry practice and established standards applicable to the storage of spent fuel. Criticality continues to be avoided by maintaining the storage racks such that k_{eff} is less than or equal to 0.95. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety defined by the limit is that the spent fuel will remain sub-critical during anticipated circumstances and design basis accidents. Since the proposed limit continues to provide this assurance, the change does not involve a significant reduction in a margin of safety.

Specific Less Restrictive Changes (L.10 Labeled Comments/Discussions)

In accordance with the criteria set forth in 10 CFR 50.92, Northeast Nuclear Energy Company (NNECO) has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. This change removes the redundant requirement to maintain an NRC approved training and retraining program for the Certified Fuel Handlers (CFHs). The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change removes a TS [Technical Specification] administrative requirement that is redundant to existing requirements that derive from 10 CFR 50.2. Therefore the TS requirement is not needed and does not [a]ffect the probability or consequences of an accident previously evaluated. The change is purely administrative, albeit a specific reduction in the requirements of the TS. The requirement will continue to apply to the unit. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant activities. The proposed change will merely remove an unneeded, redundant requirement. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because the requirement for an NRC approved training program for CFHs will continue to exist as specified in 10 CFR 50.2. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P. O. Box 270, Hartford, Connecticut.

NRC Section Chief: Michael T. Masnik.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 3, 2000.

Description of amendment request: The proposed amendment would delete Section 3.D, ''License Term'' from Facility Operating License No. DPR–40. The long-term load factor described in Section 3.D is used in the projection of reactor vessel fast neutron fluence and consequently for calculation of the pressurized thermal shock (PTS) reference temperature (RT_{PTS}) value to ensure that the 10 CFR 50.61 screening criteria for reactor vessel integrity are not exceeded. The previous fluence analysis was performed by Combustion Engineering (ABB/CE). Recently, Westinghouse Electric Company has completed an analysis (WCAP–15443, ''Fast Neutron Fluence Evaluations for the Fort Calhoun Unit 1 Reactor Pressure Vessel,'' dated July 2000) to update the ABB/CE calculation. In accordance with 10 CFR 50.61, this assessment must be updated whenever there is a significant change in projected values of RT_{PTS} or upon request for a change in the expiration date of the facility. Thus, Section 3.D can be deleted from Facility Operating License No. DPR–40 based upon the recent Westinghouse analysis and the fact that Section 3.D is redundant to 10 CFR 50.61 requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The previously evaluated accidents affected by this change are limited to the pressurized thermal shock (PTS) events. Vessel embrittlement due to fast neutron associated damage to the limiting beltline region reactor vessel material (which for Fort Calhoun Station is included in the lower course axial welds) is a component in the PTS analysis. The fast neutron, thermal neutron and dpa [displacement per atom] values of the FCS reactor vessel were recalculated using actual power history values for Cycles 1 through 14 rather than conservative estimates, along with the revised BUGLE–93 cross sections from the ENDF/B–VI cross section library to appropriately account for the iron atoms in the thermal shield and a methodology that the NRC has previously approved for neutron fluence calculations performed by Westinghouse. The fluence evaluation included data from the three surveillance capsules (W–225, W–265, and W–275) previously removed and analyzed. The RT_{PTS} evaluation applied Position 2.1 of Regulatory Guide 1.99, Revision 2 in conjunction with surveillance data from other plants containing the limiting FCS weld materials. The evaluation results indicate that the FCS reactor vessel is able to reach more than 20 years beyond current licensed life without exceeding the 10 CFR 50.61 screening criterion for RT_{PTS} of 270°F for axial welds.

In accordance with 10 CFR 50.61, this assessment must be updated whenever there is a significant change in projected values of RT_{PTS} or upon request for a change in the expiration date of the facility. Since these requirements are contained in 10 CFR 50.61, Section 3.D can be deleted from Operating License No. DPR–40 without resulting in a

significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not physically alter the configuration of the plant and no new or different mode of operation is proposed. Increasing the long term load factor from 0.77 to 0.85 more accurately projects RT_{PTS} by accounting for improvement in FCS operating cycle efficiency. Requirements for assessing and reporting RT_{PTS} are contained in 10 CFR 50.61 and therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is defined by both the screening criteria of 10 CFR 50.61 and draft regulatory guide DG–1053 for neutron fluence calculations, which requires the methodology to be capable of providing best estimate fluence evaluations within 20 percent (1σ). The analysis for FCS shows that when the applicable regulatory criteria are applied, the screening criteria of 10 CFR 50.61 are not exceeded; therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2000 (This supercedes the license amendment request dated July 28, 2000, that was published in the **Federal Register** on October 18, 2000 (65 FR 62388).

Description of amendment request: The proposed amendment would permit Fort Calhoun Station to install leak tight sleeves as an alternative to plugging to repair defective steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The CE Leak Tight Sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and, therefore, meet the design objectives of the original steam generator tubing. The applicable design criteria for the sleeves conform to the stress limits and margins of safety of Section III of the ASME code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by Regulatory Guide 1.121. Burst testing of sleeved tubes has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

Evaluation of the repaired steam generator tubes indicates no detrimental effects on the sleeve or sleeve-tube assembly from reactor coolant system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Fort Calhoun Station. Corrosion testing of sleeve-tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The installation of the proposed sleeves is controlled via the sleeving vendor's proprietary processes and equipment. The CE process has been in use since 1984 and has been implemented more than 24 times for the installation of over 4,200 sleeves. The FCS steam generator design was reviewed and found to be compatible with the installation processes and equipment.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeved tube is bounded by the current steam generator tube rupture analysis described in Fort Calhoun Station's USAR [Updated Safety Analysis Report], Section 14.14. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis, depending on the break location, and therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feed line break will not cause a SGTR [steam generator tube rupture] since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the Fort Calhoun Station safety analysis. The proposed reduction of the steam generator primary to secondary operational leakage limit provides added assurance that leaking flaws will not propagate to burst prior to commencement of plant shutdown.

In conclusion, based on the discussion above, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the CE Leak Tight Sleeves are designed using the applicable ASME Code as guidance; therefore, they meet the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeves. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. The continued integrity of the installed sleeve is periodically verified by the Technical Specification requirements.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. As discussed above, the reduced primary to secondary leakage limit is a conservative change in the plant limiting conditions for operation. Therefore, Omaha Public Power District concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The repair of degraded steam generator tubes with CE Leak Tight Sleeves restores the integrity of the degraded tube under normal operating and postulated accident conditions. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Code used in the original steam generator design. The portions of the installed sleeve assembly that represents the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation. Use of the previously identified design criteria and design verification testing assures that the margin of safety is not significantly different from the original steam generator tubes. The proposed sleeve inspection requirements are more stringent than existing requirements for inspection of the steam generator tubes, and the reduction in the operational limit for primary to secondary leakage through the steam generator tubes is more conservative than current requirements. Therefore, OPPD concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 5, 2000.

Description of amendment request: The proposed change revises Surveillance Requirement 4.6.3.4 to require testing of a representative sample of Excess Flow Check Valves (EFCVs) such that each EFCV will be tested at least once every 120 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current Surveillance Requirement (SR) frequency requires each reactor instrumentation line Excess Flow Check Valve (EFCV) to be tested every 24 months. The EFCVs at LGS (Limerick Generating Station), Units 1 and 2 are designed to not close accidentally during normal operation, but will close automatically in the event of a line break downstream of the valve. The EFCVs are provided with valve position indication in the reactor enclosure. A general alarm is provided in the control room to indicate that an EFCV position has changed state. As discussed in the LGS, Units 1 and 2 Updated Final Safety Analysis Report (UFSAR) (Section 6.2.4.3.1.5), instrument lines that penetrate the containment from the Reactor Coolant Pressure Boundary (RCPB) conform to Regulatory Guide 1.11 in that they are equipped with a restricting orifice located inside the drywell and an EFCV located outside the drywell as close as practical to the containment. The GE Nuclear Energy (GENE) Report demonstrates, through operating experience, a high degree of reliability with the EFCVs and the low consequences of an EFCV failure. A failure of an EFCV to isolate cannot initiate previously evaluated accidents. In addition, since the proposed changes will only change the surveillance frequency, there can be no increase in the probability of occurrence of an accident as a result of this proposed change.

The postulated break of an instrument line attached to the RCPB is discussed and evaluated in the Updated Final Safety Analysis Report (UFSAR), Section 15.6.2. The integrity and functional performance of the secondary containment and standby gas treatment system are not impaired by this event, and the calculated potential offsite exposures are substantially below the guidelines of 10 CFR 100. Therefore, a failure of an EFCV, though not expected as a result of the change in the surveillance frequency, is bounded by the previous evaluation of an instrument line break. The radiation dose consequences of such a break are not impacted by this proposed change. Therefore, the proposed TS changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes allow a reduced number of EFCVs to be tested each operating cycle. No other changes in requirements are being proposed. Industry operating experience as documented in the GENE report provides supporting evidence that the reduced testing frequency does not affect the kind of accident. The potential failure of an EFCV to isolate as a result of the proposed reduction in test frequency is not a physical alteration of the plant and will not alter the operation of the structures, systems and components as described in the UFSAR. Therefore, a new or different kind of accident will not be created.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The consequences of an unisolable rupture of an instrument line has been previously evaluated in the LGS, Units 1 and 2 UFSAR, Section 15.6.2. That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence. The change in surveillance frequency only changes the potential for an undetected failure of an EFCV and does not change the event sequence upon which the current margin is based. Therefore, no change in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 4, 2000.

Description of amendment request: The amendment proposes changes to the Susquehanna Steam Electric Station (SSES), Units 1 and 2, Technical Specifications (TSs) to revise the surveillance requirement (SR) for certain isolation valves known as excess flow check valves (EFCV). The current TSs require that each EFCV be tested at least once every 24 months. The proposed change would allow a representative sample to be tested every 24 months, such that each EFCV is tested at least once every 10 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

The current SR frequency requires each reactor instrumentation line EFCV to be tested every 24 months. The EFCVs at SSES Unit 1 and Unit 2 are designed so that they will not close accidentally during normal operation, will close if a rupture of the instrument line is indicated downstream of the valve, can be reopened when appropriate, and have their status indicated in the control room. This proposed change allows a reduced number of EFCVs to be tested every 24 months. There are no physical plant modifications associated with this change. Industry and SSES operating experience demonstrates a high reliability of these valves. Neither EFCVs nor their failures are capable of initiating previously evaluated accidents; therefore there can be no increase in the probability of occurrence of an accident regarding this proposed change.

The SSES FSAR [Final Safety Analysis Report] Section 15.6.2 demonstrates (consistent with the BWROG [Boiling Water Reactor Owners' Group] report) that the failure of an EFCV has very low consequence. SSES FSAR Section 15.6.2 evaluates a circumferential rupture of an instrument line that is connected to the primary coolant system. The evaluation assumes the EFCV fails to isolate the break. The dose consequences of the instrument line break are determined using the calculated mass of coolant released over approximately a 5 hour period. The reactor was assumed to be at full power prior to the break. The Standby Gas Treatment System (SGTS) and secondary containment are not impaired by the event. The evaluation concludes that the

consequences of the event are well within 10 CFR 100 limits. Thus the failure of an EFCV, though not expected as a result of this proposed change, does not affect the dose consequences of an instrument line break.

Based on the above, it is concluded that the proposed change to the EFCV surveillance requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change allows a reduced number of EFCVs to be tested each operating cycle. No other changes in requirements are being proposed. Industry and Susquehanna-specific operating experience demonstrates the high reliability of these valves. The potential failure of an EFCV to isolate by the proposed reduction in test frequency is bounded by the previous evaluation of an instrument line rupture. This change will not physically alter the plant (no new or different type of equipment will be installed). This change will not alter the operation of process variables, structures, systems, or components as described in the safety analysis. Thus, a new or different kind of accident will not be created from implementation of the proposed change.

3. The proposed change does not involve a significant reduction in the margin of safety.

SSES FSAR Section 15.6.2 evaluates a circumferential rupture of an instrument line that is connected to the primary coolant system. The evaluation assumes the EFCV fails to isolate the break. The dose consequences of the instrument line break are determined using the calculated mass of coolant released over approximately a 5 hour period. The reactor was assumed to be at full power prior to the break. The Standby Gas Treatment System (SGTS) and secondary containment are not impaired by the event. The evaluation concludes that the consequences of the event are well within 10CFR100 limits. Thus the failure of an EFCV, though not expected as a result of this proposed change, does not affect the dose consequences of an instrument line break.

Therefore, this proposed change does not represent a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Marsha Gamberoni.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 16, 2000.

Description of amendment request: The request for amendment proposes changes to the Susquehanna Steam Electric Station (SSES), Units 1 and 2, Technical Specifications to eliminate response time testing requirements for certain reactor protection system and isolation actuation system instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change eliminates certain response time testing [RTT] surveillance requirements in accordance with the NRC [Nuclear Regulatory Commission] approved methodology delineated in the BWROG [Boiling Water Reactor Owners' Group] Licensing Topical Report [LTR] NEDO 32291, ''System Analyses for Elimination of Selected Response Time Testing Requirements,'' dated October 1995, and its Supplement 1, dated October, 1999.

Implementation of the LTR and its supplement (*i.e.,* elimination of response time testing for selected instrumentation in the Reactor Protection System [RPS] and Isolation Actuation System [IAS]) does not increase the probability or consequences of an accident or malfunction of equipment important to safety as previously evaluated in the FSAR [Final Safety Analysis Report]. All component models used in the affected trip channels at SSES were analyzed for a sluggish response, or a bounding response time. As documented in the LTR and supplement, the component's sluggish response can be detected by other Technical Specification required tests. The bounding response time of the relays discussed in the LTR Supplement 1 can be used in place of actual measured response times to ensure that instrumentation systems will meet response time requirements of the accident analysis. Response Time Testing for the channel process sensors are also eliminated on a similar basis, or have previously been eliminated in license amendments (171 (Unit 1) and 144 (Unit 2)).

Based upon the analysis presented above, PPL concludes that the proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change eliminates certain response time testing (RTT) surveillance requirements in accordance with the NRC approved methodology delineated in the BWROG Licensing Topical Report (LTR) NEDO 32291, ''System Analyses for Elimination of Selected Response Time Testing Requirements,'' dated October 1995, and its Supplement 1, dated October, 1999.

Implementation of the LTR methodology and the Supplement methodology does not create the probability of a new or different type of accident from any accident previously evaluated. A review of the failure modes of the affected sensors and relays indicates that a sluggish response of the instruments can be detected by other Technical Specification surveillances. A review of SSES RTT history (in support of the LTR) revealed one RTT failure. This failure would have been detectable by the logic system functional test for this channel. Redundancy and diversity of the affected channels provide additional assurance that all affected functions will operate within the acceptance limits of the safety evaluations.

The sensors and relays in the affected RPS and IAS channels will be able to meet the bounding response times as defined and presented in the Supplement. It has been found acceptable to use component bounding response times in place of actual measured response times to ensure that instrumentation systems will meet response time requirements of the accident analysis.

PPL's adherence to the conditions listed in the NRC SERs [Safety Evaluation Reports] for the LTR and Supplement provides additional assurance that the instrumentation systems will meet the response time requirements of the accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The change does not involve a significant reduction in the margin of safety. The proposed change eliminates certain response time testing (RTT) surveillance requirements in accordance with the NRC approved methodology delineated in the BWROG Licensing Topical Report (LTR) NEDO 32291, ''System Analyses for Elimination of Selected Response Time Testing Requirements,'' dated October 1995, and its Supplement 1, dated October, 1999.

Implementation of the LTR and Supplement methodologies for eliminating selected response time testing does not involve a significant reduction in the margin of safety. The current response time limits are based on the maximum allowable values assumed in the plant safety analyses. The analyses conservatively establish the margin

of safety. The elimination of the selected response time testing does not affect the capability of the associated systems to perform their intended function within the allowed response time used as tile basis for plant safety analyses. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore, the margin of safety is not affected. This is based upon the ability to detect a sluggish response of an instrument or relay by the other required Technical Specification tests, component reliability, and redundancy and diversity of the affected functions, as justified in the reviewed and approved Topical Report and Supplement.

PPL's adherence to the conditions listed in the NRC SERs for the LTR and Supplement provides additional assurance that the instrumentation systems will meet the response time requirements of the accident analyses.

Thus, PPL concludes that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Marsha Gamberoni.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 28, 2000.

Description of amendment request: The proposed change would modify Technical Specification (TS) Surveillance Requirement (SR) 3.6.1.6.3 to expand the allowable vacuum breaker open differential pressure setpoint range to ≥ .25 pounds-per-square-inch differential (psid) and ≥ .75 psid. The SR in the current TSs requires testing to a range of ≥ .25 psid and ≥ .525 psid.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

The SR is required to verify that the vacuum breakers open when required by the containment safety analysis. The vacuum breakers setpoint prevent the creation of a vacuum in the drywell or an unacceptable differential pressure across the containment diaphragm slab. When the drywell pressure falls below the airspace pressure by an amount equal to the open set pressure of the vacuum breakers, the vacuum breakers open to allow the suppression chamber atmosphere from the wetwell airspace to flow into the drywell.

The ability to maintain containment integrity is not affected by the proposed change. Containment analyses are not affected by the proposed change.

Containment analyses assume the vacuum breakers open at .9 psid. Thus, the vacuum breakers at the new setpoint range are bounded by the setpoint assumed in the analysis. Sensitivity analyses show that the containment pressure response is insignificantly affected by the proposed change.

The setpoint expansion does not adversely affect the vacuum breakers ability to perform their design basis functions.

Based on the above, it is concluded that the proposed change to the vacuum breakers setpoint surveillance requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change allows an expanded setpoint range. No other changes in requirements are being proposed. This change will not physically alter the plant (no new or different type of equipment will be installed). This change will not alter the operation of process variables, structures, systems, or components as described in the safety analysis. The new range is bounded by the safety analysis assumptions. Thus, a new or different kind of accident will not be created from implementation of the proposed change.

3. The proposed change does not involve a significant reduction in the margin of safety.

This proposal does not involve a significant reduction in the margin of safety.

The containment pressures are insignificantly affected by the proposed change. Safety analyses assume a bounding setpoint. The operation of the vacuum breakers are not affected.

Therefore, this proposed change does not represent a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Marsha Gamberoni.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: August 17, 2000.

Description of amendment request: The proposed amendments would eliminate the need for the licensee to perform periodic response time testing of selected reactor trip system and engineered safety feature actuation system equipment as defined in Westinghouse report WCAP–14036–P–A Revision 1, ''Elimination of Periodic Protection Channel Response Time Tests.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Conformance of the proposed amendment to the standards for a determination of no significant hazard as defined in 10 CFR 50.92 is shown in the following.

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the Technical Specifications does not result in a condition where the design, material, and constructionstandards that were applicable prior to the change are altered. The same RTS [Reactor Trip System] and ESFAS [Engineered Safety Features Actuation] instrumentation is being used. The time response allocations and modeling assumptions used in the Chapter 6 and Chapter 15 safety analyses of the Final Safety Analysis Report (FSAR) are not changed; only the method of verifying response time is changed. The proposed change will not modify any system interface or equipment design specification. The proposed change can not increase the likelihood of an accident since such postulated events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the FSAR. Therefore, the proposed amendment does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of the protection channel and actuation logic

equipment used in the RTS and ESFAS. These protection systems will still have response time verified by test before being placed in operational service. Changing the method of periodically verifying instrument response for these systems (assuring equipment operability) from time response testing to calibration and functional testing will not create any new accident initiators or scenarios. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function and the response time allowance for individual components (e.g., circuit boards and relays) bound all degradation that cannot be detected by periodic surveillance. Therefore, implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

This change does not affect the total RTS and ESFAS response times assumed in the safety analyses. The periodic response time verification method for the 7300 Process Protection racks, NIS [Nuclear Instrumentation System] racks, and SSPS [Solid-State Protection System] actuation logic is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis. Periodic calibrations and functional tests will continue to be performed and may be used to detect degradation which might cause the response time to exceed the total allowance. The time response allowance for each component and function bounds all degradation that cannot be detected by periodic surveillance. Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard L. Emch, Jr..

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 6, 2000.

Brief description of amendment request: The proposed license amendment request will revise Administrative Controls in Technical Specification (TS) 5.5.14, entitled ''Technical Specifications (TS) Bases Control Program'' and TS 5.5.17, entitled ''Technical Requirements Manual (TRM)'' to incorporate the changes made to 10 CFR 50.59 as published in the October 4, 1999, **Federal Register**, Volume 64, Number 191, ''Changes, Tests, and Experiments,'' pages 53582 through 53617.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes replace the word ''involve(s)'' with ''require(s)'' and deletes reference to the term ''unreviewed safety question.'' The above changes are consistent with the revision to 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not increased. Changes to the Technical Specification (TS) Bases and the Technical Requirements Manual (TRM) are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. These changes are considered administrative changes and do not modify, add, delete, or relocate any technical requirements in the TS.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will not reduce the margin of safety because they have no direct effect on any safety analyses assumptions. Changes to the TS Bases and the TRM that result in meeting the criteria in paragraph (c)(2) of 10 CFR 50.59 will still require NRC approval. The proposed changes to TS 5.5.14 and TS 5.5.17 are considered administrative in nature based on the revisions to 10 CFR 50.59.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 27, 2000.

Description of amendment request: This proposed change eliminates the specifications associated with the 24 Vdc Emergency Core Cooling System (ECCS) instrumentation batteries and chargers. The 24 Vdc ECCS instrumentation loads will be transferred to the 125 Vdc main station batteries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The loads previously supplied by the ECCS battery systems will be added to the main station battery systems. Redundancy and reliability are maintained within the main station battery systems and the equipment will operate, essentially the same. No change in accident assumptions or pre[]cursors are involved with this change and system operation and response to analyzed events is likewise unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The methods by which the DC system supplied equipment performs their safety functions are unchanged and remain consistent with current safety analysis assumptions. The redundancy and reliability of the equipment will be maintained. There is no change in system or plant operation that involves failure modes other than those previously evaluated.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

No adverse effect on equipment operation, capability or reliability will result from this change. The equipment supplied by the DC systems involved in this change will continue to be provided with adequate, redundant, reliable, safety class DC power. Safety related loads will continue to function in accordance with analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 30, 2000.

Description of amendment request: The proposed change would revise the operability requirements for the refueling interlocks contained within Technical Specification (TS) 3.12.A as well as the surveillance requirements specified within TS 4.12.A. In addition, TS 3.12.F will be clarified to articulate that there must be a minimum of 24 hours fission product decay prior to fuel handling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The only accident described within the [Final Safety Analysis Report] FSAR while the plant is in Cold Shutdown or Refueling is a fuel handling (dropped bundle) accident. The proposed change involves equipment that is not involved in the mitigation or prevention of a fuel handling accident as described in the FSAR. Accordingly, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not effect the ability of the refueling interlocks to satisfy the safety function which is to prevent reactor criticality during refueling operations. The change only effects those interlocks which are not instrumental in satisfying the safety function of the interlocks.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of plant equipment or to the status of the reactor core during refueling. The specifications will ensure either through the interlocks or the proposed alternative, that control rods are not withdrawn and cannot be inappropriately withdrawn. This will ensure that fuel is not loaded into the core when a control rod is withdrawn.

Therefore, no new failure modes are introduced and the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety since the refueling interlocks will continue to ensure against an inadvertent criticality. This is achieved by physical interlocks or Technical Specification restrictions on refueling operations which will prevent fuel from being loaded into a core cell void of a control rod. This is accomplished by blocking control rod withdrawal whenever fuel is being loaded into the reactor vessel or by preventing fuel from being loaded into the vessel when a control rod is withdrawn.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 19, 2000. This supersedes the March 17, 2000, submittal which was noticed on May 3, 2000 (65 FR 25769).

Description of amendment request: The proposed changes would modify the voltage setting limits specified in Technical Specification (TS) Table 3.7–4, page 3.7–26, item 7 for the emergency bus degraded voltage, and revise the loss of voltage setpoints from a percentage of nominal bus voltage to an actual bus voltage value. The degraded voltage setting limit is being changed to increase the minimum allowable bus voltage to improve long-term motor performance in the event of operation with bus voltage less than nominal. The emergency bus loss of voltage setting limit is being revised to better address expected relay performance over time (*i.e.,* setting drift). Section 3.6.B, page 3.6–1, of the TS would be changed to revise the required reactor coolant system conditions from the existing wording of ''350 degrees F or 450 psig'' to ''350 degrees F and 450 psig.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have reviewed the proposed change against the criteria of 10 CFR 50.92 and have concluded that the change does not pose a significant safety hazards consideration as defined therein. Specifically, operation of Surry Power Station with the proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No increase in the probability of occurrence or consequences of an accident previously evaluated will result from the proposed change in the setting limits for the emergency bus degraded voltage and loss of voltage relay setpoints. The proposed change only affects actuation limits and therefore has no bearing on the probability of an accident. Neither the logic nor the function of the undervoltage protection circuits is being changed, nor is circuit or equipment reliability being reduced. Further, the performance characteristics of the electrical distribution system and components supplied (motors, etc.) are not being altered, and compliance with GDC–17 [General Design Criterion] is being maintained. The electrical distribution system remains capable of performing its safety function without spurious separation of the emergency buses from offsite power. If offsite power is lost, the capability of the EDG's [emergency diesel generators] to perform their safety function is not altered. Therefore, the probability of an accident previously evaluated is not increased.

The consequences of an accident would not increase since the proposed change implements setting limits that will continue to ensure that adequate voltages will be available for the continuous operation of safety-related equipment required to function to mitigate a design basis accident. The proposed setting limits for the emergency bus degraded voltage and loss of voltage bound

the setpoints and initial conditions assumed in the accident analyses and ensure that appropriate protection is maintained.

The editorial change is administrative in nature and consequently does not affect the probability or consequences of an accident in any way.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementing the proposed Technical Specifications emergency bus degraded voltage and loss of voltage relay setting limits cannot create the possibility of a new or different kind of accident than any accident previously evaluated. Revising the setpoint setting limits does not introduce any new accident precursors, and operation of the electrical distribution system and the undervoltage relaying scheme is unchanged. The relays will continue to detect undervoltage conditions and transfer safety loads to the emergency diesel generators at a voltage level adequate to ensure proper safety equipment performance and to prevent long-term equipment degradation due to undervoltage conditions. The proposed setting limits include adequate tolerances to calibrate the undervoltage relays while ensuring that emergency bus voltages remain above analytical limits. As noted above, the performance characteristics of the electrical distribution system and the components being supplied are not being altered, and compliance with GDC–17 is being maintained.

The editorial change is administrative in nature and consequently does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change continues to ensure that adequate voltage is available for safety-related equipment relied upon to respond to a design basis accident. The proposed setting limit for degraded bus voltage is conservative with respect to the existing Technical Specifications and ensures an adequate safety margin is being maintained. Further, the setting limit is maintained low enough to prevent spurious actuations given expected offsite grid voltages. While the loss of bus voltage setting limit is being expanded, sustained bus voltage in this range is not credible. Furthermore, there is no safety limit associated with the loss of voltage setting limit. The proposed change continues to ensure that the setting limits for the emergency bus degraded voltage and loss of voltage relays bound the setpoints and initial conditions assumed in the accident analyses and ensures that appropriate electrical protection is maintained. The editorial change is administrative in nature and consequently does not affect the safety analysis in any way. Consequently, the margin of safety is not being reduced by the proposed Technical Specifications change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 7, 2000 (ET 00–0044).

Description of amendment request: The proposed amendment adds text to Section 5.5.2, ''Primary Coolant Sources Outside Containment,'' and deletes Section 5.5.3, ''Post Accident sampling,'' from the administrative controls section of the Technical Specifications (TS). The proposed amendment deletes requirements from the TS (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in a license amendment application in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated December 7, 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications

(TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 8, 2000.

Description of amendment request: The proposed amendment would revise Administrative Controls Technical Specifications (TS) 5.5.14b and 5.5.14b.2 to incorporate the changes made to 10 CFR 50.59. The proposed changes would replace the word ''involve'' with ''require'' in TS 5.5.14b and revise TS 5.5.14b.2 to state: ''a change to the USAR [Updated Safety Analysis Report] or Bases that requires NRC approval pursuant to 10 CFR 50.59.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes replace the word ''involve'' with ''require'' and deletes reference to the term ''unreviewed safety question'' consistent with 10 CFR 50.59. The above changes are consistent with the revision to 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not increased. Changes to the Technical Specification (TS) Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. These changes are considered administrative changes and do not modify, add, delete, or relocate any technical requirements in the TS.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety because they have no effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph (c)(2) of 10 CFR 50.59 will still require NRC approval. The proposed changes to TS 5.5.14 are considered administrative in nature based on the revision to 10 CFR 50.59.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: October 29, 1999, as supplemented June 21, and September 8, 2000

Brief description of amendment: The amendment revised the Technical

Specifications (TSs) to include: (1) the addition of operating limits for make-up tank (MUT) level and pressure; (2) the addition of surveillance requirements for the MUT pressure instrument channel; and (3) the revision of the calibration frequency for the MUT level instrument channel, the high- and low-pressure injection flow instrument channels, and the borated water storage tank instrument channel from ''Not to exceed 24 months'' to ''Refueling interval.'' Minor editorial changes and associated Bases changes were also made.

Date of issuance: December 26, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 227.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Dates of initial notices in ***Federal Register:*** December 15, 1999 (64 FR 70090) and July 12, 2000 (65 FR 43042). The September 8, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the original notices.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 26, 1999, as supplemented on January 20, 2000.

Brief description of amendment: The proposed amendment would revise Technical Specifications (TSs) associated with the degraded voltage trip and the under-frequency reactor trip surveillance tests. For the degraded voltage trip, the proposed amendment would revise the TS to specify detailed operator actions to be taken if the minimum conditions could not be met rather than simply stating ''Cold Shutdown.'' The 6.9 kV under-frequency and reactor trip surveillance tests currently combine voltage and frequency testing under one item. The proposed TS amendment would separate the 6.9 kV voltage testing from the frequency testing and specify separate test requirements. In addition, the proposed TS amendment would require more frequent testing of the 480 volt emergency bus undervoltage reactor trip.

Date of issuance: December 28, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 214.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 28, 2000 (65 FR 10565) The January 20, 2000, submittal contained supplemental information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 2000.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: April 27, 2000.

Brief description of amendment: This amendment changes the expiration date of the Operating License to 40 years from the date of issuance of the license rather than the date of the construction permit. Specifically, the amendment changes the expiration date of the Operating License from ''midnight on March 14, 2007'' to ''midnight on March 24, 2011.''

Date of issuance: December 14, 2000.

Effective date: As of the date of issuance.

Amendment No.: 192.

Facility Operating License No. DPR–20. Amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** May 17, 2000 (65 FR 31352).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 2000.

No significant hazards consideration comments received: No. Other comments are addressed in the Commission's related Safety Evaluation.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of application of amendments: September 12, 2000; supplemented October 4, October 26, November 6, and December 8, 2000.

Brief description of amendments: The amendments revise the Technical Specification requirements related to the reroll repair process used to repair steam generator tubes. They also institute new license conditions.

Date of Issuance: December 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 318/318/318.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 4, 2000 (65 FR 59222) The supplements dated October 4, October 26, November 10, and December 8, 2000, provided clarifying information that did not change the scope of the September 12, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 15, 2000.

No significant hazards consideration comments received: No

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 23, 1999, as supplemented by letter dated October 12, 2000.

Brief description of amendment: The amendment revises Technical Specifications to incorporate the use of American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' into the River Bend Station, Unit 1, Technical Specifications.

Date of issuance: December 20, 2000.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 115.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12291).

The October 12, 2000, supplemental letter provided additional information to support staff review of the original application, and did not affect the initial finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: November 23, 1999, as supplemented by letter dated October 19, 2000.

Brief description of amendment: The amendment incorporated the use of American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' into the Arkansas Nuclear One, Unit No. 2, Technical Specifications.

Date of issuance: December 18, 2000.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 228.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12291).

The October 19, 2000, supplemental letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 23, 1999, as supplemented by letter dated October 12, 2000.

Brief description of amendment: The amendment incorporated the use of American Society of Testing and Materials D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' into the facility's TS.

Date of issuance: December 27, 2000.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 170.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000, (65 FR 12291).

The October 12, 2000, supplement provided clarifying information that did not expand the scope of the original **Federal Register** notice, or change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc.,Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 23, 1999.

Brief description of amendment: The amendment incorporated the use of American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' into the Grand Gulf Nuclear Station Technical Specifications.

Date of issuance: December 18, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 144.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12291)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: April 23, 2000.

Brief description of amendment: The amendment revised Technical Specification (TS) Surveillance Requirement 4.6.4.2.b.4 by deleting the word ''immediately,'' in order to remove a timing restriction for the hydrogen recombiner post-operation resistance testing. As a result, the amendment allows the recombiner units to cool after an operational test run, and provides a more-reliable measurement of the resistance-to-ground of the electrical insulation.

Date of Issuance: December 27, 2000.

Effective Date: December 27, 2000.

Amendment No.: 169.

Facility Operating License No. NPF–16: Amendment revised the TS.

Date of initial notice in ***Federal Register:*** May 31, 2000 (65 FR 34746)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: July 19, 2000.

Brief description of amendment: Revised the Technical Specifications (TS) to extend the applicability of the current reactor coolant system pressure/temperature limits and allowed heatup and cooldown rates to 21.7 effective full power years of operation.

Date of Issuance: December 28, 2000.

Effective Date: December 28, 2000.

Amendment No.: 112.

Facility Operating License No. NPF–16: Amendment revised the TS.

Date of initial notice in ***Federal Register:*** August 23, 2000 (65 FR 51354). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: August 18, 2000.

Brief description of amendments: The amendments consist of changes to the ACTION Statement 18 to allow operation of the units with both channels of undervoltage protection bypassed for up to 8 hours to allow performance of the monthly surveillance without placing the units in a condition not permitted by the Technical Specifications (TSs). In addition, the amendments authorize an administrative change to Item 7.b. of TS Tables 3.3–2, 3.3–3, and 4.3–2 modifying ''Degraded Voltage '' to ''Undervoltage'' to make it consistent with the Updated Final Safety Analysis Report description.

Date of issuance: December 20, 2000.

Effective date: December 20, 2000.

Amendment Nos. 209 and 203.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** September 20, 2000.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 25, 2000, as supplemented November 20, 2000.

Brief description of amendment: This amendment modifies Technical Specification (TS) 3.8.1.1, ''Electrical Power System—A.C. Sources—Operating,'' by extending the allowed outage time (AOT) for Action a.2 of TS 3.8.1.1 from 72 hours to 14 days, provided the Millstone Unit 3 (MP3) station blackout diesel generator is available to supply Millstone Unit 2 (MP2) power, otherwise the AOT is only allowed to be extended for 7 days. This one-time change is needed to support the replacement of the MP2 4160-volt electrical cross-tie line from Millstone Unit 1 (MP1) with a cross-tie from MP3. The modification is being made due to the decommissioning of MP1.

Date of issuance: December 21, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 251.

Facility Operating License No. DPR–65: Amendment revised Technical Specifications.

Date of individual notice in ***Federal Register:*** November 1, 2000 (65 FR 65344).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendment: August 25, 2000.

Brief description of amendment: The amendments authorize changes to the Millstone Nuclear Power Station, Unit Nos. 2 and 3 (MP2 and MP3) Final Safety Analysis Report (FSAR). Millstone Unit No. 1 (MP1) is being decommissioned. To support this activity, several modifications are required to modify/eliminate MP1 systems that support the operation of structures, systems, and components that are shared or common to MP2 and MP3. One of the separation projects entails the replacement of the existing MP1 to MP2 4160-volt cross-tie with a new MP3 to MP2 4160-volt cross-tie. Northeast Nuclear Energy Company has evaluated this proposed new cross-tie utilizing the criteria of 10 CFR 50.59 and determined that the modification involved four unreviewed safety questions (USQs). One USQ pertains to MP2 and three USQs pertain to MP3.

Date of issuance: December 21, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 252 and 190.

Facility Operating License Nos. DPR–65 and NPF–49: Amendments authorize changes to the FSAR.

Date of initial notice in Federal Register: October 20, 2000 (65 FR 65345).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–423 and 50–336, Millstone Nuclear Power Station, Unit Nos. 2 & 3, New London County, Connecticut

Date of application for amendment: June 26, 2000.

Brief description of amendment: The amendments revise technical specifications (TSs) ¾.1.3.1, ''Reactivity Control Systems, Movable Control Assemblies, Full Length CEA Position'' and ¾.1.3.1, ''Reactivity Control Systems, Movable Control Assemblies, Group Heights.'' Specifically, the changes revise the frequency for determining the operability of each rod not inserted fully in the core for Units 2 and 3 and the Deviation Circuit for Unit 2 from once every 31 days to once every 92 days.

Date of issuance: December 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 253 and 191.

Facility Operating License Nos. DPR–65 and NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 26, 2000 (65 FR 46011)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 2000.

No significant hazards consideration comments received: No.

Nuclear Management Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 4, 2000, as supplemented August 31, October 5, and November 16, 2000.

Brief Description of amendment: The amendment (1) adds new sections to the Technical Specifications (TSs) addressing missed surveillance test requirements and establishing a TS Bases control program, (2) revises TS Chapter 6 to allow use of generic personnel titles in lieu of plant-specific titles, (3) allows an alternative when the radiation protection manager does not meet the qualifications of Regulatory Guide 1.8, (4) relocates sections of TS Chapter 6 pertaining to onsite and offsite review and special inspections to the Operational Quality Assurance Plan, and (5) corrects typographical errors.

Date of issuance: December 21, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 115.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 31, 2000 (65 FR 34749).

The August 31, 2000, supplement provided updated TS pages to reflect incorporation of Amendment No. 110, which was issued subsequent to the May 4, 2000, application. In addition, a minor change in the proposed TS wording was proposed for consistency with the current TS. The October 5, 2000, supplement provided clarifying information to the May 4, 2000, application. The November 16, 2000, supplement proposed a minor wording change to be consistent with the latest revision of Standard TSs, NUREG–1433. The supplements were within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 2000.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: May 15, 2000

Brief description of amendments: The amendments revise station technical specification TS.3.7.B.6 to explicitly allow de-energizing motor control center (MCC) 1T1 or MCC 1T2 for up to 72 hours to accommodate installation of transfer switches for the MCCs.

Date of issuance: December 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 155 and 146.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 12, 2000 (65 FR 43049)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 15, 2000.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 29, 1999, as supplemented on November 21, 2000

Brief description of amendments: The amendments modify the Salem Unit Nos. 1 and 2 Technical Specifications (TS), and revise requirements stated in Notes 1 and 2 to Table 2.2–1, ''Reactor Trip System Instrumentation Setpoints,'' in order to add a tolerance associated with the setpoint values for the derivative module time constants (the Tau values) of the Over-Power, and the Over-Temperature delta temperature units.

Date of issuance: December 19, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days of issuance.

Amendment Nos.: 239 and 220.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4289).

The November 21, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: September 22, 2000 (PCN–520).

Brief description of amendments: The amendments revise Technical Specifications (TSs) 3.1.10, 3.3.9, 3.3.13, 3.4.5, 3.4.6, 3.4.7, 3.4.8, 3.8.2, 3.8.5, 3.8.8, 3.8.10, 3.9.2, 3.9.4 and 3.9.5 to allow small, controlled, safe insertions of positive reactivity while in shutdown modes.

Date of issuance: December 20, 2000.

Effective date: December 20, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—175; Unit 3—166.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 13, 2000 (65 FR 60984).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 31, 2000 (TS 00–05).

Brief description of amendments: These amendments revised the Technical Specifications (TSs) by relocating various reactivity control system requirements from the TSs to the Sequoyah Technical Requirements Manual.

Date of issuance: December 18, 2000.

Effective date: December 18, 2000.

Amendment Nos.: 264 and 255.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 4, 2000 (65 FR 59226).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 31, 2000 (TS 99–17).

Brief description of amendments: These amendments revised the Technical Specifications (TSs) by adding new requirements for maintaining soluble boron in the spent fuel pool.

Date of issuance: December 19, 2000.

Effective date: December 19, 2000.

Amendment Nos.: 265 and 256.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 18, 2000 (65 FR 62392).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 3rd day of January 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–596 Filed 1–9–01; 8:45 am]

BILLING CODE 7590–01–U

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24820; 812–11758]

Frank Russell Investment Company, et al; Notice of Application

January 3, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act, under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 under the Act, and under section 10(f) of the Act for an exemption from section 10(f).)

SUMMARY OF THE APPLICATION:

Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in offerings underwritten by a principal underwriter of which one of the investment advisers is an affiliated person. The transactions would be between a broker-dealer or principal underwriter and a portion of the investment company's portfolio not advised by the adviser affiliated with the broker-dealer or principal underwriter. Applicants also request relief to permit a portion of the portfolio to purchase securities in offerings underwritten by a principal underwriter of which the investment adviser to that portion is affiliated if the purchase is in accordance with all of the conditions to rule 10f–3 under the Act, except for the provision that would require aggregation of certain purchases.

APPLICANTS: Frank Russell Investment Company (''FRIC''), Russell Insurance Funds (''RIF''), and Frank Russell Investment Management Company (''Adviser'').

FILING DATES: the application was filed on August 24, 1999, and amended on December 1, 1999, and December 14, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 29, 2001, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 909 A Street, Tacoma, WA 98402.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. FRIC is a Massachusetts business trust registered under the Act as an open-end management investment company with twenty-nine series. RIF is a Massachusetts business trust registered under the Act as an open-end management investment company with five series (each series of FRIC and RIF, a ''Fund''). Shares of RIF's Funds are offered for sale only to insurance companies and to their separate accounts to fund variable insurance products.

2. The Adviser is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is a subsidiary of Frank Russell Corporation. The Adviser serves as investment adviser to each fund. The majority of the Funds are divided into two or more portions (each a ''Segment''), and the assets of each Segment are invested pursuant to a particular investment style. The Adviser selects and monitors for each Segment a sub-adviser (''Money Manager'') that is registered under the Advisers act or is exempt from registration.[1] None of the Money Managers (except by virtue of serving as Money Manager to a Segment) has any affiliation with the Funds, the Adviser, or any person that serves as promoter or principal underwriter to the Funds. Each Money Manager has complete discretion, within a Fund's objectives, policies and restrictions, over the management of its Segment and makes all decisions regarding the purchase and sale of securities for its Segment. The Adviser pays each Money Manager a fee out of the advisory fee received by the Adviser from the Fund.

(3). Applicants request relief to permit: (i) A broker-dealer registered under the Securities Exchange Act of 1934 that serves as a Money Manager or is an affiliated person of a Money Manager (the broker-dealer, an ''Affiliated Broker-Dealer''; the Money Manager, an ''Affiliated Money Manager'') to engage in principal transactions with a Segment that is advised by a Money Manager that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Money Manager (the Segment, an ''Unaffiliated Segment'' the Money Manager, an ''Unaffiliated Money Manager''), (ii) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Segment, and the unaffiliated Segment to utilize such brokerage services, without complying with rule 17e–1(b) and (c) under the Act, (iii) an Unaffiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Money Manager or a person of which an Affiliated Money Manager is an affiliated person (''Affiliated Underwriter''), (iv) a Segment advised by an affiliated Money Manager (''Affiliated Segment'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Segment with purchases by Unaffiliated Segments.

4. Applicants request that the exemptive relief apply to FRIC, RIF, or any existing or future registered open-end management investment company advised by the Adviser or a person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with, the Adviser (including any successors in interest).[2] Any investment company that currently intends to rely on the order is named as an applicant. The Adviser will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Segments and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter (''second-tier affiliate''). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Money Manager would be an affiliated person of a Fund, and an Affiliated Broker-Dealer would be either an Affiliated Money Manager or an affiliated person of the Affiliated Manager, and thus a second-tier affiliate of a Fund, including the Unaffiliated Segment. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Money Manager on behalf of an Unaffiliated Segment of a Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Money Manager is the Money Manager to another Segment of the same Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Money Manager) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Money Manager making the investment decision with respect to the Unaffiliated Segment of the Fund, or any officer, trustee or employee of the Fund.

3. Section 17(b) of the Act authorizes the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and

[1] The Adviser, even when directly exercising investment control over a Fund or Segment, is not a Money Manager for purposes of the requested relief.

[2] The term ''successors in interest'' is limited to entities that result from a reorganization into another jurisdiction or change in the type of business organization.

reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Money Manager purchases securities on behalf of an Unaffiliated Segment in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Money Manager. In addition, applicants state that Money Managers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated segment would disadvantage the Unaffiliated Money Manager to the extent that it diminishes the value of the Unaffiliated Segment. Applicants further submit that the Adviser's power to dismiss Money Managers or to change the portion of a Fund allocated to each Money Manager reinforces a Money Manager's incentive to maximize the investment performance of its Segment.

5. Applicants state that each Money Manager's contract assigns it responsibility to manage a Segment. Each Money Manager is responsible for making independent investment and brokerage allocation decisions on its own research and credit evaluations. Applicants represent that the Adviser does not dictate brokerage allocation or investment decisions to any Fund advised by a Money Manager, or have the contractual right to do so, except with respect to a Segment advised directly by the Adviser. Applicants contend that, in managing a Segment, each Money Manager acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Fund, since each Unaffiliated Money Manager is required to manage the Unaffiliated Segment in accordance with the investment objectives and related investment policies of the Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Segments to Affiliated Broker-Dealers

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Money Manager to another Segment) or a second-tier affiliate of an Unaffiliated Segment and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Segment to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Segment, without complying with the requirements of rule 17e–1(b) and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Money Manager is the Money Manager to another Segment of the same Fund. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Money Manager to a Segment) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Money Manager to the Unaffiliated Segment of the Fund, or any officer, trustee or employee of the Fund.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Money Manager are directly aligned with the interests of the Unaffiliated Segment it advises, and an Unaffiliated Money Manager will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Money Manager has a fiduciary duty to obtain best price and execution for the Unaffiliated Segment.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) when a principal underwriter of the security, or an affiliated person of the principal underwriter, is an officer, director, member of an advisory board, investment adviser or employee of the company. Section 10(f) also provides that the SEC may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Money Manager, although under contract to manage only a Segment of a Fund, is

considered an investment adviser to the entire Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Segment from an underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Segment to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Money Manager is an investment adviser to the Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Money Manager) is an affiliated person or a second-tier affiliate of the Adviser, the Unaffiliated Money Manager making the investment decision with respect to the Unaffiliated Segment of the Fund, or any officer, trustee or employee of the Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Funds because a decision by an Unaffiliated Money Manager to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Money Managers, and any common purchases by an Affiliated Money Manager and an Unaffiliated Money Manger would be coincidence.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Fund relying on the requested order will be advised by an Affiliated Money Manager and at least one Unaffiliated Money Manager and will be operated in the manner described in the application.

2. No Affiliated Money Manager, Affiliated Broker-Dealer, or Affiliated Underwriter (except by virtue of serving as Money Manager to a Segment of a Fund) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Money Manager, or any officer, trustee, or employee of a Fund.

3. No Affiliated Money Manager will directly or indirectly consult with any Unaffiliated Money Managers concerning allocation of principal or brokerage transactions.

4. No Affiliated Money Manager will participate in any arrangement whereby the amount of its sub-advisory fees will be affected by the investment performance of an Unaffiliated Money Manager.

5. With respect to purchases of securities by an Affiliated Segment during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 under the Act will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Segment with purchases by Unaffiliated Segments.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–650 Filed 1–9–01; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Schedule of Hearings and Deadlines for Submitting Comments on Petitions for the 2000 GSP Country Practices Review and Announcement of Termination of the Worker Rights Review of Swaziland and the Intellectual Property Rights Review of Moldova

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The purpose of this notice is to set forth the timetable for hearings and public comments on petitions requesting modifications in the status of GSP beneficiary countries in regard to their practices, as specified in 15 CFR 2007.0(a) and (b). In addition, the notice announces the termination of the worker rights review of Swaziland and the intellectual property rights review of Moldova. The reviews have been concluded since the two countries have brought their laws and practices into conformity with GSP statutory requirements.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508 (Tel. 202/395–6971). Public versions of all documents relating to this review are available for public inspection by appointment in the USTR public reading room between 9:30–12 a.m. and 1–4 p.m. (Tel. 202/395–6186).

SUPPLEMENTARY INFORMATION: The GSP program is authorized pursuant to Title V of the Trade Act of 1974, as amended (''the Trade Act'') (19 U.S.C. 2461 et seq.). The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. USTR has received a number of petitions requesting that certain practices in certain beneficiary developing countries be reviewed to determine whether such countries are in compliance with the eligibility criteria set forth in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and 2462(c)).

Petitions Accepted for Review Regarding Country Practices

Pursuant to 15 CFR 2007.0(b), the Trade Policy Staff Committee (TPSC) has accepted petitions to review the GSP status of Brazil, Pakistan, and Russia. The petitions involving Brazil and Russia were submitted by the International Intellectual Property Alliance and that involving Pakistan by the American Textile Manufacturers Institute. A decision on a petition relating to internationally recognized workers' rights in Peru has been deferred, and we will continue to closely monitor and assess the Government of Peru's workers' right practices over the next several months.

Any modifications to the list of beneficiary developing countries for purposes of the GSP program resulting from the Country Practices Review will take effect on such date as will be notified in a future **Federal Register** notice.

It also should be noted that public comment on the workers' rights review of Guatemala, initiated by the U.S.

Trade Representative, may be accommodated in the process described below.

A. Opportunities for Public Comment

The GSP Subcommittee of the TPSC invites comments in support of, or in opposition to, any of the petitions that have been accepted for review by the TPSC. Submissions should comply with 15 CFR Part 2007, including sections 2007.0, and 2007.1. All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (''HTS'') nomenclature.

Any comments should be accompanied by fourteen (14) copies, and submitted, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW, Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a public version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked ''business confidential'' at the top and bottom of each page of the document. The public version should also be clearly marked at the top and bottom of every page (either ''public version'' or ''nonconfidential''). Comments should be submitted no later than 5 p.m. on February 5, 2001.

B. Notice of Public Hearings

Hearings will be held on March 9, 2001 beginning at 10 a.m. at the Office of the U.S. Trade Representatives, 1724 F Street, NW., Washington, DC. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by fourteen (14) copies, in English, of a written brief or statement, and should be received by 5:00 p.m. on February 23, 2001. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted in fourteen (14) copies, in English, no later than 5:00 p.m. on April 6, 2001. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5:00 p.m. on February 23, 2001 and post-hearing and rebuttal written briefs or statements by April 6, 2001.

Jon Rosenbaum,

Assistant U.S. Trade Representative.

[FR Doc. 01–759 Filed 1–9–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Cincinnati/Northern Kentucky International Airport Hebron, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program update submitted by Kenton County Airport Board (KCAB) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 8, 2000, the FAA determined that the noise exposure maps submitted by Kenton County Airport Board under Part 150 were in compliance with applicable requirements. On December 5, 2000, the Administrator approved the Cincinnati/Northern Kentucky International Noise Compatibility Program Update. Twenty-two measures were approved; four measures were approved in part or with clarification; and one measure did not require approval at this time. One measure was withdrawn by KCAB November 22, 2000 pending further evaluation. In addition, twelve measures included in the program did not require FAA action.

EFFECTIVE DATE: The effective date of the FAA's approval of the Cincinnati/Northern Kentucky International Airport Noise Compatibility Program Update is December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, 3385 Airways Blvd., Suite 302, Memphis, Tennessee 38116–3841, telephone 901–544–3495 extension 19. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise, compatibility program for Cincinnati/Northern Kentucky International Airport, effective December 5, 2000.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land used within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable

airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Memphis, Tennessee.

The Kenton County Airport Board submitted to the FAA on May 2, 2000, the noise exposure maps, descriptions, and other documentation produced during the FAR Part 150 Noise Compatibility Study Update, initiated August 1998. The Cincinnati/Northern Kentucky International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 8, 2000. Notice of this determination was published in the Federal Register on June 16, 2000.

The Cincinnati/Northern Kentucky International Airport Noise Compatibility Program Update contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 2005. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 8, 2000, and was required by provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such a program.

The submitted program contained sixteen (16) operational measures, eighteen (18) land use measures and six (6) implementation measures. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 5, 2000.

Approval for Part 150 was granted, in total or in part, for ten (10) of the proposed operational (noise abatement) measures; one measure was withdrawn for additional study; four measures did not require approval, and one measure was deferred until the environmental analysis and FAA decision concerning the associated runway development proposal is completed and FAA has evaluated the measure for safety and efficiency. Approval was granted, in total or in part, for sixteen (16) of the land use and implementation actions. Eight (8) of the land use and implementation actions did not require approval. Land use mitigation measures include voluntary acquisition, purchase assurance, and sound insulation of residences, sound insulation for eligible schools and churches, purchase of undeveloped approved residential lots, and support of Boone County Planning Commission's Comprehensive Plan compatible land use policies.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 5, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Cincinnati/Northern Kentucky International Airport, Second Floor, Terminal One, Hebron, Kentucky.

Dated: Issued in Memphis Airports District Office, Memphis, Tennessee, December 15, 2000.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 01–711 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Modifications to Noise Compatibility Program Sarasota-Bradenton International Airport Sarasota, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on a modification to the noise compatibility program submitted by the Sarasota Manatee Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On May 7, 1996 and April 15, 1997, the FAA determined that the noise exposure maps submitted by the Sarasota Manatee Airport Authority under part 150 were in compliance with applicable requirements. On October 9, 1997, the Administrator approved the Sarasota-Bradenton International Airport noise compatibility program. On December 1, 2000, the Administrator approved a modification to the noise compatibility program. All of the program measures in the modification were fully approved.

DATES: The effective date of the FAA's approval of modifications to the Sarasota-Bradenton International Airport noise compatibility program is December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program modification for Sarasota-Bradenton International Airport, effective December 1, 2000.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or

disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Sarasota Manatee Airport Authority submitted to the FAA on May 2, 1996 and April 9, 1997, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1, 1993 through April 7, 1997. The Sarasota-Bradenton International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 7, 1996 and April 15, 1997. Notices of these determinations were published in the **Federal Register**.

The latest Sarasota-Bradenton International Airport study contains a proposed noise compatibility program modification comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that FAA evaluate and approve this material as a noise compatibility program modification as described in Section 104(b) of the Act. The FAA began its review of the program modification on June 5, 2000, and was required by a provision of the Act to approve or disapprove the program modification within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program modification within the 180-day period shall be deemed to be an approval of such program modification.

The submitted program modification contained three (3) proposed actions for noise mitigation off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program modification, therefore, was approved by the Administrator effective December 1, 2000.

Out right approval was granted for all three (3) of the specific program measures. The approval action was for the following program controls:

LAND USE MEASURES

Noise abatement measure	Description	NCP pages
1. Sound Insulation with Avigation Easement.	It is recommended that the Sarasota Manatee Airport Authority (SMAA) offer to provide sound insulation, only where feasible and cost effective and in exchange for an avigation easement to homeowners located within the DNL 65+dB contour of the 2000 Noise Exposure Map in Sarasota and Manatee Counties who purchased their current home prior to October 1, 1998. Owners of mobile homes are not eligible for this measure. Priority will be given to homeowners located within the DNL 70+dB contour, and that priority ranking will be based upon length of ownership. This will reduce existing non-compatible land uses and provide for SMAA to offer sound insulation and easements to homeowners who purchased prior to the last date allowed for eligibility of noise funds for use for noise mitigation of non-compatible structures. FAA Action: *Approved.* This is consistent with FAA's Final Policy on the Part 150 Approval of Noise Mitigation Measures because these homes which were built prior to October 1, 1998, constitute existing non-compatible development that is eligible for remedial noise mitigation measures. FAA's policy relates to the date of the residential development, and not to the date of purchase as indicated in the Noise Compatibility Program.	pgs. 1 through 7 and Figures 4, 5 and 6.

LAND USE MEASURES—Continued

Noise abatement measure	Description	NCP pages
2. Purchase of an Avigation Easement.	It is recommended that the SMAA offer to purchase avigation easements from homeowners located with the DNL 65+dB contour of the 2000 Noise Exposure Map in Sarasota and Manatee Counties who purchased their current home prior to October 1, 1998. Priority will be given to homeowners located within the DNL 70+dB contour, and that priority ranking will be based upon length of ownership. This will reduce existing non-compatible land uses and provide mitigation for homeowners who purchased prior to the last date allowed for eligibility of noise funds for use for noise mitigation of non-compatible structures. FAA Action: *Approved.* This is consistent with FAA's Final Policy on Part 150 Approval of Noise Mitigation Measures because these homes which were built prior to October 1, 1998, constitute existing non-compatible development that is eligible for remedial noise mitigation measures. FAA's policy relates to the date of the residential development, and not to the date of purchase as indicated in the Noise Compatibility Program. This measure would apply to existing residential development where soundproofing is not feasible and cost effective, such as mobile homes and early Twentieth Century era Mediterranean style homes constructed using walls and materials which make standard sound insulation techniques very difficult and costly.	pgs. 1 through 7 and Figures 4, 5 and 6.
3. Purchase and Resale with Avigation Easements and Sound Insultation.	It is recommended that the SMAA offer to purchase fee simple interest from homeowners who purchased their current home prior to December 15, 1986, and who are located within the DNL 65+dB contour of the 2000 Noise Exposure Map in Sarasota and Manatee Counties. Homes purchased by the SMAA will be sound insulated only where feasible and cost effective and all homes will be resold with an avigation easement. Priority will be given to homeowners located within the DNL 70+dB contour, and that priority ranking will be based upon length of ownership. This will reduce existing non-compatible land uses and provide mitigation for homeowners who purchased prior to the date of constructive notice. FAA Action: *Approved.* This measure would apply to existing residential development where soundproofing is not feasible and cost effective. Sound insulation was determined not to be feasible and cost effective for mobile homes. As a result mobile home owners are limited to choosing between an easement or purchase and resale by the airport with an easement.	pgs. 1 through 7 and Figures 4, 5 and 6.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 1, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Sarasota Manatee Airport Authority.

Issued in Orlando, Florida on December 14, 2000.

Bart Vernace,

Acting Manager, Orlando Airports District Office.

[FR Doc. 01–706 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement and Draft General Conformity Determination; Hartsfield Atlanta International Airport, Atlanta, GA

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), and the requirements of section 176 of the Clean Air Act Amendments (CAAA) of 1990, the Federal Aviation Administration (FAA) will file with the Environmental Protection Agency, and make available to other government and interested private parties, the Draft Environmental Impact Statement (DEIS) and the Draft General Conformity Determination for the proposed 9,000-foot Fifth runway and associated projects at Hartsfield Atlanta International Airport, Atlanta, Georgia. The DEIS and Draft Conformity Determination will be on file with the EPA and available to the public for review starting December 29, 2000 after 1 p.m. at locations listed under **SUPPLEMENTARY INFORMATION.** A Public Information Workshop and Public Hearing will be held on January 30, 2001; between the hours of 4:00 p.m. and 8:00 p.m. at the Georgia International Convention Center, 1902 Sullivan Road, College Park, Georgia. Written comments will be accepted by the FAA until February 26, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Meyer, Environmental Program Specialist, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, Phone (404) 305–7150.

SUPPLEMENTARY INFORMATION: The City of Atlanta Department of Aviation (DOA), owner and operator of the airport is proposing airside and landside improvements to the Hartsfield Atlanta International Airport. The DOA's proposed project consists of constructing and operating a full service air carrier runway 9,000 feet long by 150-feet wide, with a lateral separation from Runway 9R/27L of 4,200 feet, and shifted approximately 1,900 feet east of the previously environmentally approved 6,000-foot by 100-foot wide runway laterally separated by approximately 4,100 feet from Runway 9R/27L. Projects associated with the runway include two airfield bridges spanning across I–285, the relocation of local roadways, and land acquisition. The DEIS has examined the sponsor's proposed project and improvements along with other reasonable alternatives to the proposed project. The Federal Highway Administration (FHWA) is

acting as a cooperating agency to the FAA in this DEIS.

A Public Hearing will be held by the FAA to afford interested parties the opportunity to provide their comments on the merits and findings of the DEIS and to consider the economic, social, and environmental effects of DOA's proposed development and its consistency with the goals and objectives of such urban planning as has been carried out by the community. The Public Hearing will be conducted in conjunction with an informal Information Workshop. During the Information workshop, participants will be able to view project related materials and speak with representatives of the FAA and the consulting team.

In addition, the public is invited to comment in one of four ways during the Information Workshop/Public Hearing: (1) Written comments may be submitted anytime during the Workshop/Hearing; (2) pre-addressed written comment forms may be mailed to the individual listed above; (3) private oral comments may be given to a certified court reporter anytime during the Workshop/Hearing; and, (4) oral comments may be made in front of the Hearing Officer who will be present to preside over and conduct the Public Hearing. The FAA encourages interested parties to review the DEIS and provide comments during the public comment period.

For the convenience of interested parties and the public, the DEIS may be reviewed at the following locations:

Fulton County Central Library, 1 Margaret Mitchell Square, Atlanta

Clayton County Headquarters Library, 865 Battlecreek Road, Jonesboro

South Fulton Branch, Atlanta-Fulton Public Library, 4055 Flat Shoals Road, Union City

Forest Park Public Library, 696 Main Street, Forest Park

Hartsfield Atlanta International Airport, Department of Aviation Offices—Atrium Suite 430, Atlanta

Federal Aviation Administration, Atlanta Airports District Office, Suite 2–260, 1701 Columbia Avenue, College Park

Issued in College Park, Georgia, December 22, 2000.

Rans D. Black,

Acting Manager, Atlanta Airports District Office.

[FR Doc. 01–716 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the McGregor Executive Airport, McGregor, TX

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the McGregor Executive Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before January 23, 2001.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bill Dake, City Manager, at the following address: City of McGregor, P.O. Box 192, McGregor, Texas 76657.

FOR FURTHER INFORMATION CONTACT: Ms. Kimchi Hoang, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the McGregor Executive Airport under the provisions of the AIR 21.

On December 19, 2000, the FAA determined that the request to release property at McGregor Executive Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than February 19, 2001.

The following is a brief overview of the request: The City of McGregor requests the release of 10.94 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1947. The release of property will allow funding for maintenance, operation and development of the airport.

The sale is estimated to provide $158,000 to be used for:

1. Airport maintenance, operation and development.

2. Funding for the construction of a new 10 to 12 units T-hangar for aircraft storage.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the City of McGregor.

Issued in Fort Worth, Texas on December 19, 2000.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 01–707 Filed 1–9–01; 8:45am]

BILLING CODE 4910–13–Ms

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

DATES: The meeting will be held January 17–18, 2001, beginning at 9 a.m. on January 17. Arrange for oral presentations by January 12.

ADDRESSES: The meeting will be at the Airbus Training Center, 4355 NW. 36th Street, Miami Springs, Florida 33166.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Office of Rulemaking, ARM–24, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9078, FAX (202) 267–5075, or e-mail at gerri, robinson@faa.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Remaking Advisory Committee to be held at the Airbus Training Center, 4355 NW. 36th Street, Miami Springs, Florida 33166.

The agenda will include:

Day 1

- Opening remarks
- Review Task 1—Intrusive Inspections Report
- Review Task 3—Maintenance Criteria

- Review Task 5—Review Air Carrier Training

Day 2

- Aging Systems for Transport Category Airplanes in Part 91, 121, 125, 135 Operations
- New Taskings for ATSRAC
- FAA Enhanced Airworthiness Program for Airplane Systems Overview

If the Aging Transport Systems Rulemaking Advisory Committee approves of the draft working group reports for Tasks 1, 3 and 5, they will be forwarded to the FAA as formal recommendations.

Attendance is open to the interested public, but will be limited to the availability of meeting room space and telephone lines. Details for participating in the teleconference will be available after January 10 by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible or paying long distance charges.

The public must make arrangements by January 12, 2001, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation as well as a listing device can be made available if requested 10 calendar days before the meeting.

Dated: Issued in Washington, DC on January 4, 2001.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 01–714 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 9, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT. 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the State of Connecticut under § 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 28, 2000, the FAA determined that the application to impose and use a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2001.

The following is a brief overview of the impose and use application.

PFC Project #: 01–12–C–00–BDL.

Level of the proposed PFC: $4.50.

Proposed Charge effective date: May 1, 2001.

Proposed Charge expiration date: March 1, 2015.

Estimated total PFC revenue: $231,947,428.

Brief description of proposed projects:

Terminal Building and Concourse Construction and Reconstruction
Purchase and Install Jetways
Terminal Building Apron Construction
Construction of Terminal Roadways, Glycol Piping and Associated Utilities

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on December 12, 2000.

Bradley A. Davis,

Assistant Manager, Airports Division, New England Region.

[FR Doc. 01–713 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–02–C–00–CYS) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Cheyenne Airport, Submitted by the City of Cheyenne, Cheyenne, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Cheyenne Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 9, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th

Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gerald Olson, A.A.E., Airport Manager, at the following address: 200 East 8th Avenue, P.O. Box 2210, Cheyenne, Wyoming 82003.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Cheyenne Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, and 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 01–02–C–00–CYS to impose and use PFC revenue at the Cheyenne Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 27, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Cheyenne, Wyoming, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 30, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2007.

Proposed charge expiration date: May 1, 2012.

Total requested for use approval: $407,728.

Brief description of proposed project: Land acquisition for noise, glycol containment system, Taxiway ''A'' extension, noise compatibility land development, storm drainage master plan, Runway 12/30 and 8/26 safety area improvements, construct commercial service apron.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cheyenne Airport.

Issued in Renton, Washington, on December 27, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–709 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 9, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018,

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Lisa Cottingham, Treasurer, Indianapolis Airport Authority, at the following address: Indianapolis Airport Authority, Indianapolis International Airport, 2500 S. High School Road, Suite 100, 5th Floor Administration, Indianapolis, Indiana 46241–4941.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Indianapolis Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary K. Regan, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 312, Des Plaines, Illinois 60018, (847) 294–7525. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 20, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Indianapolis Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 26, 2001.

The following is a brief overview of the application.

PFC application number: 01–03–C–00–IND.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: April 1, 2022.

Total estimated PFC revenue: $444,022,707.00.

Brief description of proposed projects:

Impose Only: Construct Midfield Terminal Complex.

Impose and Use: Preparation costs of PFC applications.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand FAR Part 135 air taxi operators with less than 15 seats.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Indianapolis International Airport Authority.

Issued in Des Plaines, Illinois on December 22, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 01–715 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Amend an Approved Application (99–04–C–00–OTH) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at North Bend Municipal Airport, Submitted by the City of North Bend/Port of Coos Bay, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use PFC revenue at the North Bend Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 9, 2001.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO, Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Seattle, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary LeTellier. Airport Manager, at the following address: City of North Bend/Port of Coos Bay, 2348 Colorado Avenue, North Bend, OR 97459–2079.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of North Bend/Port of Coos Bay, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, 1601 Lind Avenue SW., Suite 250, Seattle, Washington 98055–4056. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application (99–04–C–00–OTH) to impose and use PFC revenue at the North Bend Municipal Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 26, 2000, the FAA received the request to amend the application to impose and use the revenue from a PFC, submitted by the City of North Bend/Port of Coos Bay, within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the amendment no later than February 23, 2001.

The following is a brief overview of the application.

Proposed increase in PFC level: From $3.00 to $4.50.

Proposed charge-effective date: May 6, 1999.

Total requested for use approval: $164,500 (Includes $60,890 from amendment).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request to amend an approved application in person at North Bend Municipal Airport.

Issued in Renton, Washington on December 28, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–710 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Amend an Approved Application (96–02–00–OTH) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at North Bend Municipal Airport, Submitted by the City of North Bend/Port of Coos Bay, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use PFC revenue at the North Bend Municipal Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 9, 2001.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Seattle, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary LeTellier. Airport Manager, at the following address: City of North Bend/Port of Coos Bay, 2348 Colorado Avenue, North Bend, OR 97459–2079.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the city of North Bend/Port of Coos Bay, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, 1601 Lind Avenue SW., Suite 250, Seattle, Washington 98055–4056. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application (96–02–C–00–OTH) to impose and use PFC revenue at the North Bend Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 26, 2000, the FAA received the request to amend the application to impose and use the revenue from a PFC, submitted by the City of North Bend/Port of Coos Bay, within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the amendment no later than February 23, 2001.

The following is a brief overview of the application.

Proposed increase in PFC level: From $3.00 to $4.50.

Proposed charge—effective date: January 1, 1998.

Total requested for use approval: $96,916 (Includes $28,185 from amendment).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA

Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request to amend an approved application in person at North Bend Municipal Airport.

Issued in Renton, Washington on December 28, 2000.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–708 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–1998–33.69–R1]

Policy for Evaluating Ignitions System Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of a proposed policy for evaluating compliance with the airworthiness certification standards for ignition systems on turbine powered aircraft engines. This proposed policy would revise the current policy to include derivative engine models with significant service experience.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: John Fisher, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: <john.fisher@faa.gov>; telephone: (781) 238–7149; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statement is available on the Internet at the following address: <http://www.faa.gov/avr/air/ane/ane110/hpage.htm>. If you do not have access to the Internet, you may request a copy by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The FAA invites interested parties to comment on the proposed policy. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing the final policy.

Background

The proposed policy statement would supersede FAA policy statement number 1998–33.69–R0, dated October 23, 1998. The intent of this proposed policy is to clarify the policy regarding § 33.69 of Title 14 of the Code of Federal Regulations. This proposed policy would assist the Aircraft Certification Offices (ACOs) in evaluating applications for aircraft engine type certification. The FAA has revised this policy to include guidance for evaluating derivative engine models with significant service experience.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on January 2, 2001.

David A. Downey,

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

[FR Doc. 01–702 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2000–33.94–R0]

Policy for Use of Structural Dynamic Analysis Methods for Blade Containment and Rotor Unbalance Tests

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of a proposed policy for evaluating the use of structural dynamic analysis methods for blade containment and rotor unbalance tests.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: <jay.turnberg@faa.gov>; telephone: (781) 238–7116; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statement is available on the Internet at the following address: If you do not have access to the Internet, you may request a copy by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The FAA invites interested parties to comment on the proposed policy. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing the final policy.

Background

Engine manufacturers are developing and using various types of structural dynamic analysis methods to support both engine certification activities and aircraft manufacturers' certification activities. The FAA has developed this proposed policy to provide guidance for evaluating the use of structural dynamic analysis methods to show compliance with the requirements of § 33.94 of Title 14 of the Code of Federal Regulations, ''Blade containment and rotor unbalance tests.'' This proposed policy would specifically address paragraph (a) of § 33.94 for engine design and configuration changes.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on January 2, 2001.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 01–703 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–1993–33.28TLD–R1]

Policy for Time Limited Dispatch (TLD) of Engines Fitted With Full Authority Digital Engine Control (FADEC) Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of a proposed policy for the

time limited dispatch (TLD) of engines fitted with full authority digital engine control (FADEC) systems. This proposed policy would revise the current policy to clarify it; the basic intent of the policy would not change.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Gary Horan, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *gary.horan@faa.gov*; telephone (781) 238–7164; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statement is available on the internet at the following address: *http://www.faa.gov/avr/air/ane/ane110/hpage.htm*. If you do not have access to the Internet, you may request a copy by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**. The FAA invites interested parties to comment on the proposed policy. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all comments received by the closing date before issuing the final policy.

Background

The FAA Engine and Propeller Directorate (EPD) issued a policy on time limited dispatch (TLD) on October 28, 1993. The purpose of this policy is to assure uniformity in applying TLD to engines fitted with FADEC systems. The objective of the TLD approach is to preserve suitable FADEC system integrity while minimizing dispatch delays and cancellations by allowing dispatch of the FADEC system with faults present. The control system is allowed to continue to operate with faults present, provided the resulting system operation and overall average reliability are adequate, and operating exposure in this less redundant state is appropriately limited.

The dispatchable configrations for the FADEC system and their associated dispatch intervals are an engine airworthiness limitation specified in the FAA-approved Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) for the engine. Although TLD is not a requirement for engine certification, entries in the ALS become part of the engine type design. In addition, the type certificate data sheet (TCDS) notes that the engine model has TLD approval and references the ALS for detailed dispatch interval information. In this revision, the FAA recommends that an applicant for engine type design approval include appropriate TLD information in the engine installation manual.

The applicant must submit a statistical TLD analysis to substantiate that the overall average reliability of the control system resulting from the applicant's proposed TLD approach meets the integrity requirements in the FAA TLD policy. The applicant is also required to establish a formal, auditable reporting system that provides periodic reports to the FAA office that oversees the engine type certificate. This system compares in-service experience with the analysis on which the TLD approval is granted.

The proposed revision to the TLD policy:

1. Clarifies where the manufacturer must include the TLD approval statements.
2. Adds a fourth category of faults, for manufacturer/operator defined dispatch intervals that have no impact on the loss-of-thrust-control (LOTC) analysis and whose repair time is not specified through the TLD analysis.
3. Clarifies the engine-aircraft interface regarding the fault recording means required for TLD.
4. Clarifies that the provision for a temporary extension of the dispatch interval must be substantiated in the TLD, analysis; also clarifies the authority of the FAA Principal Maintenance or Avionics Inspector (PMI/PAI) to temporarily extend the dispatch interval based on the TLD analysis.
5. Clarifies descriptions of the full-up and single-fault system models used in the TLD analysis.
6. Clarifies the maintenance strategies, including eliminating the use of the maintenance terms ''On-Condition'' and ''Condition Monitoring.''
7. Modifies Table 2 to specify both the short time and long time fault limitations in terms of the maximum operating time in flight hours only; to accommodate the addition of a fourth dispatch category.
8. Adds Table 3 to show the time limitations for both the short time and long time fault conditions associated with the maintenance approach used to address those fault categories.
9. Adds Figure 1 to show the typical graph used to substantiate the analysis for compliance with the requirement for equivalent or better reliability than the hydromechanical technology of early systems.
10. Adds Figure 2 to show a typical aircraft avionics system associated with FADEC system maintenance information and displays.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on January 2, 2001.

David A. Downey,

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

[FR Doc. 01–704 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8598]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States,

certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 4, 2001.

Marilynne Jacobs, Director,

Director, Office of Vehicle Safety, Compliance.

Annex A

Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2000–7111

Nonconforming Vehicle: 1992–1994 Mercedes-Benz SE and SEL passenger cars.

Substantially similar U.S.-certified vehicle: 1992–1994 Mercedes-Benz SE and SEL passenger cars.

Notice of Petition published at: 65 FR 26872 (May 9, 2000).

Vehicle Eligibility Number: VSP–343.

2. Docket No. NHTSA–2000–7225

Nonconforming Vehicles: 1995–1998 Mercedes-Benz S Class passenger cars.

Substantially similar U.S.-certified vehicles: 1995–1998 Mercedes-Benz S Class passenger cars.

Notice of Petition published at: 65 FR 26873 (May 9, 2000).

Vehicle Eligibility Number: VSP–342.

3. Docket No. NHTSA–2000–7387

Nonconforming Vehicles: 1996–2000 Audi A4 passenger cars.

Substantially similar U.S.-certified vehicles: 1996–2000 Audi A4 passenger cars.

Notice of Petition published at: 65 FR 38878 (June 22, 2000).

Vehicle Eligibility Number: VSP–352.

4. Docket No. NHTSA–00–7756

Nonconforming Vehicles: 1995–2000 Mazda Xedos 9 passenger cars.

Substantially similar U.S.-certified vehicles: 1995–2000 Mazda Millenia passenger cars.

Notice of Petition published at: 65 FR 49862 (August 15, 2000).

Vehicle Eligibility Number: VSP–351.

5. Docket No. NHTSA–2000–7511

Nonconforming Vehicles: 1997–2000 Porsche 911 passenger cars.

Substantially similar U.S.-certified vehicles: 1997–2000 Porsche 911 passenger cars.

Notice of Petition published at: 65 FR 38879 (June 22, 2000).

Vehicle Eligibility Number: VSP–346.

6. Docket No. NHTSA–2000–7512

Nonconforming Vehicle: 2000 BMW 5 Series passenger cars.

Substantially similar U.S.-certified vehicle: 2000 BMW 5 Series passenger cars.

Notice of Petition published at: 65 FR 38880 (June 22, 2000).

Vehicle Eligibility Number: VSP–345.

7. Docket No. NHTSA–2000–7522

Nonconforming Vehicles: 2000–2001 BMW Z8 passenger cars.

Substantially similar U.S.-certified vehicles: 2000–2001 BMW Z8 passenger cars.

Notice of Petition published at: 65 FR 48046 (August 4, 2000).

Vehicle Eligibility Number: VSP–350.

8. Docket No. NHTSA–2000–7524

Nonconforming Vehicles: 1978–1987 Honda CMX250C motorcycles.

Substantially similar U.S.-certified vehicles: 1978–1987 Honda CMX250C motorcycles.

Notice of Petition published at: 65 FR 39221 (June 23, 2000).

Vehicle Eligibility Number: VSP–348.

9. Docket No. NHTSA–2000–7555

Nonconforming Vehicles: 1991–1995 Mercedes-Benz Series passenger cars.

Substantially similar U.S.-certified vehicles: 1991–1995 Mercedes-Benz Series passenger cars.

Notice of Petition published at: 65 FR 44850 (July 19, 2000).

Vehicle Eligibility Number: VSP–354.

10. Docket No. NHTSA–2000–7388

Nonconforming Vehicles: 1992 Chrysler Daytona passenger cars.

Substantially similar U.S.-certified vehicles: 1992 Dodge Daytona passenger cars.

Notice of Petition published at: 65 FR 38316 (June 20, 2000).

Vehicle Eligibility Number: VSP–344.

11. Docket No. NHTSA–2000–7710

Nonconforming Vehicles: 2001 Porsche 911 Turbo passenger cars.

Substantially similar U.S.-certified vehicles: 2001 Porsche 911 Turbo passenger cars.

Notice of Petition published at: 65 FR 48279 (August 7, 2000).

Vehicle Eligibility Number: VSP–347.

12. Docket No. NHTSA–2000–7897

Nonconforming Vehicles: 1996–1998 Ferrari F355 passenger cars.

Substantially similar U.S.-certified vehicles: 1996–1998 Ferrari F355 passenger cars.

Notice of Petition published at: 64 FR 55325 (September 13, 2000).

Vehicle Eligibility Number: VSP–355.

[FR Doc. 01–698 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–8090; Notice 2]

Honda Motor Company, Ltd.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 122

This notice grants the application by American Honda Motor Co., Inc., of Torrance, California (''Honda''), on behalf of Honda Motor Company, Ltd., of Japan, for a temporary exemption from the fade and water recovery requirements of Federal Motor Vehicle Safety Standard No. 122 *Motorcycle Brake Systems*. The basis of the application is that an exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard.

Notice of receipt of the application was published on October 25, 2000, and an opportunity afforded for comment (65 FR 63912).

Honda seeks an exemption of one year for its 2001 CBR1100XX motorcycle ''from the requirement of the minimum hand-lever force of five pounds in the base line check for the fade and water recovery tests.'' Honda has previously received exemptions totaling three years from this requirement for the 1998–2000 model year CBR1100XX (See Docket No. 93–47). The brake system of the 2001 model is said to be identical to the system on vehicles previously exempted. In 1997, Honda filed a petition for rulemaking to amend Standard No. 122 to accommodate the braking system of the CBR1100XX. NHTSA granted the petition and published a Notice of Proposed Rulemaking on November 17, 1999 (64 FR 62622); however, a final rule had not been issued as of September 1, 2000, when its exemption expired.

Honda has been evaluating the marketability of a motorcycle brake system setting which is currently applied to the model sold in Europe, and has sold 3,600 exempted motorcycles as of the date of its application. The difference in setting is limited to a softer master cylinder return spring in the European version. As Honda said in its initial application in 1997, using the softer spring results in a ''more predictable (linear) feeling during initial brake lever application.'' Although ''the change allows a more predictable rise in brake gain, the on-set of braking occurs at lever forces slightly below the five pound minimum'' specified in Standard No. 122. If on-set of braking is delayed until the five pound minimum is reached, a feeling results that the brakes come on suddenly or unpredictably. Honda considers that motorcycle brake systems have continued to evolve and improve since Standard No. 122 was adopted in 1972, and that one area of improvement is brake lever force which has gradually been reduced. However, the five-pound minimum specification ''is preventing further development and improvement'' of brake system characteristics. Honda reports that many who try the system ''feel that they have more control with independent front and rear brake systems,'' and that ''The European version setting has shown greater consumer acceptance.''

The CBR1100XX is equipped with Honda's Linked Brake System (LBS) which is designed to engage both front and rear brakes when either the front brake lever or the rear brake pedal is used. The LBS differs from other integrated systems in that it allows the rider to choose which wheel gets the majority of braking force, depending on which brake control the rider uses.

According to Honda, the overall braking performance remains unchanged from a conforming motorcycle and from Honda cycles previously exempted. If the CBR1100XX is exempted it will meet ''the stopping distance requirement but at lever forces slightly below the minimum.''

While Honda's application did not cite applicable sections of Standard No. 122, its previous applications asked for relief from the first sentence of S6.10 *Brake application forces,* which reads:

> Except for the requirements of the fifth recovery stop in S5.4.3 and S5.7.2 (S7.6.3 and S7.10.2) the hand lever force is not less than five and not more than 55 pounds and the foot pedal force is not less than 10 and not more than 90 pounds.

However, NHTSA determined that Honda required relief from different provisions of Standard No. 122, although S6.10 related to them. Paragraph S6 only sets forth the test conditions under which a motorcycle must meet the performance requirements of S5. A motorcycle manufacturer certifies compliance with the performance requirements of S5 on the basis of tests conducted according to the conditions of S6 and in the manner specified by S7. In short, NHTSA provided relief from the performance requirements of S5 that are based upon the lever actuation force test conditions of S6.10 as used in the test procedures of S7.

These relate to the baseline checks under which performance is judged for the service brake system fade and fade recovery tests (S5.4), and for the water recovery tests (S5.7). According to the test procedures of S7, the baseline check stops for fade (S7.6.1) and water recovery (S7.10.1) are to be made at 10 to 11 feet per second per second (fpsps) per stop. The fade recovery test (S7.6.3) also specifies stops at 10 to 11 fpsps. Test data submitted by Honda with its 1997 application, and which it has incorporated by reference in its 2000 application, show that, using a hand lever force of 2.3 kg (5.1 pounds), the deceleration for these stops is 3.05 to 3.35 meters per second per second, or 10.0 to 11.0 fpsps. This does not mean that Honda cannot comply under the strict parameters of the standard, but the system is designed for responsive performance when a hand lever force of less than five pounds is used. For these reasons, NHTSA interprets Honda's application as requesting relief from S5.4.2, S5.4.3, and S5.7.2.

Honda argued that granting an exemption would be in the public interest and consistent with objectives of traffic safety because it

> * * * should improve a rider's ability to precisely modulate the brake force at low-level brake lever input forces.
>
> Improving the predictability, even at very low-level brake lever input, increases the rider's confidence in the motorcycle's brake system. We feel that improvements in braking, even those of an incremental nature, are in the public's interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

No comments were received on the application.

Honda's application is, in effect, a request for a one-year extension of an exemption previously granted to it. Except for the model year of the vehicle involved, the facts and arguments remain the same. The agency's rationale in granting the original exemption and its extensions are hereby incorporated by reference (62 FR 52372, October 7, 1997; 63 FR 65272, November 25, 1998; 64 FR 44263, August 13, 1999).

In consideration of the foregoing, it is hereby found that an exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of Standard No. 122. It is also hereby found that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Honda Motor Company Ltd. is granted NHTSA Temporary Exemption No. EX2000–4, from the following requirements incorporated in 49 CFR 571.122 Motor Vehicle Safety Standard No. 122 Motorcycle Brake

Systems: S5.4.1 Baseline check—minimum and maximum pedal forces, S5.4.2 Fade, S5.4.3 Fade recovery, S5,7,2 Water recovery test, and S6.10 Brake actuation forces. The exemption applies only to the CBR 1100XX model and expires December 1, 2001.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on January 3, 2001.

Rosalyn G. Millman,

Deputy Administrator.

[FR Doc. 01–699 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–01–8587; Notice No. 01–04]

Reauthorization of the Federal Hazardous Materials Transportation Law

AGENCY: Research and Special Programs Administration (RSPA), DOT

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation (''Department'' or ''we'') is preparing a legislative proposal to reauthorize its hazardous materials transportation safety program. Congress last authorized the program in 1994. In preparing our proposal, we are looking for ways to improve the effectiveness of this important safety program. In this notice, we are requesting ideas and comments from the public, state and local governments, industry, and other interested parties on possible amendments to Federal hazardous materials transportation law (Federal hazmat law), which is the statutory basis for the Department's hazardous materials program. Your ideas and comments will assist us in identifying issues that we may address and evaluate as we prepare a draft reauthorization bill.

DATES: *Comments.* Submit comments by February 26, 2001. To the extent possible, we will consider comments received after this date.

ADDRESSES: *Written comments.* Submit comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should identify Docket Number RSPA–01–8587 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at *http://dms.dot.gov* and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, (202) 366–4400, or Nancy E. Machado, (202) 366–4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Hazardous Materials Transportation Law

In this notice, we are asking stakeholders in DOT's hazardous materials transportation safety program for their ideas on ways to improve that program through statutory changes. We will consider all stakeholder comments as we develop our legislative proposal.

Federal hazmat law forms the statutory foundation of the Department's hazardous materials transportation safety program. Federal hazmat law, codified at 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. Specifically, the statute authorizes the Secretary to issue regulations that apply to persons who: (1) Transport hazardous materials in commerce; (2) cause hazardous materials to be transported in commerce; or (3) manufacture, mark, maintain, recondition, repair, or test packagings or containers (or components thereof) that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A). Also, the Secretary has the authority to issue regulations governing any safety aspect of hazardous materials transportation that the Secretary considers appropriate. 49 U.S.C. 5103(b)(1)(B).

The Department's hazardous materials regulations (''HMR'') are found at 49 CFR parts 171–180. Five operating administrations within the Department are responsible for implementing Federal hazmat law and the HMR: the Research and Special Programs Administration, Federal Motor Carrier Safety Administration, Federal Aviation Administration, Federal Railroad Administration; and U.S. Coast Guard. Furthermore, the Secretary recently delegated authority to the Office of Intermodalism to oversee and coordinate cross-modal issues (issues that affect more than one DOT operating administration) and multimodal issues (issues that affect more than one mode of transportation) arising out of the hazardous materials transportation safety program. (See 65 Fed. Reg. 49763, August 15, 2000.)

Congress last authorized the Department's hazardous materials transportation safety program in 1994, amending the existing law to authorize appropriations for fiscal years 1994 through 1997. (See Public Law 103–311, August 26, 1994.) In 1997 and again on February 16, 1999, the Secretary of Transportation sent Congress proposed legislation to reauthorize the Department of Transportation's hazardous materials transportation safety program. Since fiscal year 1998, the Department has received annual appropriations to continue the program.

You can view a variety of documents that describe and provide information about the current hazardous materials safety program at *http://hazmat.dot.gov.* Documents you may find of interest as you prepare your comments include:

- DOT's 1999 proposed bill plus section-by-section analysis, a red-line/strike-out version of the proposed bill comparing the 1999 proposal to existing law, and a table comparing the 1999 proposal to the existing law and the Administration's 1997 reauthorization proposal (*http://hazmat.dot.gov/99reauthact.htm*);
- Federal hazmat law (*http://hazmat.dot.gov/pubtrain/dotbill.pdf*);
- The Hazardous Materials Regulations (*http://www.text-trieve.com/dotrspa*);
- The 1996–1997 biennial hazardous materials safety program report (*http://hazmat.dot.gov/ohmforms.htm#biennial*); and
- The March 2000 Hazardous Materials Program Evaluation report (*http://hazmat.dot.gov/hmpe.htm*).

Copies of these documents may also be obtained by contacting either Ed Bonekemper or Nancy Machado at 202–366–4400.

B. Comments

As we prepare our legislative proposal to reauthorize the Department's hazardous materials transportation safety program, we are looking for ideas on how to improve the effectiveness of

this important safety program through statutory changes. We invite the public, state and local governments, industry, labor unions, and other interested parties to submit their ideas and comments to us for review and consideration. Information on how to submit your comments and ideas to us is contained above under the heading, **ADDRESSES.**

Issued in Washington, DC on January 5, 2001, under authority delegated in 49 CFR Part 1.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–763 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–406 (Sub–No. 14X)]

Central Kansas Railway, L.L.C.—Abandonment Exemption—in Sedgwick County, KS

On December 21, 2000, Central Kansas Railway, L.L.C. (CKR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–10905 to abandon a line of railroad extending between milepost 19.5 near Garden Plain, KS, and milepost 3.5 southeast of the grade crossing at McCormick Avenue in Wichita, KS, a distance of 16 miles in Sedgwick County, KS. The line traverses U.S. Postal Service Zip Codes 67050, 67201–67220, 67221, 67223, 67226, 67227, 67228, 67230, 67231, 67232, 67233, 67235, 67236, 67251, 67256, 67257, 67259, 26760, 67275, 67276, 67277, and 67278, and includes no stations.

In addition to an exemption from 49 U.S.C. 10903, petitioner seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions). In support, CKR contends that exemption from these provisions is necessary because the City of Wichita, the County of Sedgwick , and the State of Kansas have developed various plans for flood control, redesign of a highway interchange, development of a green way, and removal of crossings to enhance safety, all of which are dependent on abandonment of the line. These entities want to obtain the right-of-way after abandonment for the valid public purposes discussed above. Petitioner further asserts that there is no overriding public need here for continued rail service. These requests will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the labor protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 10, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 30, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–406 (Sub-No. 14X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the CKR petition are due on or before January 30, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545 (TDD for the hearing impaired is available at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at http://WWW.STB.DOT.GOV.

Decided: January 4, 2001.

By the Board, David M. Konschnik. Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–734 Filed 1–9–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on January 30, 2001, of the following debt management advisory committee:

The Bond Market Association
Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be opened to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an

advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: January 3, 2001.

Lee Sachs,

Assistant Secretary, Financial Markets.

[FR Doc. 01–647 Filed 1–9–01; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC, on January 31 through February 1, 2001.

The sessions on January 31 and February 1, 2001, are scheduled to begin at 8:30 a.m. and end at 6:30 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the January 31 session from 8:30 a.m. to 9:00 a.m. for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 31, from 9:00 a.m. through February 1, 2001, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Section 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open session should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 (Phone: 202–408–3684) at least five days before the meeting.

Dated: December 28, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 01–621 Filed 1–9–01; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
January 10, 2001

Part II

Department of the Treasury

Federal Reserve System

Federal Deposit Insurance Corporation

Office of the Comptroller of the Currency

Office of Thrift Supervision

12 CFR Parts 35, 207, 346, 533

Disclosure and Reporting of CRA-Related Agreements; Final Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 35

[Docket No. 00–34]

RIN 1557–AB85

FEDERAL RESERVE SYSTEM

12 CFR Part 207

[Regulation G; Docket No. R–1069]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064–AC33

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 533

[Docket No. 2000–107]

RIN 1550–AB32

Disclosure and Reporting of CRA-Related Agreements

AGENCIES: Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS).

ACTION: Joint final rule.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, the agencies) are publishing final rules to implement the CRA sunshine provisions of section 48 of the Federal Deposit Insurance Act. These provisions require nongovernmental entities or persons (NGEPs), insured depository institutions, and affiliates of insured depository institutions that are parties to certain agreements that are in fulfillment of the Community Reinvestment Act of 1977 to make the agreements available to the public and the appropriate agency and file annual reports concerning the agreements with the appropriate agency. These provisions were contained in section 711 of the Gramm-Leach-Bliley Act.

The rule identifies the types of written agreements that are covered by section 48 (referred to as covered agreements) and defines many of the terms used in the statute. The rule also describes how the parties to a covered agreement must make the agreement available to the public and the appropriate agencies and explains the type of information that must be included in the annual report filed by a party to a covered agreement.

EFFECTIVE DATE: This joint rule is effective April 1, 2001.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael S. Bylsma, Director, Community and Consumer Law (202) 874–5750; or Karen O. Solomon, Director, Legislative and Regulatory Activities (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

BOARD: Scott G. Alvarez, Associate General Counsel (202) 452–3583, Kieran J. Fallon, Senior Counsel (202) 452–5270, or Andrew Miller, Senior Attorney (202) 452–3428, Legal Division; Glenn E. Loney, Deputy Director (202) 452–3585, James H. Mann, Senior Attorney (202) 452–2412, or Kathleen C. Ryan, Senior Attorney (202) 452–3667, Division of Consumer and Community Affairs; For users of Telecommunications Device for the Deaf (*TDD*) *only,* contact Janice Simms at (202) 452–4984; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Deanna Caldwell, Senior Policy Analyst (202) 942–3366, or Robert Mooney, Assistant Director (202) 942–3378, Division of Compliance and Consumer Affairs; or A. Ann Johnson, Counsel, Regulation and Legislation Section (202) 898–3573, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639; Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Background
II. Overview of Comments Received
III. Detailed Explanation of Final Rule
  A. Definition of Covered Agreement
  B. Disclosure of Covered Agreements
  C. Annual Reports
  D. Effective Dates of Disclosure and Reporting Requirements
  E. Compliance Provisions
  F. Other Definitions and Rules of Construction
IV. Regulatory Flexibility Act Analysis
V. Executive Order 12866 Determination
VI. Paperwork Reduction Act
VII. Comments Regarding the Use of ''Plain Language''
VIII. Unfunded Mandates Act of 1995
IX. Compliance Chart

I. Background

Section 711 of the GLB Act (Pub. L. 106–102, 113 Stat. 1338 (1999)) added a new section 48 to the Federal Deposit Insurance Act (12 U.S.C. 1831y) (FDI Act) entitled ''CRA Sunshine Requirements.'' Section 48 applies to written agreements that (1) are made in fulfillment of the Community Reinvestment Act of 1977 (CRA),[1] (2) involve funds or other resources of an insured depository institution or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an insured depository institution or affiliate of an insured depository institution and a nongovernmental entity or person. Section 48 does not, however, cover any agreement with a nongovernmental entity or person that has not had a CRA contact with an insured depository institution or affiliate or a banking agency, such as agreements entered into by entities or persons that solicit charitable contributions or other funds without regard to the CRA. Under section 48, the parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt and use of funds or other resources under the agreement.

On May 19, 2000, the agencies published a joint notice of proposed rulemaking in the **Federal Register** (65 FR 31962, May 19, 2000) to implement section 48. The joint notice requested comment on all aspects of the proposed rule and on a wide variety of specific topics identified in the **SUPPLEMENTARY INFORMATION** accompanying the proposal.

II. Overview of Comments Received

The agencies collectively received more than 800 comments from the public on the proposed rule, although many commenters submitted copies of the same comments to each of the agencies. Comments were received from a wide variety of sources including members of Congress; state and local government officials; banks, savings associations and their holding companies and other affiliates; community-based and non-profit organizations, including national and regional associations whose membership is composed of such organizations; trade associations; other businesses; and individuals.

[1] 12 U.S.C. 2901 *et seq.*

These comments addressed to some degree nearly all aspects of the proposed rule. A number of these comments are described in more detail in the description of the final rule below. This section provides a brief overview of the comments and is not intended to represent a detailed summary of all of the comments. The agencies have carefully reviewed and considered the information and views provided by all commenters.

Commenters generally requested additional guidance on the types of actions that would constitute a written arrangement or understanding between an insured depository institution or affiliate and a NGEP. Many commenters supported the proposed rule's definition of ''fulfillment of the CRA,'' while others asserted that the proposed definition was too broad.[2] In this regard, a number of commenters expressed concern that the proposed rule could require the disclosure of, and reporting on, a wide range of agreements between banking organizations and NGEPs that are not directly related to or affected by the CRA. They also expressed concern that the proposed rule could discourage banking organizations from entering into agreements with NGEPs to provide loans, investments or banking services in their local communities.

Many commenters addressed the exemption included in the statute and the proposed rule for agreements that are entered into by an insured depository institution or affiliate with a NGEP that has not ''commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act.'' [3] Most commenters that addressed this issue requested that the agencies clarify the types of actions by a NGEP that would constitute a CRA contact as described in the statutory exemption. Some commenters recommended that the agencies define a CRA contact to include only CRA-related contacts by a NGEP with a Federal banking agency or discussions with an insured depository institution or affiliate about such contacts. Commenters also urged that the agencies clarify that certain types of discussions with an institution or affiliate, such as a general discussion by a NGEP with an institution concerning the eligibility of products or services for consideration under the CRA, were not CRA contacts (and were therefore exempt) within the meaning of the statute. Other commenters asserted that the statute did not allow the agencies to limit CRA contacts only to those that occur with a Federal banking agency and that Congress intended a CRA contact to encompass a broad range of CRA-related contacts including discussions by a NGEP with an insured depository institution or affiliate concerning the CRA.

A number of commenters also argued that a CRA contact must be with an appropriate official or representative of the insured depository institution or affiliate. A significant number of commenters also urged that a CRA contact be recognized only if the contact occurred within a specified period of time before the parties entered into the agreement. Some commenters expressed concern that, without these or other limitations, the statute or proposed rule would impose a substantial burden on persons claiming the exemption and make the exemption virtually meaningless. Other commenters asserted that the agencies lacked the authority to require that a CRA contact be temporally related to a CRA-related agreement.

A number of commenters argued that the statute or the proposed rule imposed a substantial burden on persons who engage in discussions with banking organizations concerning the CRA or petition the Federal banking agencies for action related to the CRA. These commenters argued that these burdens could chill the public's exercise of free speech or right to petition the government as protected by the Constitution.

Commenters generally supported the provisions of the proposed rule that sought to streamline the disclosure and annual reporting obligations of the parties to a covered agreement to the extent consistent with the statute. For example, commenters widely supported the proposed rule's provisions giving insured depository institutions, affiliates and NGEPs flexibility in making covered agreements available to the public and allowing insured depository institutions, affiliates and NGEPs that are party to a number of covered agreements the ability to file a single, consolidated annual report relating to all of the agreements.

Commenters also generally supported the provisions of the proposed rule that required a NGEP to make its covered agreements available to an agency only upon request. Some commenters requested that insured depository institutions and affiliates also be permitted to make covered agreements available to the appropriate agency upon request, or that the agencies further streamline the agency disclosure obligations applicable to institutions and affiliates. Commenters requested that the agencies streamline the process for determining what information contained in a covered agreement may be withheld from public disclosure, such as by identifying categories of information that could be withheld from public disclosure without prior agency review.

Commenters overwhelmingly supported the proposed rule's provisions allowing NGEPs to use Federal tax forms and other reports to fulfill the reporting requirements of the rule. Comments were mixed concerning the proposed rule's provisions governing the reporting of specific purpose funds received by a NGEP, with some commenters supporting this reporting method and others asserting that the method was burdensome or not authorized by the statute.

Commenters also supported the provisions of the rule that provided that a NGEP is not required to file an annual report for any year in which NGEP did not receive funds under a covered agreement. Several commenters requested that the agencies provide a similar exemption from the annual reporting requirements to insured depository institutions and affiliates.

III. Detailed Explanation of Final Rule

This section provides a more detailed discussion of the comments received on the proposal, the changes made by the agencies in response to comments, and the other provisions of the final rule. As with the proposal, the final rule uses the term ''insured depository institution,'' rather than ''bank'' or ''savings associations,'' to facilitate compliance and consistency among the agencies' rules. As discussed below, the rule identifies the specific agency or agencies with whom a covered agreement and its related annual reports should be filed, and the agency or agencies that would be considered a relevant supervisory agency for a covered agreement.

The final rule and the remaining portions of this preamble also refer to a ''nongovernmental'' entity or person'' as a ''NGEP.'' The final rule uses this term, rather than the term ''person,'' to avoid confusion over the scope of the rule. The term ''nongovernmental entity or person'' or ''NGEP'' is defined in section ____.11 of the rule generally to include

[2] The proposed rule generally defined ''fulfillment of the CRA'' by reference to the full list of factors that the agencies consider in evaluating the CRA performance of an insured depository institution or in acting on an application for a deposit facility under the CRA, as described in the lending, investment and service tests set forth in the CRA regulations jointly adopted by the agencies (''CRA Regulations''). *See* 12 CFR Part 25 (OCC); 12 CFR Part 228 (Board); 12 CFR Part 345 (FDIC); 12 CFR Part 563e (OTS).

[3] *See* 12 U.S.C. 1831y(e)(1)(B)(iii).

any company or individual other than the Federal government; a state, local or tribal government; an insured depository institution or affiliate; or a representative of any of the foregoing.

The **SUPPLEMENTARY INFORMATION** accompanying the proposed rule included examples illustrating the scope and application of the proposed rule. Commenters generally favored having examples that provide additional guidance concerning the rule's provisions. Some commenters requested that the agencies clarify or amend certain examples, and commenters were divided on whether the agencies should incorporate all examples into the final rule.

The final rule includes examples illustrating some of the key provisions of the rule, including the definition of a ''CRA communication,'' the scope of the exemptions for qualifying loan agreements, and the information required to be provided in the annual report of an NGEP. The examples included in the rule are part of the rule and compliance with an example, to the extent applicable, constitutes compliance with the rule. (*See* section ____.1(d).) The examples included in the rule illustrate only the scope and application of the particular topic addressed by the example and do not illustrate any other topic or issue that may arise under the rule.

The agencies also have included in this preamble examples that illustrate other provisions of the rule. The agencies have not included these other examples in the final rule because fewer questions appear to arise in connection with these provisions and, thus, including the examples in the rule could make the rule longer without providing a commensurate level of benefit. The agencies, however, have included these examples in the preamble to illustrate the manner in which the agencies expect to interpret the rule in these areas. To further assist members of the public in complying with the rule, the agencies have included in this preamble a chart that summarizes the disclosure and reporting requirements of the rule. This chart, which is not part of the rule, is located at Part IX of this preamble.

By operation of law, the regulations of the agencies implementing section 48 shall take effect on the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form, which is April 1, 2001.[4]

The agencies requested comment on whether the rule should remain, as proposed, in a separate part of each agency's regulations or be incorporated into the agencies' existing CRA Regulations. Commenters generally favored keeping the rule separate from the CRA Regulations. In addition, section 48 amended the FDI Act, and not the CRA, and is independent of the CRA and the CRA Regulations. Accordingly, the final rule is promulgated as a new part to each agency's regulations. Section ____.1(c) of the final rule provides that nothing in the final rule affects in any way the CRA, the agencies' CRA Regulations, or any agency's interpretations or administration of the CRA or the CRA Regulations.

The following description applies to the rule of each agency. Since each agency's rule will be codified at a different part of the Code of Federal Regulations, the following description references the rule using only the section numbers used in the rule.

A. Definition of Covered Agreement

Section ____.2 of the rule defines which agreements are covered by the rule and includes the Act's exemptions from the definition of a covered agreement for qualified loan agreements.

1. Covered Agreements

The proposed rule defined a covered agreement as any contract, arrangement, or understanding that meets all of the following four criteria:

- The agreement is in writing;
- The agreement is made pursuant to, or in connection with, the fulfillment of the CRA, as defined by the rule (*see* section __.4);
- The parties to the agreement include (1) one or more insured depository institutions or affiliates of an insured depository institution, and (2) one or more NGEPs; and
- The agreement provides for the insured depository institution or affiliate to provide cash payments, grants, or other consideration (except loans) having an aggregate value of more than $10,000 in any calendar year, or to make loans in an aggregate principal amount of more than $50,000 in any calendar year.

The final rule retains these four criteria for coverage. The final rule also provides that, in order for an agreement to be covered, one of the NGEPs that is a party to the agreement must have had a CRA communication (as defined in section __.3) prior to the time the parties entered into the agreement. As noted above, section 48 specifically exempts from coverage any agreement entered into by an institution or affiliate with a NGEP who has not had a CRA communication. The agencies believe that structuring this statutory exemption as an affirmative requirement for coverage makes the rule easier to understand without affecting the scope of the rule. The scope of the exemption for agreements with a NGEP that has not had a CRA communication is discussed in detail below.

A covered agreement may be with an insured depository institution or any affiliate of an insured depository institution, including a bank holding company or a nonbank affiliate. Section 48 and the rule apply only to written contracts, arrangements or understandings, and do not apply to oral contracts or agreements.

Some commenters requested that the agencies provide additional guidance concerning when written communications between a NGEP and an insured depository institution or affiliate would constitute a ''contract, arrangement or understanding.'' In addition, some commenters asserted that the rule should apply only to legally enforceable contracts, while comments were mixed on whether the rule should apply to unilateral lending or investment pledges made by an insured depository institution or affiliate in response to previous actions by a NGEP.

As noted above, section 48 by its terms applies not only to written contracts, but also to written arrangements and written understandings that are entered into by an insured depository institution or affiliate with a NGEP and that otherwise meet the statutory criteria to be a covered agreement. For this reason, the agencies have not limited the final rule to legally binding written contracts. Other written agreements that do not constitute a legally binding contract, but that reflect a mutual arrangement or understanding between an insured depository institution or affiliate and a NGEP would be a covered agreement if they meet the other criteria set forth in the rule.[5] A written arrangement or understanding may be reflected by one or more documents.

The agencies have included three examples in the final rule that illustrate when a written arrangement or understanding would and would not exist. (*See* section ____.2(b).) Example 1 involves a NGEP that meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEP's community. The NGEP and institution, however, do not reach an agreement concerning the community

[4] 12 U.S.C. 4802(b).

[5] 12 U.S.C. 1831y(a) and (e)(1).

development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. The institution later unilaterally issues a press release that announces the institution has established a general goal of making $100 million of community grants in low- and moderate-income neighborhoods in the institution's community over the next 5 years and does not identify the NGEP. Since there was no agreement or understanding between the institution and NGEP, and the institution acted unilaterally to establish its investment goal, Example 1 states that the press release issued by the institution is not a written arrangement or understanding.

In Example 2, a NGEP meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEP's community. The NGEP and the insured depository institution reach a mutual understanding that the institution will provide $10 million in additional loans in low- and moderate-income neighborhoods in the NGEP's community. The insured depository institution tells the NGEP that it will issue a press release announcing the program and subsequently issues a press release that incorporates the key terms of the mutual understanding between the institution and NGEP. The press release reflects the mutual arrangement or understanding between the NGEP and the insured depository institution and is, therefore, a written arrangement or understanding.

In Example 3, a NGEP sends a letter to an insured depository institution requesting that the institution provide a $15,000 grant to the NGEP. The insured depository institution responds in writing and agrees to provide the grant to the NGEP in connection with its annual grant program. Since the exchange of letters reflects an understanding or arrangement between the insured depository institution and the NGEP, the agreement would be a covered agreement if it meets the other criteria set forth in the rule including, in particular, the requirement that the NGEP have had a CRA communication.

These examples are not exclusive and other written exchanges may or may not constitute a written arrangement or understanding depending on the facts and circumstances of the particular situation.

2. Loan Agreements That Are Not Covered Agreements

Section 48(e)(1)(B) specifically exempts certain types of loan agreements from coverage even if they otherwise meet the definition of a covered agreement. Section ____.2(c) of the final rule implements these exemptions.

a. *Mortgage Loans.* The first statutory exemption is for any individual mortgage loan. Under this exemption, any mortgage loan made by an insured depository institution or affiliate to any individual or entity is exempt from the requirements of section 48. This exemption is available for any mortgage loan, regardless of the identity of the borrower or the rate charged on the loan.

The agencies requested comment on what types of loans would qualify as a ''mortgage loan'' for purposes of this statutory exemption. A number of commenters addressed this issue, with the vast majority stating that the exemption should be available for any loan that is secured by real estate. A few commenters asserted that the agencies should define a mortgage loan to include any loan the proceeds of which are used for real estate-related purposes, even if the loan was not secured by real estate. Some commenters also contended that investments in mortgage-backed securities or other types of real estate investments should be exempt under this provision.

The final rule provides that this statutory exemption is available to any individual loan that is secured by real estate. The real estate securing the loan may be used for residential or commercial purposes, and the loan does not need to have been obtained for purposes of purchasing or improving the real estate. Since section 48 specifically provides that this exemption is available only to mortgage loans, an agreement to make a real-estate related investment (including an investment in mortgage-backed securities) or to make a loan that is not secured by real estate is not exempt under this provision, although such agreements may be exempt from coverage under other provisions of the rule.

Section ____.2(d) of the final rule provides examples illustrating the rule's exemptions for qualifying loan agreements. The first example (Example 1) illustrates the exemption for any individual mortgage loan. In this example, an insured depository institution provides an organization with a $1 million loan pursuant to a written agreement. The loan is secured by real estate that is owned or to-be-acquired by the organization. Accordingly, Example 1 states that the agreement is exempt from coverage regardless of the interest rate on the loan or whether the loan was made for purposes of re-lending.

b. *Specific Contracts or Commitments for Qualifying Loans.* The statute also exempts from coverage ''any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities, if the funds are loaned at rates [that are] not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to other parties.'' [6] Under the statute, this exemption is available for any type of loan to any individual or entity if the loan meets the market rate and re-lending restrictions of the statute.

The agencies requested comment on whether this exemption covers only a specific commitment to make a qualifying loan or extension of credit (such as a loan commitment typically made in the course of providing a line of credit to a small business), or also would provide an exemption for a commitment to make multiple loans that meet the Act's restrictions. The agencies also requested comment on whether the agencies should define when a loan is made at ''substantially below market rates'' or for purposes of re-lending. Most commenters that addressed these issues requested that the agencies provide additional guidance concerning the phrases ''substantially below market rates'' and ''for purposes of re-lending,'' and some of these commenters suggested definitions for these phrases. Comments were mixed on whether the exemption was available only to a specific contract or commitment for an individual loan or if it also would cover a general commitment by an insured depository institution to make multiple loans over a period of time.

After carefully reviewing the language and purposes of section 48 and the comments received, the agencies have determined that the exemption in section ____.2(c)(2) is available only with respect to a specific contract or commitment by an insured depository institution to make a *single* loan or extension of credit that meets the Act's market-rate and re-lending restrictions, and does not cover an agreement or commitment by an institution or affiliate to make multiple loans or extensions of credit. The agencies also have amended the rule to provide that a loan is made for ''purposes of re-lending'' only if the loan application or other loan documents indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or

[6] 12 U.S.C. 1831y(e)(1)(B)(ii).

extension of credit to one or more third parties.

The final rule retains the statute's restriction that the loan or extension of credit may not be made at a rate that is substantially below market rates. In determining whether a loan or extension of credit is made at ''substantially below market rates,'' an institution should compare the rate charged on the loan or extension of credit to the rate the institution has or would charge a comparable borrower (*e.g.*, a NGEP with similar financial resources and credit history) on a comparable type of transaction (*e.g.*, a construction loan, permanent financing, small business loan, or unsecured consumer loan). Since the rates charged on particular types of loans vary over time and may vary depending on the location of the lender and borrower, the agencies have not included in the rule a fixed formula for determining whether a loan or extension is made at ''substantially below market rates.''

Examples 2, 3 and 4 in section ____.2(c) of the rule illustrate the scope and application of this exemption. In Example 2, an insured depository institution commits to provide a $500,000 line of credit to a small business pursuant to a written agreement. The example provides that the loan is made at a rate within the range of rates offered by the institution to other similarly situated small businesses in the market and the loan documentation does not indicate that the borrower intends or is authorized to re-lend the borrowed funds. Accordingly, the example states that this commitment for an individual loan is exempt under section ____.2(c)(2) of the rule.

In Example 3, a small business obtains a $75,000 small business loan, documented in writing, from an insured depository institution. The institution offers its borrowers small business loans that are guaranteed by the Small Business Administration (SBA) and the loan is made under this loan program. The loan documentation does not indicate that the borrower intends or is authorized to re-lend the funds to any third-party. Although the rate charged by the institution on the loan is well below that charged by the institution on commercial loans, the rate is within the range of rates that the institution would charge a similarly situated small business for a similar loan under the institution's SBA loan program. Accordingly, the example states that the loan is not made at substantially below market rates and is exempt from coverage under section ____.2(c)(2) of the rule.

Example 4 involves a bank holding company that enters into a written agreement with a community development organization. The agreement provides for the insured depository institutions owned by the bank holding company to make $250 million in small business loans in their communities over the next 5 years. Since the agreement provides for the institutions to make multiple loans, the agreement is not a specific contract or commitment for a loan or extension of credit and, thus, is not exempt from coverage under section ____.2(c)(2) of the rule. The example notes, however, that each small business loan made pursuant to this general commitment would be exempt from coverage if the loan separately meets market rate and re-lending restrictions of the exemption.

To be entirely exempt from coverage under section ____.2(c)(1) or (2) of the rule, an agreement must be exclusively a loan, extension of credit or loan commitment that meets the requirements of the relevant exemption. The rule provides, however, that if an agreement includes a loan, extension of credit or loan commitment that, if documented separately, would meet the rule's requirements to be exempt and also provides for the insured depository institution or affiliate to provide other funds or resources, the exempt loan, extension of credit or loan commitment may be excluded for purpose of determining whether the agreement meets the Act's dollar thresholds or is in fulfillment of the CRA. (See section ____.2(e).)[7]

3. CRA Communication

Section 48(e)(1)(B)(iii) provides a statutory exemption from the CRA Sunshine provisions for ''any agreement entered into by an insured depository institution or affiliate with a [NGEP] who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act of 1977.'' This exemption for agreements with persons who have not had a CRA contact was included in section ____.2(b)(2) of the proposed rule, which contained an exemption that restated the statutory language in section 48(e)(1)(B)(iii). Section ____.2(b)(2) also provided examples of actions that would constitute a CRA contact and other examples of actions that would not be considered a CRA contact.

The preamble invited comment on this aspect of the proposal, including comment on whether the agencies should provide a more detailed definition of the exemption and on several alternative approaches to defining CRA contact. Nearly all commenters requested that the agencies change the definition of CRA contact in the proposed rule to explain the breadth of the exemption, to provide additional clarity regarding what constitutes a CRA contact, or to exempt specifically certain types of contacts. Many commenters underscored the importance of a rule that allowed persons to determine before entering into an agreement whether or not they have had a CRA contact and qualify for the exemption. While many commenters expressed concern about various aspects of the proposal on CRA contact, commenters were divided on how to address these concerns.

A significant number of commenters argued that the agencies should define a CRA contact to cover only providing CRA-related comments or testimony to an agency and discussions with an insured depository institution or affiliate about providing (or refraining from providing) such comments or testimony. There was also significant support for an alternative that would have excluded discussions with an insured depository institution or affiliate concerning whether particular loans, services, investment or community development activities are generally eligible for consideration by an agency under the CRA Regulations. Others argued that only conversations related specifically to the CRA performance record of an institution should be covered.

A significant number of commenters advocated exempting contacts that are incidental to ordinary business dealings, which were perceived as outside the intended scope of the statute. Others advocated exempting certain types of ''routine inquiries,'' such as inquiries about what an institution's CRA rating is or about the CRA statute or rule.

Some commenters, on the other hand, supported a broad interpretation of CRA contact that would cover general discussions of the CRA. A small number of commenters supported a broad interpretation of CRA contact while also advocating that the agencies narrow other aspects of the definition of a covered agreement, such as the definition of fulfillment.

In addition to these issues regarding the scope of the exemption, many commenters urged the agencies to

[7] The agencies note, however, that if the other consideration would reduce the effective interest rate paid on the loan or extension of credit to a rate that is substantially below the market rate, the loan or extension of credit would not itself be exempt from coverage.

address other issues raised by the CRA contact definition. In particular, a number of commenters suggested that the agencies indicate who at the relevant institution or affiliate and who at the NGEP must have a CRA contact or have knowledge that a CRA contact has occurred, or require a temporal or other connection between the CRA contact and negotiation of a CRA agreement.

As explained more fully below, the final rule incorporates changes in three areas to address comments regarding the definition of CRA contact. In summary, in order to identify contacts that have a relationship to an agreement and to avoid imposing substantial burden on parties entitled to claim the exemption, the final rule adopts a definition of ''CRA communication'' that has three parts. First, the rule adds clarity regarding the type of communication that is considered to concern the CRA; second, the rule provides that the institution and the NGEP must have knowledge of the CRA communication and specifies who must have that knowledge; third, the rule recognizes a temporal relationship between the communication and the agreement.

In addition, the final rule relocates and rewords the CRA communication provision from an exemption for NGEPs that have not had a CRA communication to a requirement in the definition of a covered agreement that the agreement be with a NGEP that has had a CRA communication. The final rule also refers to a CRA contact as a ''CRA communication.'' This relocation and rewording makes the final rule easier to read and understand and does not have any substantive effect.

a. *Definition of CRA Communication.* In considering the scope of the exemption in section 48(e)(1)(B)(iii) for NGEPs that have not had a contact concerning the CRA, the agencies have carefully considered the words of the statute and the purpose of the exemption as well as the comments received by the agencies. The Conference Report for the Act indicates that this exemption was designed to provide an exemption from the requirements of the CRA Sunshine provisions for a wide range of organizations that solicit funds without regard to the CRA. The Conference Report lists as examples of the types of groups that might qualify for this exemption civil rights groups, community groups providing housing or other services in low-income neighborhoods, veterans groups, and community theater groups.[8]

[8] *See* H.R. Conf. Rep. No. 106–434 at 179 (1999).

The final rule clarifies the definition of a CRA communication by adding specificity that was drawn from the examples published in the original proposal and in the preamble to the original proposal. Under the final rule, a CRA communication is defined to include any of the following five types of contacts:

- Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution or any CRA affiliate;[9]
- Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and that must be included in the institution's CRA public file;
- Any discussion or other contact with an insured depository institution or any affiliate about providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution or any CRA affiliate;
- Any discussion or other contact with an insured depository institution or any affiliate about providing or refraining from providing written comments that concern the adequacy of the institution's CRA performance and that must be included in the institution's CRA public file; and
- Any discussion or other contact with an insured depository institution or affiliate about the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

The first four types of contacts include contacts with a Federal banking agency or with an institution or affiliate about contacting a Federal banking agency, as well as written communications that, under existing rules, must be retained by an institution in its CRA public file. The final rule includes a fifth type of contact that relates to any discussion or other contact with an institution or affiliate about the adequacy of the institution's performance under the CRA.

In adopting this fifth type of contact, the agencies have carefully considered the suggestion of a number of commenters that CRA communications be limited to the first four types of agency contacts or to discussions with an institution regarding agency contacts. The agencies note that the exemption in section 48(e) for a NGEP that has not had a CRA communication, by its terms, is available only if the NGEP has not ''discussed with the institution, or otherwise contacted the institution, concerning the CRA.'' By its terms, the exemption appears to contemplate that, in order to qualify for the exemption, the NGEP not have had discussions or contacts ''concerning the CRA.'' Contacts ''concerning the CRA'' would cover discussions that are not limited to discussions regarding providing testimony or comments to an agency.

In order to explain what type of contact is covered by the words ''concerning the CRA,'' the final rule includes the fifth category for discussions or other contacts about the ''adequacy'' of the institution's performance under the CRA. This reference was included to indicate that a contact that is related to how well or how poorly an institution is fulfilling its obligation to help meet the credit needs of the institution's community as evaluated under the CRA is one of the types of contacts that would be most likely to influence a CRA agreement, and, consequently, would be a CRA communication that disqualifies a NGEP from claiming the exemption in section 48(e)(1)(B)(iii).

To help illustrate when a discussion or contact relates to the adequacy of an institution's CRA performance, the final rule contains several examples of contacts that would be covered and several examples of contacts that would be exempt.[10] These examples address only the content of a CRA communication and assume that all other requirements regarding the communication (and agreement) are otherwise satisfied.

Three examples address contacts that are CRA communications and, consequently, would cause a written agreement involving the NGEP to be a covered agreement. In the first example, a NGEP files a written comment with a Federal banking agency in response to a general agency request for comments on an application to open a new branch.

[9] As discussed more fully below, a ''CRA affiliate'' is an affiliate of an insured depository institution whose activities are considered in evaluating the CRA performance of the institution. Accordingly, it is viewed as part of the insured depository institution for these purposes.

[10] Some commenters argued that the examples in the proposed rule were helpful in illustrating the scope of the CRA contact exemption and requested additional examples. Other commenters argued that the examples would broadly discourage certain kinds of contacts and should be eliminated. Section ____.1(d) of the final rule states that the examples included in the rule are not exclusive, and the agencies believe that, on this basis, the examples are a useful illustration of the scope of the rule.

The comment filed by the NGEP states that the applicant insured depository institution has successfully addressed the credit needs of its community. In the second example, a NGEP states to an executive officer of an insured depository institution that the institution must improve its CRA performance. Both of these examples illustrate a contact in which the CRA performance record of the institution is specifically mentioned.

The statute does not require that a specific reference to the Community Reinvestment Act of 1977 be made in order to represent a CRA communication, and, in fact, a number of commenters indicated that discussions leading to agreements often do not include a specific reference to the CRA because the context of the negotiation makes clear that the agreement is intended to address CRA performance. To illustrate this, an example of a CRA communication has been included that involves an oral discussion in which the NGEP claims that the institution needs to make more mortgage loans in low- and moderate-income neighborhoods. The connection with the CRA is indicated by the reference to the action requested, which involves activities that are often the focus of CRA performance evaluations, along with a statement indicating an obligation that the institution take this action, an obligation that is considered to arise out of CRA evaluations.

The final rule also includes several examples of contacts that are not considered to be CRA communications. One example involves a fund-raising letter sent by a NGEP to an insured depository institution and to other businesses in the community encouraging all businesses in the community to meet their obligation to make the community a better place to live by supporting the fund-raising efforts of the NGEP. This example illustrates that a fund-raising letter that is widely distributed in a way that does not imply an obligation under the CRA is not itself considered to be a CRA communication. Similarly, a contact by a NGEP with an insured depository institution to simply determine what rating the institution received at its most recent CRA performance examination would not, by itself, constitute a discussion concerning the adequacy of the institution's performance.

A number of commenters advocated clarifying that the definition of CRA communication would not include marketing efforts for products or services that might relate to CRA activities. The rule contains two examples that illustrate that general marketing efforts and general discussions regarding the eligibility of products and services for CRA consideration are not considered to be CRA communications unless the communication includes a discussion concerning the adequacy of the particular institution's CRA performance.

One example involves a discussion by a NGEP with an insured depository institution regarding whether particular loans, services, investments, community development activities or other activities are generally eligible for consideration by a Federal banking agency under the CRA, without any discussion of the adequacy of the CRA performance of the insured depository institution or affiliate.

Another example illustrates a situation in which the NGEP combines a general marketing discussion with a discussion of the eligibility of particular loans for consideration under the CRA, but without any discussion of the adequacy of the CRA performance record of the institution or obligation of the institution to take any action related to the CRA. In this example, the NGEP engages in the sale or purchase of loans in the secondary market and sends a general offering circular to financial institutions offering to sell or purchase a portfolio of loans. The NGEP then meets with the institution and discusses whether specific loans are generally eligible for consideration under the CRA, including which loans are made in the institution's community, without discussing the CRA performance or obligations of the institution. The agencies believe that purchases and sales of loans in the secondary market are typically done in the manner illustrated in the example and, therefore, generally do not involve a CRA communication.

The final rule also retains two examples contained in the proposed rule regarding other matters. One illustrates that statements made at a widely attended conference on a general topic (but not a meeting or hearing regarding a specific institution, affiliate or transaction) are not considered to be CRA communications. Statements made at widely attended conferences on general topics are not likely to be effective in influencing CRA agreements and cannot be effectively monitored.

The other example illustrates that statements made in response to a direct request to the specific NGEP from a Federal banking agency (but not a general request for comment in connection with an application for approval of a transaction or an examination) are not considered to be CRA communications. Some commenters suggested that this example be deleted because it suggested a preference for statements made by NGEPs that have been directly contacted by a banking agency over NGEPs that provide information to the agency in the course of a general solicitation of public comment. The final rule retains the example because the agencies believe that it is important to the agencies' ability to meet their statutory obligations under the CRA that the agencies obtain information regarding the credit needs of the community from sources that include NGEPs that may enter into agreements with insured depository institutions. In these circumstances, the contact results due to an action by the agency, not an attempt by the NGEP to influence the agency or obtain a CRA agreement. Imposing the rule's requirements on the NGEP in this context might discourage cooperation between NGEPs and the agencies and impede the ability of the agencies to obtain useful information regarding the banking and credit needs of communities.

b. *Knowledge of CRA Communications.* To define when a NGEP has had a CRA communication with an insured depository institution for purposes of the exemption provided in section 48(e)(1)(B)(iii), it is essential to know when a communication is ''*with* the [insured depository] institution'' and when it is *by* a NGEP. In other words, it is essential to know who speaks for the institution and for the NGEP. The statute is silent on this point.

A number of commenters suggested that the rule apply only to CRA communications that occur with designated officers of the insured depository institution or affiliate, such as the CRA compliance officer or persons that negotiate covered agreements. In circumstances where the individuals involved in or responsible for negotiating agreements do not know that a CRA communication has occurred, commenters claimed that it would be difficult, if not impossible, for institutions and NGEPs to know whether they properly claimed the exemption or were, in fact, in violation of the CRA Sunshine provisions.

For example, casual conversations between a bank teller and a customer who is also an employee of a business consulting firm might involve CRA activities of the bank and meet a broad reading of the proposed definition of CRA contact. Commenters were concerned that, if so, the contact could cause a written agreement between the institution and business consulting firm

to be a covered agreement even though the conversation had no influence over the agreement because officials of the institution and of the NGEP responsible for negotiating the agreement were not aware of the conversation.

To address this, a number of commenters urged the agencies to include a requirement that officers of the institution and of the NGEP responsible for negotiating agreements have knowledge of the CRA communication. Others suggested that contacts include only communications with executive officers and the CRA compliance officer of insured institutions and with senior officers of NGEPs.

As noted above, the CRA Sunshine provisions do not indicate who a NGEP must contact at an insured depository institution or affiliate in order to have been considered to have made a CRA contact for purposes of the exemption in section 48(e). The statute is also silent on who speaks for a NGEP that is an organization or company, rather than an individual.

The agencies believe that a CRA communication can only have an effect on an institution's willingness to enter into an agreement or on the terms of an agreement if the communication is with or is known to individuals at the organization who are either involved in negotiating the agreement or have authority or responsibility for such agreements. These are the individuals that speak for the institution and represent the institution in its decision making. Moreover, these are the individuals that are the most likely to have communications regarding the CRA that could lead to or affect the types of agreements that the CRA Sunshine provisions are intended to cover.

There is no evidence in the terms of the CRA Sunshine provisions or in the legislative history for those provisions that Congress intended to deny the exemption based on CRA contacts that are not known to the individuals that are involved with or have the authority to influence the negotiation of CRA agreements. In fact, the example referred to in the legislative history of the type of organization the exemption was designed to protect is a large youth organization with national membership.[11] Given the size, scope and nature of the organization, it is impossible to believe that members of that organization have not—at some time and in some capacity—had contacts with insured depository institutions regarding the CRA. Without a requirement in the rule that attributes CRA communications only to members of the organization that have authority or responsibility for negotiating agreements on behalf of that organization, this organization identified in the legislative history would not be able to claim the exemption.

Moreover, there would be significant burden imposed on both banking organizations and NGEPs if organizations and NGEPs are not entitled to rely on the exemption in section 48(e)(1)(B)(iii) because of a CRA communication between any employee at the organization with any member of a NGEP. To assure that no unauthorized contacts occur and that agreements are properly exempt under section 48(e)(1)(B)(iii), a banking organization and NGEP would be required to monitor all contacts by all employees and members of the organization and NGEP. Even in organizations of only moderate size, this could entail tracking contacts by thousands of employees at a single banking organization. The burden from this monitoring effort is likely to be overwhelming with few benefits because few if any CRA communications that result in CRA agreements are likely to occur among individuals at the organization other than those individuals with authority and responsibility for these agreements.

For these reasons, the final rule modifies the proposed rule to require that, in order to be a CRA communication that disqualifies a NGEP from the exemption in section 48(e)(1)(B)(iii), specified individuals at the institution or affiliate and at the NGEP must have knowledge of the communication.

Under the final rule, an insured depository institution or affiliate is considered to have knowledge of a CRA communication with a NGEP if any of the following representatives of the institution or affiliate have knowledge of the contact with the NGEP:

- An employee who approves, directs, authorizes or negotiates the agreement with the NGEP;
- An employee who is designated with responsibility for compliance with the CRA and who knows that the institution or any affiliate of the institution is negotiating, intends to negotiate, or has been informed by the NGEP that it expects to request that the institution or affiliate negotiate an agreement with the NGEP; or
- An executive officer of the institution or affiliate and who knows that the institution or any affiliate of the institution is negotiating, intends to negotiate, or has been informed by the NGEP that it expects to request that the institution or affiliate negotiate an agreement with the NGEP.

In addition to contacts between an institution or affiliate and a NGEP, there are several types of CRA contacts that arise in the agency review process or the CRA examination process or that involve records that the institution is responsible for maintaining. These contacts are of such importance that the institution is deemed by the final rule to have knowledge of the communication. In particular, an institution or affiliate is deemed under the final rule to have knowledge of any testimony provided to a Federal banking agency at a public meeting or hearing and of any written comment submitted to the insured depository institution that must be and has been included in the institution's CRA public file. An institution or affiliate is also considered under the final rule to have knowledge of any comment (written or oral) that has been made by a NGEP to a Federal banking agency if the comment is conveyed in writing by the agency to the insured depository institution or affiliate.

The rule establishes a parallel knowledge requirement for a NGEP. A NGEP is considered to have knowledge of a CRA communication if any of the following have knowledge of the contact:

- A director, employee or member of the NGEP who approves, directs, authorizes or negotiates the agreement with the insured depository institution of affiliate;
- A person who functions as an executive officer of the NGEP and who knows that the NGEP is negotiating or intends to negotiate an agreement with the insured depository institution or affiliate; or
- Where the NGEP is an individual, the individual.

For purposes of this requirement, an executive officer of an institution, affiliate or NGEP is defined as provided in Regulation O to include any person that participates or has authority to participate in the major policymaking functions of the institution, affiliate or NGEP, regardless of the person's title (*see* 12 CFR 215.2(e)). In addition, persons who serve as counsel to or agent for an insured depository institution or NGEP are considered to be acting for the insured depository institution or NGEP for purposes of receiving written comments or testimony from an agency.

Under the final rule, the designated individuals are not required personally to have *had* the CRA communication. Instead, a CRA communication is

[11] *See* H.R. Conf. Rep. No. 106–434 at 179 (1999); 145 Cong. Rec. S13887 (daily ed. Nov. 4, 1999).

covered if the communication involved or is known to one of the designated individuals. The individuals identified in the rule at the insured depository institution or affiliate and at the NGEP are the individuals who either are involved in or are responsible for CRA agreements. A CRA communication with an employee of an insured depository institution, affiliate or NGEP that is not known to the individuals that negotiate an agreement or to a person with authority to intervene in the negotiation of an agreement is unlikely to influence the agreement in any way. The knowledge requirement also significantly reduces the burden on insured depository institutions, affiliates and NGEPs to monitor contacts of employees or members that play no role or have no influence in the negotiations or decisions regarding agreements.

c. *Timing of CRA Communications.* A majority of commenters argued that the final rules should require a temporal relationship between the CRA communication and the agreement. These commenters contended that a communication that occurs long before or anytime after an agreement has been entered into does not influence the terms of an agreement or encourage an institution to enter into an agreement. Consequently, commenters argued that taking account of CRA communications that are distant in time from the date of an agreement would be contrary to the purpose of the exemption granted in section 48(e)(1)(B)(iii), which they argued was to exempt any agreement with an NGEP that has not attempted to use the CRA to negotiate the agreement. These commenters argued that only CRA communications that occur during some period prior to the date of the agreement be considered to be CRA contacts. Commenters suggested periods that varied from 30 days to 2 years prior to the agreement, with some arguing that only contacts that occur during the public comment period for an agency's review of a transaction or a CRA examination be considered.

Many commenters also contended that failure to adopt a temporal connection between a CRA communication and a covered agreement would *forever* disqualify a NGEP for the exemption based on one CRA communication, regardless of when it occurred, its influence on a written agreement or how circumstances may have changed. They argued that this would significantly chill free speech and the right to provide comments to a Federal agency.

On the other hand, several commenters argued that section 48(e)(1)(B)(iii) by its terms does not provide any limitation on the timing of a CRA communication, and that the exemption is available only to a NGEP that has not had a CRA communication with an agency or insured depository institution at any time. These commenters believed that the agencies have no authority to adopt a temporal requirement.

The agencies have taken particular care in considering the views presented by commenters on this matter. A purpose of the CRA Sunshine provisions is to provide public disclosure of agreements that are in fulfillment of the CRA in order to allow the public and Congress to monitor how resources paid under these agreements are used.[12] The exemption in section 48(e)(1)(B)(iii) was included in order to provide relief from the reporting and disclosure provisions for agreements with NGEPs that have not had a discussion concerning the CRA. Thus, the agencies believe that the purposes of the exemption and of the CRA Sunshine provisions generally assume a connection between the CRA communication and the covered agreement.

As a practical matter, in the case of agreements that are intended to be covered by the CRA Sunshine provisions, CRA communications normally occur during the period in which the agreement is discussed or negotiated, which is a relatively short period immediately before the agreement is reached. Indeed, it is during this negotiating period that communications regarding the CRA have the most effect on whether a CRA agreement will be reached and on what will be the purpose and the terms of the agreement.

This view was supported by commenters representing insured depository institutions as well as commenters representing NGEPs, most of whom indicated that CRA communications occurred regularly during the negotiation period for CRA agreements. This view is also consistent with one of the purposes of the CRA Sunshine provisions, which was to allow monitoring of agreements that result from contacts concerning the CRA.

The exemption provided in section 48(e)(1)(B)(iii) would, over time, become meaningless if the exemption is lost because of statements concerning the CRA that are made long before or after an agreement has been reached. Without a temporal relationship, all persons that potentially may have agreements with insured depository institutions or their affiliates regarding activities that receive favorable consideration under the CRA would likely feel compelled to maintain records that allow them to determine whether a CRA contact *had ever* been made by any person in the organization in order to ensure that the NGEP is in compliance with the exemption and the CRA Sunshine provisions. This would represent a significant recordkeeping burden on persons, including businesses, community organizations and individuals, that the exemption was intended to benefit. For many of these organizations, this would mean tracking and reviewing contacts from numerous employees or members on a continuous and long-term basis.

This heavy burden is inconsistent with the purpose of the exemption. It is also inconsistent with the directive in the CRA Sunshine provision that the agencies prescribe regulations designed to ensure and monitor compliance with the CRA Sunshine provisions without imposing an undue burden on the parties.

The agencies believe that recognizing a temporal relationship is an effective and objective method for identifying CRA communications that are most likely to have influenced the shape or the existence of an agreement. Conversely, by not covering communications made at a time that is distant from or after the agreement, the final rule substantially reduces the potential that communications that are unrelated to an agreement will be covered without excluding communications that have the most direct effect on the agreement. Moreover, a temporal relationship focuses on the fact that in nearly all, if not all, cases CRA communications are made during the period in which the potential for an agreement is discussed and the agreement is negotiated. Thus, a temporal relationship supports the purpose of the CRA Sunshine provisions, including the exemption in section 48(e)(1)(B)(iii), of identifying and exempting NGEPs that have not made CRA communications in an effort to obtain or negotiate a CRA agreement.

For these reasons, the final rule provides a time frame designed to recognize the connection between the communication and the agreement. To be deemed not to have had a CRA communication under section 48(e)(1)(B)(iii), a NGEP must not have had a CRA communication within 3 years prior to entering into the agreement in the case of oral or written communications with a Federal banking agency. The NGEP also must not have

[12] *See, e.g.,* 145 Cong. Rec. S13877–78 (daily ed. Nov. 4, 1999).

had within the 3 years prior to the agreement any written CRA communication with the relevant insured depository institution or any of its affiliates. In addition, the NGEP must not have had within the 3 years prior to the agreement any oral communication with the relevant insured depository institution or any of its affiliates about providing (or refraining from providing) comments or testimony to a Federal banking agency or comments to the institution's CRA public file where such communications occur in connection with a request to, or agreement by, the institution or affiliate to take any action that is in fulfillment of the CRA. Finally, the NGEP must not have had any other oral CRA communication with the relevant insured depository institution or any of its affiliates concerning the adequacy of the institution's CRA performance within one year prior to entering into the agreement.

The agencies selected the three year period for communications with an agency, certain types of discussions with an institution or affiliate about providing testimony or comments to an agency, and other written contacts with an institution or affiliate based on several considerations. In this regard, existing regulations generally require an insured depository institution to maintain written comments in its CRA public file for a period of three years.[13] The agencies' examination schedules also generally call for the agencies to evaluate the CRA performance of large insured depository institutions every 3 years. Regulations issued by the Office of Management and Budget and applicable to Federal agencies also discourage any collection of information that would require regulated entities to retain records for more than three years.[14]

The agencies selected the one year period for oral communications with an insured depository or affiliate (other than those relating to agency comments or testimony under the circumstances described above) based on several other considerations. One consideration was that many commenters suggested a time period in the one year range. Also, a shorter time period for oral communications with an insured depository institution or affiliate recognizes that, as a practical matter, oral communications are harder to monitor and remember than written communications. The agencies believe, however, that insured depository institutions and affiliates are more likely to document and remember oral communications with a NGEP that concern providing comments or testimony to a Federal banking agency where such communications also involve a request to, or agreement by, the institution or affiliate to take additional actions in fulfillment of the CRA. Accordingly, the agencies have included such oral communications in the three year period described above.

The agencies believe these time frames provide reasonable assurance that the communication and the agreement are not connected and would not impose an undue burden on the parties. Moreover, commenters indicated that where a CRA communication occurs it is most often occurs immediately before the parties enter into an agreement. This contact period is well within the time periods adopted by the rule.

d. *Additional Exemptions.* A number of commenters requested that the Board exercise the authority granted by the CRA Sunshine provisions to provide exemptions for certain types of agreements that may involve a CRA communication.[15] In particular, commenters requested exemptions for law firms and consulting firms, trade associations, owners of real estate that enter into sale or lease agreements with banks, community development financial institutions (CDFIs), and participants in the secondary loan market such as government-sponsored enterprises.

The agencies believe that many of the concerns raised by these commenters are addressed by modifications made to the fulfillment, CRA communication and other sections of the rule. In addition, a wide range of agreements between insured depository institutions and affiliates and law firms will not be covered under the final rule because the definition of ''nongovernmental entity or person'' in the final rule excludes any person or entity that is acting as a representative of an insured depository institution or affiliate. (*See* section ____.11.) Accordingly, many agreements between law firms and insured depository institutions and affiliates would not be considered covered agreements because the agreement provides that the law firm will be acting as a representative of the institution or affiliate.

In order for agreements to be covered agreements, the NGEP must have had a CRA communication with an insured depository institution or affiliate that is a party to the agreement or an affiliate of a party to the agreement *and* the agreement must be made pursuant to, or in connection with, the fulfillment of the CRA, as described below. The agencies believe that most traditional consulting agreements that insured depository institutions and affiliates enter into will not meet both of these requirements.

CDFIs that are insured depository institutions or affiliates of insured depository institutions are not covered by the CRA Sunshine provisions to the extent that they have agreements with other insured depository institutions or affiliates. CDFIs that are not insured depository institutions or affiliates thereof are considered NGEPs under the rule (*see* section ____.11.), and there appears to be no reason to provide a special exemption for this class of NGEPs. In light of the other changes and clarifications incorporated in the final rule, the Board also has not adopted any additional exceptions. The Board retains the authority to grant exemptions from the CRA communication provisions if experience in administering these provisions demonstrate that such action is appropriate.

4. Fulfillment of the CRA for Purposes of the CRA Sunshine Provisions

The CRA Sunshine requirements of section 48 of the FDI Act apply only to covered agreements. To be a covered agreement, section 48(e)(1) requires that the agreement be made pursuant to, or in connection with, ''the fulfillment of the Community Reinvestment Act.'' Section 48(e)(2) defines ''fulfillment'' for this purpose as ''a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision'' to approve or disapprove an application for a deposit facility under section 803 of the CRA or to assign a rating to an insured depository institution under section 807 of the CRA.

In defining fulfillment for purposes of the CRA Sunshine provisions, the agencies proposed the lending, investment, and service activities enumerated in the agencies' CRA Regulations as the list of factors that have a material impact on the relevant agency decisions.[16] This list of factors is:

(1) Home purchase, home improvement, small business, small farm, community development, and consumer lending as described in the lending test portion of the CRA

[13] *See* 12 CFR 25.43(a)(1) (OCC); 12 CFR 228.43(a)(1) (Board); 12 CFR 345.43(a)(1) (FDIC); and 12 CFR 563e.43(a)(1)(OTS).

[14] *See* 5 CFR 1320.5(d)(2)(iv).

[15] *See* 12 U.S.C. 48(h)(3)(B).

[16] 12 CFR 25.21–25.29 (OCC); 12 CFR 228.21–228.29 (Board); 12 CFR 345.21–345.29 (FDIC); 12 CFR 563e.21–563e.29 (OTS).

Regulations, including loan purchases, loan commitments and letters of credit;

(2) Making investments, deposits, or grants, or acquiring membership shares that have as their primary purpose community development, as described in the investment test portion of the CRA regulations;

(3) Delivering retail banking services, as described in the service test portion of the CRA Regulations;

(4) Providing community development services as described in the service test portion of the CRA Regulations;

(5) For a wholesale or limited-purpose insured depository institution, community development lending, qualified investments, and community development services, as described in the community development test portion of the CRA Regulations for wholesale or limited-purpose insured depository institutions;

(6) For a small insured depository institution, the lending and other activities described in the small insured depository institution performance standard of the CRA Regulations; and

(7) For an insured depository institution whose CRA performance is evaluated on the basis of a strategic plan, any element of that plan as described in the strategic plan portion of the CRA Regulations.

The proposed rule also provided that an agreement was in fulfillment of the CRA if it called for any NGEP to provide or refrain from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement, or written comments that are required to be included in the CRA public file of any such insured depository institution.[17]

Some commenters suggested that this list of factors was too broad and covered normal business arrangements that were not intended to be covered by the CRA Sunshine provisions. In particular, commenters suggested that, by referring to a list of factors that includes all home mortgage loans wherever and to whomever made, the proposal could cover activities for which no CRA performance credit would ordinarily be granted to the lending institution.

A number of commenters also argued that the agencies should only consider an activity to be in fulfillment of CRA if the activity is itself ''material'' to the CRA performance rating of an insured depository institution or to an evaluation of its CRA performance in an application for a deposit facility. These commenters suggested, among other options, that an agreement be considered to be in fulfillment of CRA only if it involved loans in more than one of the assessment areas served by the insured depository institution, loans of significant amounts based on the size of the institution, or activities that would change the CRA rating of the institution.

The CRA Sunshine statute specifically defines ''fulfillment'' to mean ''a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision'' to act on an application for a deposit facility or assign a CRA rating. Under the terms of the statute, the agency must identify *factors* that have a material impact. The statute determines the threshold of *amounts* of resources that are sufficient to trigger the CRA Sunshine requirements. For this reason, the agencies did not adopt the suggestion of commenters that the agencies modify the list of factors to include a measure of the *size* of an activity.

The agencies recognize, on the other hand, that the list of factors in the original proposal was very broad and could be read to cover activities that do not implicate the purposes of the CRA Sunshine provisions. To address this, the final rule has been amended to provide that performance of a listed activity, other than providing or refraining from providing CRA-related comments to an agency or providing comments that must be included in the institution's CRA public file, is considered to be in fulfillment of the CRA for purposes of the CRA Sunshine provisions only if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party or an affiliate of a party to the agreement.

This is intended as a general test that does not turn on whether or not the activity in fact receives credit at the next CRA performance examination or is considered as part of a review of CRA performance in a future application for a deposit facility. Instead, an insured depository institution or NGEP can make this judgment on the basis of general experience with the CRA performance review process for the particular type of insured depository institution. An insured depository institution is likely to receive favorable consideration for an activity if the activity (1) received favorable consideration at the institution's previous CRA performance examination, (2) would address a deficiency that an agency cited in the most recent public evaluation of the CRA performance of the institution, or (3) is of the type that is favorably considered by the agencies in reviewing the CRA performance of comparable insured depository institutions. For example, under item (3), an activity conducted by a small, wholesale or limited-purpose insured depository institution (as defined in the CRA Regulations) would likely receive favorable consideration if the agencies favorably consider such an activity when reviewing the CRA performance of other small, wholesale or limited-purpose institutions, respectively.

Home mortgage lending in low- and moderate-income neighborhoods in an insured depository institution's assessment area typically is considered favorably. On the other hand, home mortgage lending in middle- and upper-income neighborhoods, while taken into account in determining the size and scope of an institution's lending activities under the CRA Regulations, generally does not receive favorable consideration. However, the context in which the insured depository institution operates may dictate otherwise. For example, this would be the case if the institution operates only in middle- and upper-income areas or makes loans only in high cost areas.

In focusing on activities that are likely to receive favorable consideration, the agencies recognize that there is a difference between the purpose of the CRA Regulations, which must broadly take account of the context in which an insured depository institution operates, and the purpose of the CRA Sunshine provisions. The agencies do not intend the list of factors under the CRA Sunshine provisions in any way to indicate any change in the information that the agencies review under the CRA Regulations or to affect in any way the manner in which examinations are conducted or CRA performance ratings given. Accordingly, section ____.4 specifically provides that the term ''fulfillment of the CRA'' is only defined for purposes of the CRA Sunshine regulation. In addition, as discussed above, section ____.1(c) provides that the final rule does not affect in any way the CRA, the CRA Regulations or any agency's interpretations or

[17] The CRA Regulations generally require the agencies to consider public comments and comments included in an institution's CRA public file when evaluating an institution's CRA performance. In addition, the CRA Regulations require the agencies to consider written or oral comments submitted to the agency when acting on applications for a deposit facility.

administration of the CRA or CRA Regulations.

As noted above, the final rule also provides that the list of factors representing fulfillment of the CRA for purposes of the CRA Sunshine provisions includes providing or refraining from providing oral or written comments or testimony to an agency concerning the performance under the CRA of an insured depository institution that is a party to an agreement or that is an affiliate of a party to an agreement. Providing or refraining from providing written comments concerning the performance under the CRA of an insured depository institution that is a party to an agreement or that is an affiliate of a party to an agreement where the comments must be included in the institution's CRA public file also is always a factor that represents fulfillment of the CRA. Providing oral or written comments or testimony to an agency concerning the adequacy of an institution's CRA performance or providing written comments that must be included in the institution's CRA public file are activities that are always considered to be in fulfillment of the CRA under the final rule, without regard to whether the communication comments favorably or unfavorably on the CRA performance of the institution.

The terms of a written agreement generally determine whether the contract, arrangement or understanding is in fulfillment of the CRA. However, the parties to a written agreement may not avoid coverage under the Act by reaching an oral understanding, such as, for example, an understanding that a party will submit (or refrain from submitting) oral or written CRA-related comments or testimony to an agency or written comments to an insured depository institution that would have to be included in the institution's CRA public file, and excluding this understanding from the terms of the written agreement.

Commenters generally supported the original proposal to exclude from the list of factors activities designed to ensure compliance with the Federal laws that prohibit discriminatory or other illegal credit practices, such as the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Commenters generally agreed that inclusion of these activities in the list of factors could have an unintended and detrimental impact on compliance with and enforcement of the fair lending laws by, for example, discouraging agreements to hire ''mystery shoppers'' to test the institution's compliance with the fair lending laws or agreements to settle a fair lending complaint and improve fair lending performance. Accordingly, the list of factors has not been changed to include these or other activities.

5. Value

An agreement is subject to the CRA Sunshine provisions only if it calls for an insured depository institution or affiliate to provide to one or more persons cash payments, grants, or other consideration of more than $10,000 in any calendar year, or to make loans that have an aggregate principal amount of more than $50,000 in any calendar year. The statutory threshold is based on the total value of payments and loans *provided* for under the agreement and does not require that these payments or loans actually be made to a party to the agreement.[18]

The final rule follows the proposed rule in providing that all cash payments, grants, consideration or loans provided by an insured depository institution or affiliate under the agreement, including amounts provided to individuals or entities that are not parties to the agreement, will be considered in determining whether an agreement meets the rule's dollar thresholds. However, the rule provides that if an agreement includes a loan, extension of credit or loan commitment that, if done separately, would be exempt from coverage and also provides for the institution or affiliate to provide other funds or resources, the parties may exclude the exempt loan, extension of credit or loan commitment when determining if the agreement meets the dollar thresholds of the rule. (*See* section ____.2(e)(2) of the rule and the discussion under section III.A.2.b. above concerning qualifying loans).

Under the final rule, an agreement that provides for payments to be made in any calendar year in excess of the dollar thresholds established by the statute is a covered agreement for its entire term. The agencies believe that using a calendar year period for these calculations should facilitate compliance with the rule by providing all parties to a covered agreement a uniform basis for determining whether the agreement is covered by the rule and because the terms of an agreement may not coincide with the parties' fiscal years.

The final rule provides that the annual value of an agreement that does not have a fixed schedule of payments is considered to be the entire value of the agreement. (*See* section ____.2(e)(1).) Commenters were mixed in their view of how to determine the value of a multi-year agreement that does not specify when payments should be made. Some commenters believed that the annual value of these agreements should be determined by amortizing the total value over the life of the agreement, or by reference to actual disbursements, while others suggested that the entire value be credited to the first year of the agreement. The final rule credits the entire value of this type of agreement to the first year of the agreement. This approach is the easiest to calculate and is the least likely to cause an agreement unexpectedly to become a covered agreement.

The agencies requested comment on how to value an agreement that does not specify the amount of payments, grants, loans or other consideration to be provided under the agreement, such as an agreement for an insured depository institution to open a branch or to begin offering a new loan product. Commenters that addressed this issue suggested allowing the parties to estimate the value of the agreement in these cases or to assume that the agreement had no value.

In circumstances where an agreement does not specify the amount of payments, grants, loans or other consideration to be provided under the agreement, the agencies believe that the parties must reasonably estimate the value of the agreement. The final rule allows insured depository institutions that choose to report a list of covered agreements to report the estimated value of the agreement at that time (*see* section III.B.3. below).

The following are examples of the value provisions of the rule. These examples, which are not included in the rule, illustrate only the application of the dollar thresholds of the rule, and assume that the agreement otherwise qualifies as a covered agreement.

Example 1: An insured depository institution enters into a written agreement with a small business investment company pursuant to which the institution will invest $25,000 in the company. Since the agreement does not establish a schedule of payments, the entire $25,000 is deemed to be provided in the first year. Accordingly, the agreement meets the dollar threshold criterion to be a covered agreement.

Example 2: An insured depository institution and a community organization enter into a written agreement pursuant to which the institution will invest $1 million in a state-sponsored investment fund that supports affordable housing initiatives for low- and moderate-income individuals during the next year. The community organization will not receive any funds or other resources from the insured depository institution or its affiliates under the

[18] *See* 12 U.S.C. 1831y(e)(1)(A)(i).

agreement. The agreement meets the value threshold criterion for a covered agreement under the proposed rule because the value of the agreement for purposes of the CRA Sunshine provisions does not depend on who receives payments or resources under the agreement.

Example 3: An affiliate of an insured depository institution provides a $100,000 loan to an association of small businesses pursuant to a written agreement. The loan is on market terms and not for purposes of re-lending. The agreement also provides for the affiliate to make a $5,000 grant to the local chamber of commerce's small business incubator. Because the loan is made on market terms and not for purposes of re-lending, the loan would be an exempt agreement under the rule if it were a separate agreement (*see* section ____.2(c)(2)). Accordingly, the value of the loan may be excluded in determining the value of the agreement. After excluding the loan, the agreement would not meet the dollar criterion of the rule.

Example 4: An insured depository institution and a NGEP enter into a written agreement that requires an affiliate of the insured depository institution to provide the organization with a grant of $5,000 in 2001, $8,000 in 2002, and $11,000 in 2003. The agreement exceeds the dollar threshold criterion of the rule because the agreement provides for payments in excess of $10,000 during 2003. Assuming the agreement meets the other requirements of the rule and is not otherwise exempt, the agreement is a covered agreement for its entire term.

6. Related Agreements Considered a Single Agreement

In two circumstances, section 48(e) requires that separate agreements or contracts be aggregated for purposes of determining whether the agreements—taken as a whole—meet the definition of a covered agreement.[19] The agencies received very few comments concerning the aggregation provisions of the proposed rule. Some commenters stated that the aggregation rules should be deleted or should apply only when necessary to prevent circumvention of the CRA Sunshine provisions. The agencies have retained the aggregation rules included in the final rule because the CRA Sunshine provisions require the aggregation of agreements in certain circumstances, and excluding the aggregation principles from the final rule would require institutions and NGEPs to consult both the statute and the rule to determine compliance with those provisions.

Other commenters requested clarification of certain aspects of the aggregation rules. Those matters are addressed below.

a. *Agreements entered into by the same parties.* Under the final rule, all written contracts, arrangements, or understandings that are entered into by an insured depository institution or affiliate of an insured depository institution will be considered to be part of a single agreement if the contracts, arrangements, or understandings are entered into with the same NGEP within a 12-month period and each agreement is in fulfillment of the CRA. This aggregation rule applies to all written agreements entered into during the 12-month period by the same NGEP on the one hand, and any part of the same organization, including an insured depository institution and any of its affiliates, on the other hand. The following examples illustrate this aggregation principle and assume that a CRA communication has occurred before each agreement.

Example 1: In November, an insured depository institution enters into a written agreement with Community Development Organization, Inc. pursuant to which the institution makes an $8,000 investment in the organization. In April of the next year, an affiliate of the insured depository institution and Community Development Organization, Inc. enter into a written agreement under which the affiliate makes an additional $8,000 investment in the organization. For purposes of this example, both investments are assumed to be qualified investments under the CRA Regulations. The separate agreements must be aggregated under the rule and the combined agreement meets the $10,000 dollar threshold of the rule. Accordingly, the agreements are jointly considered a covered agreement.

Example 2: In September, an insured depository institution orally agrees to donate $15,000 of computer equipment to a local housing organization. In January of the following year, the institution and organization enter into a written agreement for the institution to make a $5,000 CRA qualified investment in a local housing project that is eligible for low-income housing tax credits. The agreements do not need to be aggregated under the rule because the September agreement was not in writing.

Example 3: In February, an insured depository institution enters into a written agreement with Partnership A for the institution to make a $9,000 grant to Partnership A for the purpose of rehabilitating affordable housing units. In August of the same year, an affiliate of the insured depository institution enters into a written agreement with Partnership A under which the affiliate makes a payment of $9,000 so that its employees may have access to the child care center operated by Partnership A. The August agreement is not in fulfillment of the CRA. Accordingly, the two agreements would not be aggregated under the rule.

b. *Substantively Related Contracts.* Section 48(e)(1)(A)(ii) requires the aggregation of separate but ''substantively related contracts'' even where the contracts are entered into with different NGEPs. Unlike the aggregation rule discussed above, the rule aggregating ''substantively related contracts'' applies only to separate, written contracts and does not apply to other types of written arrangements or understandings.

The rule defines written contracts entered into by an insured depository institution or any of its affiliates as ''substantively related'' if the contracts were negotiated in a coordinated fashion. The rule does not require that the separate contracts each be in fulfillment of the CRA or that the parties to the contracts (other than the banking organization) be the same. Thus, the rule prevents parties from avoiding the disclosure and reporting obligations of the statute by separating out from an agreement payments or grants that may not themselves be in fulfillment of the CRA. The following examples illustrate this aggregation principle and assume that a CRA communication occurred before each contract.

Example 1: Two housing organizations jointly approach an insured depository institution to obtain funding. A representative of the insured depository institution meets with both organizations at the same time to discuss their funding needs. The institution enters into a written contract with one organization to provide it with $9,000 for the purpose of rehabilitating affordable housing units. The institution enters into a separate written contract with the other organization to provide the organization with an unrestricted grant of $9,000. Because the contracts were negotiated in a coordinated fashion, the contracts must be aggregated under the rule. When aggregated, the contracts would meet the statute's $10,000 dollar threshold and each contract would be a covered agreement.

Example 2: A bank holding company announces its intention to acquire an insured depository institution. A Florida-based group and a California-based group independently approach the bank holding company to seek funding for specific projects and separately negotiate written contracts with the bank holding company. The contracts would not be aggregated under the rule, and each contract would be a covered agreement only if that contract on its own met the requirements of the rule.

7. Multiparty Agreements

The agencies requested comment on how the rule should apply in circumstances where a covered agreement involves several parties and a CRA communication has been made by or concerning only one of the parties. This issue arises where several NGEPs enter into a covered agreement with an insured depository institution and only one of the entities or persons has made a CRA communication or where a NGEP has a CRA communication concerning one insured depository institution and

[19] *See* 12 U.S.C.1831y(e)(1) and (2).

subsequently enters into a covered agreement jointly with the institution and several other unaffiliated insured depository institutions. Several commenters indicated that the disclosure and reporting requirements of the rule should only apply to parties to a covered agreement that have engaged in a CRA communication.

The final rule provides that a NGEP that is a party to a covered agreement that involves multiple NGEPs is not required to comply with the requirements of the rule if two requirements are met. (*See* section ____.3(d).) First, the NGEP must not have had a CRA communication concerning any insured depository institution or affiliate that is a party to, or an affiliate of a party to, the agreement. Second, no officer, employee or representative of the NGEP identified in section ____.3(b)(4) of the rule may have knowledge at the time the agreement is entered into that another NGEP that is a party to the agreement has had a CRA communication. Similarly, an insured depository institution or affiliate that is a party to a covered agreement that involves multiple insured depository institutions or affiliates is not subject to the disclosure and reporting requirements if (1) no NGEP that is a party to the agreement has had a CRA communication with or concerning the institution or affiliate, and (2) no officer or employee of the institution or affiliate identified in section ——.3(b)(3)(i) has knowledge that the NGEP has had a CRA communication with another insured depository institution or affiliate that is a party to the agreement. In the context of multiparty agreements, covering parties that have knowledge of a CRA communication by other parties to the agreement assures that parties do not avoid the requirements of the CRA Sunshine provisions by refraining from making a CRA communication because the party is aware that the communication has already been made by another party.

B. Disclosure of Covered Agreements

Section 48(a) requires that each party to a covered agreement fully disclose the agreement in its entirety and make the full text of the agreement available to the public and the appropriate agency with supervisory responsibility over the relevant insured depository institution.[21] The disclosure requirements of section 48 apply only to covered agreements entered into after November 12, 1999.[22]

1. Disclosure to the Public

Section ____.6 of the final rule requires that each party to a covered agreement make a complete copy of the agreement available to any member of the public upon request. A covered agreement must be made available during the entire term of the agreement and the 12 month period following expiration of the agreement, without regard to whether funds are paid or received under the agreement during the year in which a request for the agreement is made. A party may charge the requestor for the costs of copying and sending an agreement, so long as the fees are reasonable.

Commenters generally supported having maximum flexibility to make covered agreements available to the public and to charge requestors reasonable fees to cover the costs of making covered agreements available.[23] Accordingly, the final rule does not prescribe any particular method a party must employ in making a covered agreement available to the public. The agencies expect that parties to covered agreements will employ methods of making agreements available that will not require requestors to go through unreasonable efforts to obtain the agreements. For example, a party may make a covered agreement available to any individual or entity by mailing it to the requestor. A party also may make an agreement available to an individual or entity with access to the Internet by posting the agreement on a publicly accessible website or to members of the public within a local geographic area by making the agreement available at an office within that area. In addition, a party may choose to publish a list of its covered agreements and provide the full text of an agreement only to any individual or entity that requests a particular agreement identified in the list.

Several commenters requested clarification concerning how a party should comply with the statute's public disclosure requirement when a covered agreement consists of or involves multiple documents. For example, commenters questioned whether all of the supporting documentation relating to a loan or grant must be disclosed. The final rule follows the statute and requires only that the written contract, arrangement, or understanding be disclosed and does not require the disclosure or supporting documentation. When the covered agreement consists of a single document, that document must be disclosed. When the covered agreement consists of or is reflected by multiple documents, the party may disclose all of the written documentation relating to the agreement or only those documents that set forth the primary terms of the agreement, including (1) the names and addresses of the parties to the agreement; (2) the amount of any payments, fees, loans, or other consideration to be made or provided by any party to the agreement; (3) any description of how the funds or other resources provided under the agreement are to be used; and (4) the term of the agreement (if the agreement establishes a term).

Several commenters requested that the rule establish a fixed period of time, such as 30 days, within which a party must respond to a request for a covered agreement. The final rule follows the text of section 48 and does not specify a time period for responding to public requests for an agreement. The agencies expect that the parties will promptly respond to requests from the public for covered agreements.

As with the proposed rule, the final rule gives discretion to an insured depository institution to fulfill its public disclosure obligation by placing a copy of a covered agreement in its CRA public file and making it available in accordance with the procedures set forth in the CRA Regulations relating to public files. Several commenters recommended that affiliates of insured depository institutions that are parties to covered agreement also be permitted to disclose a covered agreement to the public by placing it in the CRA public file of an affiliated insured depository institution. The final rule allows affiliates to fulfill their disclosure obligations in this manner so long as the affiliated insured depository institution then makes the agreement publicly available in accordance with the rules governing public disclosure of information in the CRA public file. When an affiliate relies on the CRA public file of an insured depository institution affiliate to fulfill the disclosure obligations of the rule, it must refer members of the public that

[21] 12 U.S.C. 1831y(a).

[22] The rule includes special transition provisions governing the disclosure of covered agreements entered into after November 12, 1999, but before the effective date of the rule. *See* section III.D below.

[23] Some commenters questioned whether a party to a covered agreement may also charge a requestor for the cost of searching its records for covered agreements. The final rule, like the provisions of the CFA Regulations governing the public availability of information in an insured depository institution's CRA public file, does not authorize the recovery of search costs. *See* 12 CFR 25.43 (OCC); 12 CFR 228.43 (Board); 12 CFR 345.43 (FDIC); 12 CFR 563e.43 (OTS).

request a copy of the affiliate's covered agreements to the affiliated insured depository institution.

The proposed rule provided that the parties' obligation to make a covered agreement publicly available terminated 12 months after the end of the term of the agreement, and the agencies requested comment on whether this time period should be shorter or longer. Several commenters stated that the time period proposed was reasonable, while others advocated a shorter time period or no time period at all after the term of an agreement. In order to fulfill the purposes of section 48, the agencies believe that the parties to a covered agreement must make the agreement available to the public for a reasonable period of time. After reviewing the comments received, the final rule continues to require covered agreements to be available to the public for a period of 12 months after the term of the agreement.

2. Treatment of Confidential and Proprietary Information

Section 48(h)(2)(A) directs the agencies to ensure that their implementing regulations ''do not impose undue burden on the parties [to a covered agreement] and that proprietary and confidential information is protected.''[24] This provision must be read in harmony with section 48(a), which requires that a covered agreement ''shall be in its entirety fully disclosed, and the full text thereof made available * * * to the public.''[25] Other provisions of section 48 require the reporting of the terms and value of covered agreements, the identity of the parties to the agreement, and the uses of funds and resources provided under covered agreements.

The proposed rule provided that a party could withhold information contained in a covered agreement from public disclosure only if the party received a determination from the relevant supervisory agency that such information could be withheld by the agency under the Freedom of Information Act (5 U.S.C. 552) (FOIA). The agencies noted, moreover, that the Act's directive that terms of covered agreements be made available to the public could require disclosure of some types of information that an agency might normally be able to withhold from disclosure under the FOIA.

The agencies requested comment on a number of issues associated with the disclosure of potentially confidential and proprietary information in covered agreements, including the likelihood that covered agreements would contain confidential and proprietary information, whether FOIA standards should be applied in determining whether information can be withheld, and whether alternative procedures could be adopted.

Commenters indicated that covered agreements may often contain information they ordinarily consider to be confidential or proprietary, such as information about new and innovative programs an insured depository institution is offering, underwriting standards for loans, competitive pricing information, or personal data that would otherwise be protected under applicable privacy rules. Some commenters expressed concern that the requirement to disclose publicly covered agreements could harm their competitive position or dissuade insured depository institutions and their affiliates from entering into agreements with NGEPs that are in fulfillment of the CRA.

Many commenters indicated that requesting a determination of whether information can be withheld from disclosure from the relevant supervisory agencies would be burdensome and time consuming. They suggested the agencies streamline the process for obtaining such determinations or, alternatively, provide a list of information that a party could withhold from disclosure without obtaining an agency determination. Many commenters expressed support for using the FOIA as the standard for determining whether information can be withheld from public disclosure.

In light of the comments received, the agencies have revised the procedures for withholding information from public disclosure to clarify the process for determining whether information can be withheld from public disclosure and limit the circumstances in which the relevant supervisory agency is involved in making the determination. As discussed above, section 48 directs that certain information in covered agreements be disclosed. Accordingly, the final rule requires the disclosure of the following information contained in a covered agreement:

- The names and addresses of the parties to the agreement;
- The amount of any payments, fees, loans, or other consideration to be made or provided by any party to the agreement;
- Any description of how the funds or other resources provided under the agreement are to be used;
- The term of the agreement (if the agreement establishes a term); and
- Any other information that the relevant supervisory agency determines is not properly exempt from public disclosure.

The agencies anticipate making a determination that additional information in a covered agreement must be disclosed only in response to a specific request for such a determination. (*See* section ____.6(b)(4).) Any such request must be in writing and submitted to the relevant supervisory agency in accordance with its rules concerning the availability of information.[26]

The final rule allows a party to a covered agreement to withhold from public disclosure any information not described above if the party believes the relevant supervisory agency could withhold that information under The FOIA. There is no requirement that the party obtain a determination from the relevant supervisory agency that such information can be withheld. Standards the agencies use to determine whether they can withhold information in their records from public disclosure records are contained in subsection (b) of The FOIA (5 U.S.C. 552(b)).

With regard to the disclosure of information the agencies receive under the final rule, including copies of covered agreements and annual reports, section ____.8 provides that such information will be made available in accordance with The FOIA and the rules regarding the availability of information of the relevant supervisory agency.

3. Filing of Covered Agreement With Agencies

Section 48(a) also requires each party to a covered agreement to make the agreement available to the appropriate agency. The proposed rule required each insured depository institution or affiliate that is a party to a covered agreement to file a complete copy of the agreement with each relevant supervisory agency within 30 days after entering into the agreement. NGEPs were obligated to file a covered agreement with a relevant supervisory agency within 30 days of receiving a request from the agency.

Some commenters requested that the agencies allow insured depository institutions and affiliates, like NGEPs, to make a covered agreement available to the relevant supervisory agency only upon an agency's request. Others suggested that the rule allow insured depository institutions and affiliates the option of filing with the agencies either

[24] 12 U.S.C. 1831y(h)(2)(A).

[25] 12 U.S.C. 1831y(a).

[26] *See,* 12 CFR Part 4 (OCC); 12 CFR Part 261 (Board); 12 CFR Part 309 (FDIC); 12 CFR Part 505 and 31 CFR Part 1 (OTS).

copies of covered agreements or a list of their covered agreements. Commenters also suggested that the agencies allow insured depository institutions and affiliates to file covered agreements with the agencies on a periodic basis, such as once each quarter or once each year, rather than 30 days after entering into each agreement, or by placing agreements in an institution's CRA public file.

The agencies believe that it is important for the agencies to receive notice when parties enter into a covered agreement and to be able to gain prompt access to the covered agreement. Such notice and access allow the agencies to monitor compliance by the parties with the disclosure and reporting requirements of section 48 and respond to requests from interested members of the public for copies of, or information related to, covered agreements. The agencies, however, have sought to streamline the agency disclosure obligations imposed on insured depository institutions and affiliates in a manner consistent with these principles.

In particular, the final rule allows an insured depository institution or affiliate to fulfill its agency disclosure obligation by filing, within 60 days after the end of each calendar quarter, either a complete copy of each covered agreement entered into during the calendar quarter, or a list of all covered agreements entered into during the calendar quarter. If the institution or affiliate elects to file a list of agreements with the agency, the list must provide the following information concerning each covered agreement entered into during the relevant calendar quarter:

- The name and address of each party to the agreement;
- The date the agreement was entered into;
- The estimated total value of all payments, fee, loans and other considerations to be provided by the institution or any affiliate under the agreement; and
- The date the agreement terminates.

An institution or affiliate that files a list of covered agreements with the relevant supervisory agency must provide any relevant supervisory agency a complete copy of any covered agreement referenced in the list within 7 calendar days of receiving a request from the agency for the agreement. The rule allows an agency to request a copy of an agreement referenced in a list for up to 36 months after the term of the agreement. The final rule also continues to allow insured depository institutions and affiliates that are parties to the same covered agreement to file jointly the appropriate documents with each relevant supervisory agency.

NGEPs that are parties to covered agreements must make a complete copy of each agreement available to any relevant supervisory agency on the agency's request. The NGEP must provide the requesting agency with a copy of the agreement within 30 calendar days of the agency's request. As with disclosure to the public, a NGEP's obligation to make an agreement available to an agency terminates 12 months after the end of the agreement's term.

Whenever an insured depository institution, affiliate or NGEP files a copy of a covered agreement with an agency-either at the agency's request or, in the case of an institution or affiliate, as part of a quarterly filing-the institution, affiliate or NGEP must provide the agency with a *complete* copy of the agreement. If the party proposes to withhold information contained in the agreement, the party must also file a public version of the agreement that excludes such information and provide an explanation justifying the exclusions under the FOIA. The agencies will not keep information confidential under the FOIA that a party would be required to disclose to the public under section 48. Accordingly, the parties may not propose to withhold, and the agencies will not withhold under the FOIA, the types of information in a covered agreement that a party must make publicly available under section ____.6(b)(3) of the rule.

4. Relevant Supervisory Agency

The final rule continues to use the term ''relevant supervisory agency'' to identify the appropriate agency for a particular covered agreement. The agencies have moved the definition of this term from section ____.6 of the rule to the general definitions section (section ____.11) because the term is used in multiple sections of the rule. The agencies otherwise have made no substantive changes to the definition. Under the rule, the ''relevant supervisory agency'' for a covered agreement is:

- The OCC in the case where—

—The parties to the agreement include a national bank or subsidiary of a national bank; or

- A national bank or subsidiary or CRA affiliate of a national bank provides funds or resources under the agreement;
- The Board in the case where—

— The parties to the agreement include a state member bank, subsidiary of a state member bank, bank holding company, or subsidiary of a bank holding company (other than an insured depository institution or subsidiary thereof); or

—A state member bank or subsidiary or CRA affiliate of a state member bank provides funds or resources under the agreement;

- The FDIC in the case where—

— The parties to the agreement include a state nonmember bank or subsidiary of a state nonmember bank; or

—A state nonmember bank or subsidiary or CRA affiliate of a state nonmember bank provides funds or resources under the agreement; or

- The OTS in the case where—

— The parties to the agreement include a savings association, subsidiary of a savings association, savings and loan holding company or subsidiary of a savings and loan holding company; or

—A savings association or subsidiary or CRA affiliate of a savings association provides funds or resources under the agreement.

Under the definition, more than one agency may be the relevant supervisory agency with respect to a single covered agreement. For example, if a national bank, state nonmember bank, and a savings association provide funds pursuant to a covered agreement entered into by their parent bank holding company, the OCC, FDIC, OTS, and Board would each be a relevant supervisory agency for the agreement.

Several commenters expressed concern that requiring filings with multiple agencies under these circumstances could increase the burden of complying with the statute. Some commenters asserted that the rule should allow all filings to be made with one regulatory body, such as the Federal Financial Institutions Examinations Council, and asserted that such a procedure would reduce burden or help ensure the consistent review of confidential and proprietary information that may be contained in a covered agreement.

Section 48 directs that the ''appropriate Federal banking agency'' receive agreements and annual reports under the statute. The agencies continue to believe that the rule properly identifies the appropriate Federal banking agency for a covered agreement by ensuring that a covered agreement and its related annual reports are filed with the agency or agencies that have supervisory authority over the insured depository institution or affiliate that is involved with the agreement, either as a party or as a source of funds or resources paid under the agreement.

C. Annual Reports

The Act requires each NGEP, insured depository institution, or affiliate of an insured depository institution that is a party to a covered agreement to file a report at least annually concerning disbursement, receipt and use of funds under the covered agreement. Section ____.7 of the final rule implements these annual reporting requirements. The rule's annual reporting obligations apply only to covered agreements entered into on or after May 12, 2000.[27]

The proposed rule required each party to a covered agreement to file an annual report for the fiscal year that the agreement was entered into and each subsequent fiscal year during the term of the agreement. The proposal also provided that a NGEP did not have to file an annual report for any fiscal year during the term of a covered agreement if the NGEP did not receive any funds under the covered agreement in that year.

Commenters generally supported the reporting exception provided to NGEPs. Several commenters requested that the agencies also provide insured depository institutions and affiliates a similar exception from the annual reporting requirement for years in which an institution or affiliate does not make or receive payments, fees, or loans under a covered agreement.

Section 48 requires a NGEP that is a party to a covered agreement to file a report at least once a year providing ''an accounting of the use of funds received pursuant to'' the covered agreement during the preceding 12-month period.[28] The Act requires an insured depository institution or affiliate that is a party to a covered agreement to file an annual report concerning funds or other resources provided or received by the institution or affiliate under the agreement and any loans, investments, or services provided by any party under the agreement during the preceding 12-month period.[29]

In light of these requirements and the comments received, the final rule provides that a NGEP must file an annual report for each fiscal year in which the NGEP receives or uses funds or other resources under a covered agreement. Because the statute focuses on both the receipt and use of funds by a NGEP under a covered agreement, the agencies have modified the rule to require a NGEP to file an annual report for any fiscal year in which the NGEP uses funds received under a covered agreement, even if the funds were not received in that year. An insured depository institution or affiliate must file an annual report for a fiscal year if the institution or affiliate made or received any payments, fees, or loans under a covered agreement during the fiscal year, or has data that must be reported on loans, investments, and services provided by any party to the agreement during the fiscal year.

These requirements ensure that a party files an annual report for each year that the party has information that must be provided to the relevant supervisory agency, and that an annual report is not filed for any fiscal year where the relevant party has no information that must be reported. The agencies note that a NGEP must file an annual report for a fiscal year if it received or used *any* funds or other resources under the covered agreement during the fiscal year, even if the amount of funds or resources received or used are less than the value thresholds discussed above for defining a covered agreement. Any annual report must be filed with each relevant supervisory agency for the covered agreement.

The following examples illustrate these reporting requirements:

Example 1: A savings association and a community development organization enter into a 3-year covered agreement pursuant to which the association will invest $100,000 in the organization. The savings association in fact provides $95,000 to the organization in the first year of the agreement and the remaining $5,000 to the organization in the second year of the agreement, and the organization uses the funds in the fiscal years that they are received. The organization must file an annual report with the OTS for each of the first two fiscal years of the agreement because the organization received and used funds under the agreement in those years. The savings association also must file an annual report for each of the first fiscal two years of the agreement since it made payments in those years. Because the organization does not receive or use funds under the covered agreement during the third year of the agreement, the organization and savings association would not be required to file an annual report with the OTS for that year.

Example 2: A state nonmember bank enters into a covered agreement with a community organization to make $1 million in community development grants in the community over the next 5 years. The community organization will not receive any funds or other resources under the agreement (including under the grants as they are made), nor will it provide any services under the agreement. Both parties must make the covered agreement available to the public and the FDIC. In addition, the state nonmember bank must file an annual report for any year in which it makes payments concerning grants made and actions taken under the agreement. The community organization is not required, however, to file any annual reports concerning the agreement because the organization receives and uses no funds or resources under the agreement.

1. Annual Reports Filed by NGEPs

Section 48(c) requires each NGEP that is a party to a covered agreement to file a report at least annually with the appropriate banking agency providing an accounting of how the NGEP used any funds received under the covered agreement during the previous year. The proposed rule required the annual report filed by a NGEP to set forth (1) the name and mailing address of the NGEP, (2) information sufficient to identify the covered agreement for which the report is filed, such as by providing the names of the parties to the agreement and the date it was entered into or by providing a copy of the agreement, and (3) the amount of funds received by the NGEP under the covered agreement during the fiscal year. The final rule retains these information requirements.

a. *Itemized List of Uses of Funds.* Section 48(c) requires that the annual report of a NGEP provide a detailed, itemized accounting of how the NGEP used during the previous year any funds or resources received under the covered agreement. The proposed rule required the accounting to be provided in one of two ways—either a description of the specific purpose or purposes for which the funds were used, or an itemized list of the amount of general purpose funds used for pre-defined expense categories. The proposed rule required a NGEP to use the specific purpose reporting method for any funds or other resources that the NGEP received and allocated for a specific purpose. Under the specific purpose reporting method, the NGEP would provide in its annual report a description of each specific purpose for which the funds or resources were used during the fiscal year; and the amount of funds or resources used for each specific purpose during the fiscal year.

For funds or other resources that were used for general or unspecified purposes, the proposed rule required the NGEP to report the amount of funds used during the fiscal year for each category of expenses included in the detailed, itemized list set forth in section 48(c)(3). These categories required the NGEP to report the aggregate amount of funds used during the fiscal year for compensation of officers, directors, and employees; administrative expenses; travel expenses; entertainment expenses;

[27] The rule includes special transition provisions governing the filing of annual reports that relate to the fiscal year of any party to a covered agreement that ends prior to January 1, 2001. *See* section III.D below.

[28] *See* U.S.C. 1831y(c)(1).

[29] *See* U.S.C. 1831y(b).

payment of consulting and professional fees; and other expenses and uses.

Commenters generally supported the itemized list and recommended that the agencies not use their statutory authority to expand the list of expense categories included in section 48(c)(3). The comments received concerning the proposed specific purpose reporting method were mixed. Some commenters supported the streamlined reporting procedures for specific purpose funds because they believed it would require the reporting of less information than the itemized list of expenses. Some commenters that supported this reporting method requested that the agencies provide NGEPs with the option of using the specific purpose reporting method or the detailed itemized list to report the use of specific purpose funds.

Several commenters opposed the specific purpose reporting method on the basis that section 48(c) does not provide for this type of reporting. In addition, some commenters expressed concern that the proposed rule's definition of specific purpose funds was too broad or unclear or requested additional guidance on when a NGEP receives and uses funds or other resources for a specific purpose.

Section 48(c)(1) requires a NGEP to provide annually ''an accounting of the use of funds received pursuant to each [covered] agreement during the preceding 12-month period.'' [30] Section 48(c)(3) provides that this annual accounting ''shall include a detailed, itemized list of the uses to which such funds have been made, including compensation, administrative expenses, travel, entertainment, consulting and professional fees paid, and such other categories, as determined by regulation by the appropriate Federal banking agency.'' [31] The final rule implements these requirements by providing that the annual report of an NGEP must provide a detailed, itemized list of how any funds or other resources received by the NGEP at any time under the covered agreement were used during the fiscal year using the categories of expenses included in section 48. Unlike the proposal, the list must disclose how the NGEP during the fiscal year used *any* funds or resources received under the covered agreement, including funds or resources that were received in a previous fiscal year but that were not used in that fiscal year. The agencies have modified the rule in this way to more closely track the provisions of section 48.

Under section 48 and the rule, the itemized list of expenses must include, at a minimum, the amount of funds used during the fiscal year for—

- Compensation of officers, directors, and employees;
- Administrative expenses;
- Travel expenses;
- Entertainment expenses;
- Payment of consulting and professional fees; and
- Other expenses and uses (specify expense or use).

The annual report may reflect the total amount of funds from all sources that the NGEP used during the fiscal year for the types of expenses listed above. The agencies may determine from this and other information included in the annual report the proportion of funds that the NGEP received under the covered agreement that were used for each category of expenses listed above. If a NGEP uses funds under a covered agreement for certain categories of expenses, such as ''travel expenses,'' the annual report need only reflect the amount used for that category.

The agencies also believe that it is appropriate and consistent with the statute to allow a NGEP, where possible, to provide a more detailed accounting of how it used funds received under a covered agreement. A more detailed accounting can be provided when a NGEP allocates and uses funds received under a covered agreement for a specific purpose that is more limited than the categories of expenses listed above, *i.e.,* it is for a specific expense in one of the categories listed above.

A specific purpose would not include a general statement that funds were received, for example, for services rendered or to fund a general program or to fund a project that involved spending in multiple categories from the more detailed list. Instead, as explained below, the final rule clarifies that this reporting option is available only if the NGEP allocated and used the funds received under the agreement for a purpose that is at least as specific and limited as a category of expenses in the itemized list, such as to purchase a computer or to fund a specific trip.

Accordingly, the final rule allows a NGEP that allocates and uses funds received under a covered agreement for a specific purpose to report how it used such funds by using the detailed, itemized list, or stating the amount received and used for the specific purpose and providing a brief description of the specific purpose. In the event a NGEP chooses to use the more specific reporting option, the NGEP must use the detailed, itemized list to report the use of any funds that were not allocated and used for a specific purpose.

The final rule includes examples illustrating these reporting provisions. (*See* section ____.7(d)(5).) The first example involves a NGEP that receives $15,000 under a covered agreement and uses these funds to support its general operations during the fiscal year. In these circumstances, the NGEP's annual report must state that it received $15,000 during the fiscal year under the agreement and provide the total amount of funds and resources that the NGEP used during the fiscal year for each category of expenses included in the detailed, itemized list (*i.e.,* for compensation, administrative, travel and entertainment expenses, consulting and professional fees, and other expenses and uses).

The second example involves an organization that receives $15,000 under a covered agreement and allocates and uses these funds during the fiscal year to purchase computer equipment to support its activities. Because the organization allocated and used the funds for a purpose that is more narrow and limited than the categories of expenses in the itemized list, the organization would have the option of reporting either the total amount it used during the year for each type of expense in the itemized list of expenses described above, or a statement that it used the $15,000 to purchase computer equipment.

The third example involves a group that receives funds under a covered agreement and uses some of these funds during the fiscal year for a specific purpose (to fund a particular business trip) and some of the funds for other purposes. Since the group did not use all of the funds for a specific purpose, the group's annual report must provide the amount that the group used during the year for each category of expenses in the itemized list. The group also could report that it allocated and used a specified portion of the funds for the business trip and briefly describe the trip.

b. *Use of Other Reports.* As noted above, section 48(h)(2)(A) directs the agencies to ensure that their regulations implementing section 48 ''do not impose an undue burden on the parties.'' [32] The Conference Report for the Act also indicates that the agencies should allow reporting parties to use reports prepared for other purposes to fulfill the annual reporting

[30] 12 U.S.C. 1831y(c)(1).

[31] 12 U.S.C. 1831y(c)(3).

[32] 12 U.S.C. 1831y(h)(2)(A).

requirements.[33] Accordingly, the final rule does not require that a NGEP's annual report be prepared on a special form or in a particular format. Instead, the final rule provides that a NGEP's annual report may consist of or incorporate reports or documents that the NGEP has prepared for public, internal or other purposes so long as the documents filed with the relevant supervisory agency contain all of the information required by the rule.

The preamble to the proposed rule indicated that the agencies had reviewed several tax forms commonly filed by tax-exempt nonprofit organizations and noted that Internal Revenue Service Return of Organization Exempt From Income Tax on Form 990 requires the filer to provide information that is at least as detailed, and in some cases more detailed, than the list of expenses required under section 48(c). Accordingly, the preamble to the proposed rule specifically indicated that NGEPs could use a completed Form 990 to provide the information required by the rule.

Commenters expressed overwhelming support for allowing NGEPs to use documents prepared for other purposes to fulfill the rule's reporting requirements. Commenters in particular praised the agencies for allowing NGEPs to use a Form 990 to fulfill their reporting obligations and many requested that the agencies incorporate this guidance in the text of the final rule. In response to these requests, the rule expressly allows a NGEP to use a Form 990 to provide the information required by the rule and includes an example illustrating how a NGEP could use a Form 990 to provide the expense information required by the rule. (*See* section ____.7(d)(3) and (d)(5)(i).)

Some commenters also requested that the agencies clarify whether a NGEP could use other tax forms, such as Short Form Return of Organization Exempt From Income Tax on Form 990EZ, to fulfill its annual reporting obligation. The final rule continues to provide that the annual report of a NGEP may consist of or incorporate *any* report or Federal or state tax form so long as the documents submitted, when taken as a whole, contain all of the information required by the rule. Accordingly, a NGEP could incorporate a copy of an IRS Form 990EZ in its annual report. However, unless the form contains all the information required by the rule, the NGEP must supplement the form with the additional information necessary to fulfill the rule's reporting requirements.

[33] *See* H.R. Conf. Rep. No. 106–434 at 179 (1999).

c. *Consolidated Annual Reports Permitted.* The proposed rule permitted a NGEP that is a party to 5 or more covered agreements to file a single consolidated report covering all of the NGEP's covered agreements. The agencies requested comment on whether consolidated reports should be permitted when a NGEP is party to 2 or more covered agreements. Commenters generally expressed support for permitting a NGEP to file consolidated reports when it is a party to 2 or more agreements, and the final rule makes that change.

A NGEP's consolidated report must identify the NGEP filing the report and each agreement covered by the report. In addition, in order to facilitate the tracking of payments under covered agreements, the final rule requires that any consolidated annual report filed by a NGEP indicate the amount the NGEP received under each covered agreement included in the report during the fiscal year. All other information required by the rule may be provided on an aggregate basis for all agreements covered by the annual report. Any consolidated report must be filed with all of the relevant supervisory agencies for the covered agreements included in the report. The rule includes an example of the type of information that must be included in a consolidated annual report filed by a NGEP. (*See* section ____.7(d)(5)(iv).)

2. Annual Reports Filed by Insured Depository Institutions and Affiliates

The annual reporting requirements for insured depository institutions and affiliates are largely specified in section 48(b) and the final rule, like the proposal, includes these requirements. The annual report for an insured depository institution or affiliate must identify the entity filing the report and identify the covered agreement to which the annual report relates. In addition, the annual report must provide:

- The aggregate amount of payments, fees and loans (listed separately) provided by the insured depository institution or affiliate under the agreement to any other party during the fiscal year;
- The aggregate amount of payments, fees and loans (listed separately) received by the insured depository institution or affiliate under the agreement from any other party during the fiscal year;
- A description of the terms and conditions of any payments, fees, or loans provided to, or received from, another party under the agreement; and
- The aggregate amount and number of loans, amount and number of investments, and amount of services provided under the covered agreement to any NGEP that is *not* a party to the agreement:
  - —By the insured depository institution or affiliate; and
  - —By *any other* party to the agreement, unless such information is not known to the insured depository institution or affiliate or will be contained in an annual report filed by another party.

These informational requirements track those established by the statute.

The rule allows an insured depository institution and an affiliate that are parties to the same covered agreement to file a single, consolidated report for the agreement. The proposed rule also allowed an insured depository institution or affiliate that is a party to 5 or more covered agreements to file a single consolidated report relating to all of the agreements. To reduce burden and in response to comments, the final rule allows insured depository institutions or affiliates that are a party to 2 or more covered agreements to file a consolidated annual report.

The proposed rule would have permitted the consolidated report of an insured depository institution or affiliate to provide aggregate data on the amount of payments, fees and loans provided and received by the institution or affiliate under all agreements included in the report, and on the loans, investment and services provided by the other parties to all of the agreements included in the report. In order to facilitate the tracking of payments made by insured depository institutions and affiliates under covered agreements, the final rule requires that any consolidated report filed by an institution or affiliate state the amount of payments, fees, and loans provided by the institution or affiliate under each covered agreement included in the report. The final rule continues to allow a consolidated report to provide aggregate information concerning any payments, fees and loans received by the institution or affiliate under all of the agreements included in the report, and concerning any loans, investments and services provided by other parties to the agreements included in the report.

3. When and Where Must Annual Reports Be Filed

The final rule adopts the approach for filing annual reports taken in the proposed rule and provides that each party to a covered agreement generally must prepare and file an annual report with each relevant supervisory agency for the fiscal year in which the party enters into the agreement and each

subsequent fiscal year during the term of the covered agreement. In order to provide maximum flexibility, the final rule also permits a party to elect to use the calendar year as its fiscal year for purposes of the rule. Using a fiscal year reporting period permits a party to coordinate preparation of its annual reports with other documents or reports that typically are prepared on a fiscal year basis. Commenters generally supported this approach and the agencies have made no changes to the proposed rule.

As in the proposal, each party to a covered agreement must file its annual report for a fiscal year with each relevant supervisory agency within 6 months of the end of the party's fiscal year. Some commenters requested additional time to prepare and file annual reports. The agencies believe allowing 6 months for the filing of annual reports gives the parties to a covered agreement a reasonable amount of time to gather the information necessary from the previous fiscal year and prepare the report. In addition, the time period is similar to the time period that parties have to prepare tax forms and annual reports relating to the previous fiscal year. For example, IRS rules generally require an IRS Form 990 to be filed by the 15th day of the 5th month after the end of an organization's fiscal year.

Consistent with section 48(c)(2), the rule allows a NGEP to fulfill its filing requirement by providing its annual report to the insured depository institution or affiliate that is a party to the agreement. In response to comments, the agencies have revised the rule to allow a NGEP up to 6 months (rather than 5) after the end of its fiscal year to provide a copy of its annual report to the appropriate insured depository institution or affiliate. Any NGEP that uses this filing option must instruct the institution or affiliate to file the report with all of the relevant supervisory agencies on behalf of the NGEP. An insured depository institution or affiliate that receives an annual report from a NGEP in this manner must forward it to the relevant supervisory agencies within 30 days. This procedure reduces the likelihood that annual reports will be filed with the wrong agency because the insured depository institution or affiliate will know its relevant supervisory agency while the NGEP may not.

D. Effective Dates of Disclosure and Reporting Requirements

As discussed above, the disclosure provisions of section 48 apply to all covered agreements entered into after November 12, 1999, and the annual reporting provisions apply to all covered agreements entered into on or after May 12, 2000.

1. Agreements That Are Amended or Renewed After Statutory Dates

A written modification, amendment, renewal, or extension of an agreement creates a new agreement. Thus, if an agreement entered into before November 12, 1999, is modified, amended, renewed or extended after that date, the parties must disclose the entire new agreement in accordance with the rule's requirements if the agreement meets the criteria to be a covered agreement.

Example: An insured depository institution and a community organization entered into a written agreement in January 1999 that calls for the institution to place an ATM in the local community by January 2001. In September 2000, the parties entered into a written modification of the agreement that calls for the institution to establish a full-service branch rather than an ATM. If the modified agreement meets the criteria to be a covered agreement, each party must disclose the modified agreement in accordance with the rule and the insured depository institution must file any annual reports required by the rule concerning the agreement. (The organization would not be required to file an annual report because it does not receive any funds or resources under the agreement.)

2. Transition Rules

Section ____.10 of the final rule contains special transition provisions governing the disclosure and reporting for covered agreements that were entered into after the dates set forth above, but before April 1, 2001, the effective date of the final rule.

a. *Disclosure to Public.* The final rule provides that a covered agreement that was entered into after November 12, 1999, and that terminates before April 1, 2001, the effective date of the rule, must be made publicly available in accordance with the procedures in section ____.6 of the rule until April 1, 2002, one year after the effective date of the rule. The agencies believe this requirement provides the public with a reasonable opportunity to obtain copies of the agreements consistent with the requirements of section 48. Parties to such covered agreements are not required to make the agreements available to the public until the final rule becomes effective.

b. *Disclosure to Relevant Supervisory Agency.* The final rule requires a NGEP to make any covered agreement that was entered into after November 12, 1999, and that terminates prior to April 1, 2001, available to the relevant supervisory agency upon request until April 1, 2002. Insured depository institutions and affiliates that are a party to any such agreement must make the agreement available to the relevant supervisory agency by June 30, 2001, by providing the agency either a copy of the agreement or a list identifying the agreement in accordance with section ____.6(d) of the rule.

c. *Annual Reporting.* The final rule also includes a special transition rule for annual reports that relate to fiscal years that end on or before December 31, 2000. Under this provision, if an insured depository institution, affiliate or NGEP is a party to a covered agreement that was entered into between May 12, 2000, and December 31, 2000, and has a fiscal year that ends within that period, the institution, affiliate or NGEP must file an annual report concerning the covered agreement with the relevant supervisory agency by June 30, 2001, relating to that fiscal year.[34] The annual report must provide the information described in section ____.7 of the rule. For any fiscal year that ends after December 31, 2000, the party would follow the reporting procedures in section ____.7 of the rule.

Example. On May 30, 2000, a NGEP and insured depository institution entered into a covered agreement for the institution to make a grant of $30,000 in two $15,000 installments. The first installment was made on June 15, 2000 and the second on December 15, 2000. The fiscal year of the NGEP ended on June 30, 2000. The NGEP is required to file an annual report for its fiscal year that ended June 30, 2000, no later than June 30, 2001. This report would reflect the June 15, 2000, payment received by the NGEP. Under section ____.7 of the rule, the NGEP would then file a second annual report by December 31, 2001, for its fiscal year ending June 30, 2001. This second annual report would reflect the December 15, 2000, payment.

E. Compliance Provisions

The final rule makes no substantive changes to the compliance provisions that were proposed. Section 48(g) specifically provides that nothing in section 48 authorizes the agencies to enforce the provisions of any covered agreement. The proposed rule incorporated this provision and the final rule retains it. (*See* section ____.9(e)) This is consistent with the long-standing policy of the agencies that CRA-related agreements entered into between insured depository institutions (or their affiliates) and NGEPs are private matters between the parties and are not enforced by the agencies.

[34] A NGEP may comply with this requirement by providing a copy of the annual report by June 30, 2001, to an insured depository institution or affiliate that is a party to the agreement in accordance with section ____.7(f)(2).

Some commenters objected that the compliance provisions in section ____.9 (a) through (c) only apply to NGEPs and do not apply to insured depository institutions and affiliates. The agencies may enforce compliance by insured depository institutions and affiliates with the disclosure and reporting requirements of section 48 using the cease and desist and other enforcement powers granted in section 8 of the FDI Act.[35] Section 8 of the FDI Act, however, applies only to insured depository institutions, affiliates and institution-affiliated parties, as defined in the FDI Act. The provisions of section 8 of the FDI Act, therefore, generally do not apply to NGEPs that are parties to a covered agreement. Section 48(f) instead includes special compliance provisions applicable to NGEPs that are party to a covered agreement.[36]

Under these provisions, the material and willful failure of a NGEP to comply with section 48 may cause the related covered agreement to be unenforceable. In particular, under the section 48(f)(1), if the appropriate agency determines that a NGEP has willfully failed to comply with section 48 in a material way, and the NGEP does not comply with the law after receiving notice and a reasonable period of time to correct the area of noncompliance, the agreement thereafter is unenforceable by operation of section 48.

Consistent with section 48(f)(3), the rule provides that inadvertent or de minimis errors in reports or other documents filed with an agency under the rule will not subject the filing party to any penalty. The rule requires the agencies to provide a NGEP written notice and an opportunity to respond before determining the NGEP has not complied with the rule, and allows the NGEP at least 90 days to correct a willful and material violation.

The rule also clarifies that, in these circumstances, the agreement becomes unenforceable *only* by the party that has willfully and materially failed to comply with the rule. Any other party to the agreement may continue to enforce the agreement against the noncomplying party. The agencies believe this construction is the interpretation that is most consistent with the language and purpose of the Act. The agencies note that an alternative construction could encourage NGEPs to violate the statute in an attempt to avoid performance under a legally binding contract, thereby frustrating the purpose of the statute. If the insured depository institution or affiliate elects not to enforce the covered agreement against the noncomplying NGEP, the appropriate agency may assist the institution or affiliate in identifying a successor NGEP to assume the responsibilities of the NGEP under a covered agreement that has become unenforceable.

Section 48(f)(1)(B) also provides that, if an individual diverts funds or resources received under a covered agreement for his or her personal financial gain and contrary to the purposes of the agreement, the appropriate agency may order the individual to disgorge the funds and/or prohibit the individual from being a party to any covered agreement for up to 10 years. As noted above, section 48 specifically provides that it does not authorize the agencies to enforce any provision of a covered agreement. If, however, a court or other body of competent jurisdiction determines that an individual has diverted funds or resources for personal financial gain and contrary to the purposes of the agreement, the agencies may take one of the actions specified in the statute.

F. Other Definitions and Rules of Construction

1. Nongovernmental Entity or Person

Section 48 applies only to agreements entered into by a ''nongovernmental entity or person'' with an insured depository institution or affiliate. For ease of reference, the rule uses the term ''NGEP'' instead of the phrase ''nongovernmental entity or person.'' Some commenters requested that the agencies exclude certain types of entities or organizations from the definition of NGEP, including government-sponsored enterprises, credit unions, and quasi-public entities.

The final rule adopts the definition of nongovernmental entity or person as proposed. The agencies believe this definition properly identifies those entities and persons that are not governmental entities and persons and, therefore, are within the meaning of the statutory term ''nongovernmental entity or person.'' Under the rule, a NGEP means any individual or entity other than the U.S. government, a state government, a unit of local government, an Indian tribe, or any department, agency, or instrumentality of such a governmental entity. A NGEP does not include a federally chartered public corporation that receives federal funds appropriated specifically for that corporation. A nongovernmental entity that is affiliated with, or receives funding from, such a federally chartered public corporation, however, would not be considered a NGEP under the rule, unless the entity independently qualified for an exclusion.

The final rule also does not treat insured depository institutions and their affiliates as NGEPs. Section 48 draws a distinction between insured depository institutions and their affiliates, on one hand, and NGEPs on the other hand, and imposes separate obligations on these two groups.

2. Affiliate

The final rule adopts the term ''affiliate'' as proposed. The term is defined in the FDI Act by reference to the Bank Holding Company Act.[37] Under the Bank Holding Company Act, an affiliate is any company that controls, is controlled by, or is under common control with another company. A company generally is considered to control another entity if it owns or controls 25 percent or more of any class of the other entity's voting securities.

The final rule retains the special rule of construction that would apply in situations where an insured depository institution has filed an application with an agency to become affiliated or merge with another entity. In such circumstances, a NGEP may have a CRA communication and enter into an agreement with the acquiring insured depository institution (or holding company thereof) concerning the adequacy of the CRA performance of the target institution. The agencies believe these types of contacts constitute a CRA communication under section 48 and that any agreement resulting from such communication is a covered agreement if it otherwise meets the requirements of section 48. Accordingly, the rule provides that an insured depository institution is deemed to be an affiliate of any company that would be under common control or merged with the institution pursuant to a transaction that is pending before an agency. This rule of construction applies only where the agency application is pending at both the time an agreement is entered into and the time when a triggering CRA communication occurs. An example illustrating this point is provided in section ____.3(c)(1)(iv) of the final rule.

3. CRA Affiliate Treated as Insured Depository Institution

The CRA Regulations provide that an insured depository institution, at its

[35] *See* 12 U.S.C. 1818.

[36] Other Federal statutes outside the banking laws also may provide for penalties if an insured depository institution, affiliate, or NGEP fails to comply with the agency disclosure and reporting requirements of section 48 or includes false information in a filing made with an agency under section 48. *See, e.g.* 18 U.S.C. 1001.

[37] 12 U.S.C. 1813(w)(6); 12 U.S.C. 1841(k).

election, may request that an agency consider certain activities conducted by an affiliate in evaluating the CRA performance of the insured depository institution.[38] In these circumstances, the selected activities of the affiliate are viewed as activities of the insured depository institution. Accordingly, the proposed rule provided that a contact concerning this type of affiliate, referred to as a ''CRA affiliate,'' to be the equivalent of a contact concerning an insured depository institution. Similarly, the proposed rule provided that an agreement would be considered to be in fulfillment of the CRA if it concerned the performance of any of the activities in the list of factors performed by a ''CRA affiliate'' of an insured depository institution.

The agencies requested comment on the treatment of CRA affiliates and how agreements should be treated that relate to affiliates that are not CRA affiliates at the time an agreement is entered into, but become CRA affiliates during the term of an agreement. Commenters generally did not object to the definition of CRA affiliate or treating activities of such an affiliate as the activities of the insured depository institution for purposes of the CRA Sunshine provisions. However, several commenters objected to an existing agreement becoming a covered agreement during the term of an agreement as a result of the designation of an affiliate as a CRA affiliate.

In light of the comments, section ____.11(c) of the final rule defines a ''CRA affiliate'' as any company that is an affiliate of an insured depository institution and whose activities were considered by an agency in assessing the CRA performance of the institution at the institution's most recent CRA examination prior to the agreement. In addition, the rule provides that an insured depository institution or affiliate may designate a company as a ''CRA affiliate'' at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation. Section ____.4(b) of the final rule requires that an insured depository institution or affiliate inform the other parties to a covered agreement if the agreement concerns the activities of a CRA affiliate. The institution or affiliate must provide this notification not later than the time the agreement is entered into. The agencies are of the view that an agreement that relates to an affiliate that is not a CRA affiliate at the time the parties enter into an agreement cannot become a covered agreement if the affiliate becomes a CRA affiliate during the term of the agreement.

Example 1: The director of a NGEP submits a written comment to a Federal banking agency concerning the adequacy of the CRA lending performance of a mortgage company that is affiliated with an insured depository institution. One year later, the director of the NGEP negotiates an agreement with the mortgage company for it to provide $100 million in mortgage loans in low- and moderate-income neighborhoods in the next year. The insured depository institution elected, in accordance with the agencies' CRA Regulations, to have the lending activities of the mortgage company considered in the institution's most recent CRA performance evaluation. The mortgage affiliate, therefore, is considered a CRA affiliate with respect to its lending activities. The agreement is in fulfillment of the CRA for purposes of section 48 and the NGEP has engaged in a CRA communication under section ____.3(a)(1) because the selected activities of a CRA affiliate and contacts with an agency regarding a CRA affiliate are considered activities of and contacts concerning an insured depository institution. Accordingly, the agreement is a covered agreement.

Example 2: An affiliate of an insured depository institution engages in mortgage lending and provides credit counseling services. The insured depository institution elected to have only the mortgage lending activities of the affiliate considered in its most recent CRA performance evaluation. The affiliate and a community group enter into an agreement that provides for the affiliate to provide credit counseling services in the local community. The agreement is not in fulfillment of the CRA because the affiliate is not considered a CRA affiliate with respect to its credit counseling activities. Accordingly, the agreement is not a covered agreement.

4. Term of Agreement

Under the final rule, the duration of a party's obligation to make a covered agreement publicly available and to file annual reports concerning the agreement is based on the term of the covered agreement. As a general matter, the term of an agreement ends on the agreement's termination date established by the parties. Agreements that do not establish a termination date are deemed for purposes of the proposed rule to terminate on the last date on which any party makes any payments or provides any loan or other resources under the agreement. The rule gives the agencies discretion, in appropriate circumstances, to determine that the term of such an agreement is a shorter or longer period. The appropriate agency could exercise this discretion, for example, where a one-time grant is made to a NGEP late in a year with the clear expectation that the funds would be used in the next year. In such circumstances, the agency could require the NGEP to file an annual report for the next year.

IV. Regulatory Flexibility Act Analysis

Office of the Comptroller of the Currency

The Regulatory Flexibility Act (5 U.S.C. 604) requires an agency to publish a final regulatory flexibility analysis when promulgating a final rule that was subject to notice and comment, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The OCC believes that this rule will not have a significant economic impact on a substantial number of small national banks, national bank subsidiaries, or NGEPs that are party to covered agreements with national banks or their subsidiaries. This final rule restates the statutory requirements and includes provisions designed to reduce the regulatory burden on entities and persons of all sizes. The OCC has prepared the following final regulatory flexibility analysis because the Gramm-Leach-Bliley Act imposes requirements that are new to the OCC and those subject to the rule, and because the OCC is unable at this time to estimate definitively the economic impact of compliance with the new requirements of the rule.

Need for and Objectives of Rule

As discussed above, this rule implements the CRA Sunshine provisions of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y), which was enacted by section 711 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1465 (1999)). The rule's objectives are to inform insured depository institutions, affiliates of insured depository institutions, and NGEPs on how to comply with section 48 by:

(1) Identifying those agreements that are covered by section 48, including describing the circumstances in which an agreement is in fulfillment of the CRA;

(2) Providing procedures for the disclosure of covered agreements to the public and the relevant supervisory agency; and

(3) Providing procedures for preparing and filing annual reports relating to covered agreements with the relevant supervisory agency.

[38] *See* CRA lending test (12 CFR 25.22(c), 228.22(c), 345.22(c) and 563e.22(c)); CRA investment test (12 CFR 25.23(c), 228.23(c), 345.23(c) and 563e.23(c)); CRA service test (12 CFR 25.24(c), 228.24(c), 345.24(c) and 563e.24(c)); CRA community development test for wholesale and limited-purpose institutions (12 CFR 25.25(d), 228.25(d), 345.25(d) and 5632.25(d)); and CRA strategic plans (12 CFR 25.27(c), 228.27(c), 245.27(c) and 563e.27(c)).

New Compliance Requirements

The final rule contains new compliance requirements that require insured depository institutions, affiliates, and NGEPs that enter into a covered agreement to make the agreement available to members of the public and to the appropriate agency, and to file an annual report with the appropriate agency concerning the disbursement and use of funds under the agreement. These reporting provisions are required by section 48 and apply regardless of the size of the insured depository institution, affiliate, or NGEP. The agencies have sought to reduce burden of complying with these requirements wherever possible and consistent with section 48.

Comments on the Initial Regulatory Flexibility Analysis

Although few commenters addressed the initial regulatory flexibility analysis specifically, many commenters addressed the regulatory burdens associated with complying with the final rule. Many commenters noted that section 48 was broadly worded and commended the agencies' efforts to clarify which agreements are subject to section 48 and how a party to a covered agreement may comply with the statute's disclosure and reporting obligations. Many commenters, however, expressed concern that the scope of agreements that were covered by the proposed rule would result in coverage of a wide range of agreements between banking organizations and NGEPs that were not intended to be subject to the disclosure and reporting requirements of section 48. Many commenters also expressed concern that the statute and the rule would discourage banking organizations from entering into agreements with NGEPs to provide loans, investments or banking services in their local communities.

Commenters also provided specific comments on the disclosure and annual reporting procedures of the proposed rule. These comments are discussed in detail in part III. Commenters generally supported granting the parties to covered agreements maximum flexibility in disclosing covered agreements to the public and allowing the parties to charge reasonable fees for making covered agreements available. Some commenters requested clarification concerning how a party should comply with the public disclosure requirements when a covered agreement consists of multiple documents. Some commenters supported requiring the public disclosure period to terminate 12 months after the term of the agreement, as proposed, while others recommended a shorter time period or no time period at all after the term of the agreement.

Many commenters expressed concern that the procedures in the proposed rule for obtaining a determination from an agency that information in covered agreements may be withheld from public disclosure was vague and overly complicated. Commenters also expressed concern with the requirement that an insured depository institution and affiliate file each covered agreement with the relevant supervisory agency within 30 days of entering into the agreement.

Several commenters objected to the proposed rule's requirement that a NGEP that receives and uses funds or other resources for a specific purposes must follow reporting procedures that are different from the detailed, itemized list that is described in section 48, while others supported the proposal. Commenters also requested additional detail on the circumstances in which funds or other resources are received for a specific purpose. Commenters overwhelmingly supported the proposed rule's provisions allowing NGEPs to use Federal tax forms and other reports to fulfill the reporting requirements of the rule.

Several commenters requested that insured depository institutions and affiliates have an exception for filing annual reports for fiscal years in which they have no information to report. Some commenters also requested that a form be adopted for insured depository institutions and affiliates to use in filing annual reports. In addition, commenters generally supported the option of filing consolidated reports for NGEPs, insured depository institutions, and affiliates that are parties to two or more covered agreements.

Minimizing Impact on Small Institutions

Section 48 directs the OCC and the other agencies to ensure that the rule does not impose an undue burden on the parties to covered agreements. The final rule includes several provisions that are designed to reduce the burden and minimize the impact of the rule on insured depository institutions, affiliates and NGEPs, including small institutions, affiliates and NGEPs. Many of the provisions of the proposed rule that were supported by commenters were retained in the final rule and other provisions were added in response to comments received by the OCC and the other agencies.

The final rule gives parties to covered agreements flexibility in determining how to make a covered agreement available to the public. The rule permits an insured depository institution or affiliate to use the institution's CRA public file to disclose covered agreements to the public. Parties to covered agreements also may charge a requestor reasonable fees for the cost of copying and mailing covered agreements. In response to comments received, the final rule provides a streamlined method parties may follow to determine whether information in a covered agreement can be withheld from public disclosure and additional guidance on the types of information that must be disclosed.

The rule requires a NGEP to file a covered agreement with a relevant supervisory agency only upon request of the agency. In addition, in response to comments, the final rule allows an insured depository institution or affiliate to make a covered agreement available to the relevant supervisory agency by either filing a copy of the covered agreement with the agency or filing with the agency a list that briefly describes the covered agreements to which the institution or affiliate is a party. These filings must be made 60 days after the end of the relevant calendar quarter. The final rule also permits two or more insured depository institutions and affiliates that are parties to the same covered agreement to file jointly the information that must be disclosed to the relevant supervisory agency.

The final rule provides exceptions to the annual reporting requirements for NGEPs and insured depository institutions and affiliates under certain circumstances. It also permits parties to covered agreements to file their annual reports on either a fiscal year or calendar year basis. The rule also allows an insured depository institution, affiliate, or NGEP that is a party to 2 or more covered agreements to prepare a single, consolidated annual report concerning all of the covered agreements.

NGEPs are permitted to incorporate into their annual reports other reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. The final rule also permits NGEPs that receive and use funds for a specific purpose (that is, a purpose that is more specific and limited than the reporting categories listed in the regulation) either to provide a detailed, itemized list of the uses of funds by the NGEP or a brief description of the use and the amount of funds used for the specific purpose. NGEPs are permitted to file an annual

report with the relevant supervisory agency by filing it directly with the agency or by filing it with the insured depository institution or affiliate that is a party to the covered agreement with instructions to forward the annual report to the relevant supervisory agency.

Entities and Persons Covered

The OCC's final rule applies to national banks, subsidiaries of national banks and NGEPs that enter into covered agreements with a national bank or a national bank subsidiary. Section 48 does not authorize the OCC to provide an exemption for covered agreements based on the size of the insured depository institution, affiliate or NGEP that enters into the agreement.

The OCC and the other agencies requested estimates of the burden the proposed rule would impose on insured depository institutions and affiliates and NGEPs. One large bank estimated that it was a party to over 500 agreements in 1999 that would have been considered covered agreements under the proposed rule. A national organization that promotes the availability of credit and capital in underserved communities commented that it and its 720 community organization members have negotiated 300 ''CRA agreements'' with insured depository institutions and their affiliates.

The agreements that trigger the disclosure and reporting requirements of the final rule are entered into by private parties on a voluntary basis, are not enforced by the agencies and, to date, have not been required to be disclosed to the agencies. The OCC believes that larger national banks and NGEPs are likely to be party to more covered agreements than smaller national banks and NGEPs. The OCC and the other agencies have modified the rule in several respects in order to clarify the types of agreements that are covered by section 48, and the types of agreements that are exempt from coverage. Although some commenters submitted estimates of the number of covered agreements they would be a party to under the proposed rule, the OCC does not believe the information provided to date is sufficiently comprehensive to enable it to estimate definitively the total number of national banks, subsidiaries, or NGEPs that are parties to covered agreements.

Federal Reserve System

The Regulatory Flexibility Act (5 U.S.C. 604) requires an agency to publish a final regulatory flexibility analysis when promulgating a final rule that was subject to notice and comment, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Board believes that this rule will not have a significant economic impact on a substantial number of small state member banks, bank holding companies, affiliates of bank holding companies, and NGEPs that are a party to a covered agreement with any of the foregoing. This final rule restates the statutory requirements and includes provisions designed to reduce the regulatory burden on entities and persons of all sizes. The Board has prepared the following final regulatory flexibility analysis because the Gramm-Leach-Bliley Act imposes requirements that are new to the Board and those subject to the rule, and because the Board is unable at this time to estimate definitively the economic impact of compliance with the new requirements of the rule.

Need for and Objectives of Rule

As discussed above, this rule implements the CRA Sunshine provisions of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y), which was enacted by section 711 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1465 (1999)). The rule's objectives are to inform insured depository institutions, affiliates of insured depository institutions, and NGEPs on how to comply with section 48 by:

(1) Identifying those agreements that are covered by section 48, including describing the circumstances in which an agreement is in fulfillment of the CRA;

(2) Providing procedures for the disclosure of covered agreements to the public and the relevant supervisory agency; and

(3) Providing procedures for preparing and filing annual reports relating to covered agreements with the relevant supervisory agency.

New Compliance Requirements

The final rule contains new compliance requirements that require insured depository institutions, affiliates, and NGEPs that enter into a covered agreement to make the agreement available to members of the public and to the appropriate agency, and to file an annual report with the appropriate agency concerning the disbursement and use of funds under the agreement. These reporting provisions are required by section 48 and apply regardless of the size of the insured depository institution, affiliate, or NGEP. The agencies have sought to reduce burden of complying with these requirements wherever possible and consistent with section 48.

Comments on the Initial Regulatory Flexibility Analysis

Although few commenters addressed the initial regulatory flexibility analysis specifically, many commenters addressed the regulatory burdens associated with complying with the final rule. Many commenters noted that section 48 was broadly worded and commended the agencies' efforts to clarify which agreements are subject to section 48 and how a party to a covered agreement may comply with the statute's disclosure and reporting obligations. Many commenters, however, expressed concern that the scope of agreements that were covered by the proposed rule would result in coverage of a wide range of agreements between banking organizations and NGEPs that were not intended to be subject to the disclosure and reporting requirements of section 48. Many commenters also expressed concern that the statute and the rule would discourage banking organizations from entering into agreements with NGEPs to provide loans, investments or banking services in their local communities. Commenters also provided specific comments on the disclosure and annual reporting procedures of the proposed rule. These comments are discussed in detail in part III. Commenters generally supported granting the parties to covered agreements maximum flexibility in disclosing covered agreements to the public and allowing the parties to charge reasonable fees for making covered agreements available. Some commenters requested clarification concerning how a party should comply with the public disclosure requirements when a covered agreement consists of multiple documents. Some commenters supported requiring the public disclosure period to terminate 12 months after the term of the agreement, as proposed, while others recommended a shorter time period or no time period at all after the term of the agreement.

Many commenters expressed concern that the procedures in the proposed rule for obtaining a determination from an agency that information in covered agreements may be withheld from public disclosure was vague and overly complicated. Commenters also expressed concern with the requirement that an insured depository institution and affiliate file each covered agreement with the relevant supervisory agency within 30 days of entering into the agreement.

Several commenters objected to the proposed rule's requirement that a NGEP that receives and uses funds or other resources for a specific purposes must follow reporting procedures that are different from the detailed, itemized list that is described in section 48, while others supported the proposal. Commenters also requested additional detail on the circumstances in which funds or other resources are received for a specific purpose. Commenters overwhelmingly supported the proposed rule's provisions allowing NGEPs to use Federal tax forms and other reports to fulfill the reporting requirements of the rule.

Several commenters requested that insured depository institutions and affiliates have an exception for filing annual reports for fiscal years in which they have no information to report. Some commenters also requested that a form be adopted for insured depository institutions and affiliates to use in filing annual reports. In addition, commenters generally supported the option of filing consolidated reports for NGEPs, insured depository institutions, and affiliates that are parties to two or more covered agreements.

Minimizing Impact on Small Institutions

Section 48 directs the Board and the other agencies to ensure that the rule does not impose an undue burden on the parties to covered agreements. The final rule includes several provisions that are designed to reduce the burden and minimize the impact of the rule on insured depository institutions, affiliates and NGEPs, including small institutions, affiliates and NGEPs. Many of the provisions of the proposed rule that were supported by commenters were retained in the final rule and other provisions were added in response to comments received by the Board and the other agencies.

The final rule gives parties to covered agreements flexibility in determining how to make a covered agreement available to the public. The rule permits an insured depository institution or affiliate to use the institution's CRA public file to disclose covered agreements to the public. Parties to covered agreements also may charge a requestor reasonable fees for the cost of copying and mailing covered agreements. In response to comments received, the final rule provides a streamlined method parties may follow to determine whether information in a covered agreement can be withheld from public disclosure and additional guidance on the types of information that must be disclosed.

The rule requires a NGEP to file a covered agreement with a relevant supervisory agency only upon request of the agency. In addition, in response to comments, the final rule allows an insured depository institution or affiliate to make a covered agreement available to the relevant supervisory agency by either filing a copy of the covered agreement with the agency or filing with the agency a list that briefly describes the covered agreements to which the institution or affiliate is a party. These filings must be made 60 days after the end of the relevant calendar quarter. The final rule also permits two or more insured depository institutions and affiliates that are parties to the same covered agreement to file jointly the information that must be disclosed to the relevant supervisory agency.

The final rule provides exceptions to the annual reporting requirements for NGEPs and insured depository institutions and affiliates under certain circumstances. It also permits parties to covered agreements to file their annual reports on either a fiscal year or calendar year basis. The rule also allows an insured depository institution, affiliate, or NGEP that is a party to 2 or more covered agreements to prepare a single, consolidated annual report concerning all of the covered agreements.

NGEPs are permitted to incorporate into their annual reports other reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. The final rule also permits NGEPs that receive and use funds for a specific purpose either to provide a detailed, itemized list of the uses of funds by the NGEP or a brief description of the use and the amount of funds used for the specific purpose. NGEPs are permitted to file an annual report with the relevant supervisory agency by filing it directly with the agency or by filing it with the insured depository institution or affiliate that is a party to the covered agreement with instructions to forward the annual report to the relevant supervisory agency.

Entities and Persons Covered

The Board's final rule applies only to the following parties to covered agreements: (1) State member banks and subsidiaries of state member banks, (2) bank holding companies, (3) affiliates of bank holding companies, other than banks, savings associations and subsidiaries of banks and savings associations, and (4) NGEPs that enter into covered agreements with any company listed in (1) through (3). Section 48 does not authorize the Board to provide an exemption for covered agreements based on the size of the insured depository institution, affiliate or NGEP that enters into the agreement.

The Board requested estimates of the burden the proposed rule would impose on insured depository institutions and affiliates and NGEPs. One large bank estimated that it was a party to over 500 agreements in 1999 that would have been considered covered agreements under the proposed rule. A national organization that promotes the availability of credit and capital in underserved communities commented that it and its 720 community organization members have negotiated 300 ''CRA agreements'' with insured depository institutions and their affiliates.

The agreements that trigger the disclosure and reporting requirements of the final rule are entered into by private parties on a voluntary basis, are not enforced by the agencies and, to date, have not been required to be disclosed to the agencies. The Board believes that larger banking organizations and NGEPs are likely to be party to a higher proportion of covered agreements than smaller banking organizations and NGEPs. Although some commenters submitted estimates of the number of covered agreements they would be a party to under the proposed rule, the Board and the other agencies have modified the rule in several respects in order to clarify the types of agreements that are covered by section 48, and the types of agreements that are exempt from coverage. The Board does not believe it has received enough information at this time to estimate definitively the total number of insured depository institutions, affiliates or NGEPs that are parties to covered agreements.

Federal Deposit Insurance Corporation

Subject to certain exceptions, the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to prepare a final regulatory flexibility analysis in conjunction with its issuance of a final rule. If the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required.[39] At the time of issuance of

[39] The RFA defines the term ''small entity'' in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration (SBA). The SBA has defined a ''small entity'' for banking purposes as a national or commercial bank, savings institution or credit union with less than $100 million in assets. *See* 13 CFR 121.201.

the proposed rule, the FDIC was unable to certify that the rule would not have a significant economic impact on a substantial number of small entities. Although the final rule contains provisions designed to reduce the burden of regulatory compliance by all parties to covered agreements, the FDIC lacks sufficient information to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to section 604 of the RFA, the FDIC provides the following final regulatory flexibility analysis.

Need for and Objectives of the Rule

The final rule implements § 48 of the Federal Deposit Insurance Act (FDIA) addressing disclosure and reporting requirements for certain agreements related to the CRA. Section 48(h) requires the Federal banking agencies to publish regulations applicable to insured depository institutions, their affiliates, and NGEPs relating to:

- The types of agreements covered by the rule;
- The procedures for implementing the disclosure requirements related to agreements covered by the rule; and
- The procedures for implementing the annual reporting requirements related to agreements covered by the rule.

Small Entities to Which the Final Rule Will Apply

The final rule applies to all FDIC-insured state nonmember banks (and their affiliates), including those insured state nonmember banks with assets of under $100 million. As of September 2000, 3,331 (of 5,130 total) FDIC-insured state nonmember banks had assets of under $100 million. The final rule also applies to NGEPs that enter into covered agreements with insured depository institutions or their affiliates.

Section 48 does not authorize the FDIC to create exemptions for disclosure or reporting requirements based on the asset size of either an insured depository institution (or its affiliate) or a NGEP; therefore, the FDIC did not establish alternative compliance standards for small entities.

Because agreements like those that will trigger the disclosure and reporting requirements of the final rule have not been previously disclosed or monitored by the FDIC, the FDIC lacks sufficient information to estimate the total number of insured state nonmember banks (or their affiliates) and NGEPs that may be parties to covered agreements.

Initial Regulatory Flexibility Analysis and Related Burden Reduction Measures

In its initial regulatory flexibility analysis, the FDIC specifically requested information on the likely significance of the economic impact the proposed rule would impose on state nonmember banks, their affiliates, and NGEPs who enter into covered agreements. Following publication of the proposed rule, the FDIC received approximately 200 comment letters. Although none of the commenters specifically responded to the questions raised in the initial regulatory flexibility section of the proposed rule, many commenters addressed the regulatory burdens associated with the disclosure and reporting requirements described in the proposed rule. They also requested clarification regarding the types of agreements that would be subject to the rule and advocated implementation of a more streamlined way to protect confidential or proprietary information from disclosure. (For a more complete discussion of the comments received, see the analysis contained in Part II of the Supplementary Information section of the preamble.)

Section 48 of the FDIA requires insured depository institutions, their affiliates, and NGEPs that are parties to covered agreements: to make the agreements available to the public and to the relevant supervisory agency (as defined in the rule), and to file an annual report related to covered agreements with the relevant supervisory agency.

Section 48(h)(2)(A) of the FDIA further requires the Federal banking agencies to prescribe implementing regulations that do not impose an undue burden on parties to covered agreements. In accordance with both this statutory mandate and with the comments received in response to the proposed rule, in the final rule, the FDIC sought to minimize the burden on all parties to covered agreements—including small entities.

A brief description of some of the burden reduction measures related to the final rule's disclosure and reporting requirements follows. (For a more detailed discussion explanation of these and other burden reduction measures adopted in the final rule, see the analysis contained in Part III of the **SUPPLEMENTARY INFORMATION** section of the preamble.)

The rule minimizes burden in its disclosure requirements by offering parties to covered agreements flexibility in making these agreements available to public. No one single method of disclosure is prescribed. NGEPs need only disclose covered agreements when a request for the agreement is made. One way that insured depository institutions (or affiliates) may meet their agency disclosure obligations is by filing a quarterly list of covered agreements with the relevant supervisory agency, with the actual agreement to be provided upon the request of the agency. If two or more insured depository institutions or their affiliates are parties to a covered agreement, they are permitted to jointly disclose the agreements to the relevant supervisory agency. Further, an insured depository institution and its affiliates may use the institution's CRA public file as a disclosure mechanism. All parties to covered agreements are permitted to collect reasonable fees associated with the disclosure of these agreements. For clarity, the rule contains a list of items contained in a covered agreement that may not be withheld from disclosure, but it allows parties to request an agency determination concerning whether other information properly may be withheld.

The rule minimizes burden in its reporting requirements by providing certain exceptions to the annual reporting requirement for both NGEPs and for insured depository institutions and their affiliates. Annual reports may be filed to reflect either a calendar year or fiscal year accounting system. A NGEP may use certain tax forms and other reports to satisfy its reporting requirement and also may meet its reporting obligations by filing the report with the insured depository institution (or affiliate) that is a party to the agreement. The rule permits consolidated annual reporting if insured depository institutions, their affiliates, or NGEPs are parties to at least two covered agreements.

Reporting, Recordkeeping, and Other Compliance Requirements

The final rule contains disclosure and reporting requirements applicable to all FDIC-insured state nonmember banks, affiliates of state nonmember banks, and non-governmental entities or persons that are parties to covered agreements. Parties to covered agreements are required to make the agreements available to the public and to the relevant supervisory agency and to report annually to the relevant supervisory agency concerning the covered agreements. (For a more detailed explanation of the disclosure requirements of the final rule, see the explanation contained in Part III, B of the **SUPPLEMENTARY INFORMATION** section of the preamble. For a more detailed

explanation of the reporting requirements of the final rule, see the explanation contained in Part III, C of the **SUPPLEMENTARY INFORMATION** section of the preamble.)

The final rule does not establish specific recordkeeping procedures for parties to covered agreements. The FDIC anticipates that the parties will employ recordkeeping policies and practices sufficient to allow retrieval of covered agreements as necessary for compliance with the disclosure and annual reporting requirements of the final rule.

Although the final rule contains provisions to minimize the compliance burden on parties to covered agreements, it is possible that insured state nonmember banks (and their affiliates) and NGEPs may require professional skills in recognizing the existence of a covered agreement; and in compiling materials responsive to annual reporting requirements of the final rule.

Office of Thrift Supervision

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires federal agencies to prepare a final regulatory flexibility analysis (RFA) with a final rule that was subject to notice and comment, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. OTS believes that this rule will not have a significant economic impact on a substantial number of small savings associations and their subsidiaries, savings and loan holding companies, affiliates of savings associations and savings and loan holding companies (other than bank holding companies, banks, and subsidiaries of bank holding companies and banks), or NGEPs that enter into covered agreements with any of the foregoing because the burden imposed on small entities stems in large part from the GLB Act, rather than the final rule. This final rule restates the statutory requirements and includes clarifications designed to reduce the regulatory burden on savings associations, affiliates, and NGEPs of all sizes, as discussed below. OTS has prepared the following RFA because the GLB Act imposes requirements that are new to OTS, the thrift industry, and others, and because OTS is uncertain of the economic impact of compliance with the new requirements.

1. Statement of Need and Objectives

A description of the reasons why OTS is adopting this final rule and a statement of the objectives of, and legal basis for, the final rule, are contained in the **SUPPLEMENTARY INFORMATION** above.

2. Small Entities to Which the Final Rule Applies

OTS's final rule applies to the following types of entities if they are a party to a covered agreement:

(1) Savings associations and their subsidiaries;

(2) Savings and loan holding companies

(3) Affiliates of savings associations and savings and loan holding companies, other than bank holding companies; banks; and subsidiaries of bank holding companies and banks; and

(4) NGEPs that enter into covered agreements with any company listed in (1), (2), or (3).

The final rule would apply regardless of the size of the savings association, affiliate, or NGEP.

Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets of $100 million or less. 13 CFR 121.201, Division H (2000). As of the publication of the proposed rule, OTS calculated that of the approximately 1,100 savings associations, a maximum of 486 were small savings associations. OTS also calculated that these 486 savings associations held approximately 100 subordinate organizations that could possibly qualify as small entities. OTS further calculated that a maximum of 205 savings and loan holding companies could possibly qualify as small entities.[40]

The initial RFA (IRFA) published in the proposed rule explained that to date, parties to covered agreements have not had to disclose or report agreements to OTS. Generally, neither OTS nor any other Federal agency is a party to covered agreements. Finally, OTS does not enforce such agreements. Thus, OTS did not have information about these agreements. OTS sought comments to enable it to make an accurate burden estimate including the number and size of savings associations, affiliates, and NGEPs that are parties to covered agreements, and the number of covered agreements that currently exist and would likely be entered into each year in the future.

OTS received many comments on the proposed rule addressing its potentially broad application. A few NGEPs specifically noted that three of the largest community advocacy organizations have 720, 1,200, and 3,600 members, respectively. Commenters noted that each of these members is a potential NGEP. Community advocacy organizations are just one of many types of NGEPs subject to the rule.

A substantial number of NGEPs commented that there were hundreds, if not thousands, of covered agreements. Commenters estimated that one large community advocacy organization alone had 300 covered agreements, including more than $1 trillion in loans and investments for low- and moderate-income communities. Commenters estimated another community advocacy organization had a dozen agreements. A very large financial institution estimated that it had more than 500 covered agreements in effect in 1999. A federal savings association indicated that it entered into 42 covered agreements with 38 community groups during the first six months since the GLB Act was enacted. A local government indicated that it had $1.3 billion in loans or grants in 60,000 separate transactions that potentially were covered, including 15,000 transactions with one large financial institution alone.

While this information provides anecdotal evidence that a potentially large number of savings associations, affiliates, and NGEPs of all sizes are parties to a potentially large number of covered agreements, it does not enable OTS to make a reliable estimate of the burden of the final rule.

3. Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

As described more fully elsewhere in the **SUPPLEMENTARY INFORMATION** above, the primary requirements of the final rule involve the disclosure and reporting of covered agreements. The final rule requires each party to a covered agreement to disclose the agreement to the public by making a complete copy available to any individual or entity upon request. It also requires each savings association or affiliate that is a party to a covered agreement to provide a copy to each relevant supervisory agency (as defined in the rule) and requires each NGEP that is a party to provide a copy to each relevant supervisory agency upon request. The final rule also requires each party to a covered agreement to file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds

[40] It is likely that the number of small SLHCs is significantly less than 205. In a recent notice of proposed rulemaking, OTS applied a newly promulgated Small Business Administration (SBA) standard for determining whether holding companies are small. OTS estimated there were 88 small SLHCs under the asset-based definition in the SBA's rule (*i.e.,* holding company structures holding assets of less than $100 million), or 150 small SLHCs using the revenue-based definition in the SBA's rule. *See Savings and Loan Holding Companies Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy,* 65 Fed. Reg. 64,392, 64,397 (October 27, 2000) (applying SBA rule 13 CFR 121.201).

or other resources under the covered agreement. Most of these requirements are mandated by section 48 of the FDI Act.

Savings associations, affiliates, and NGEPs may already have recordkeeping and other policies and practices that would already enable them to partly or fully meet the requirements of this final rule. To the extent that existing practices and available resources are insufficient, parties to covered agreements would need professional skills to comply with this final rule. To disclose covered agreements, parties may need clerical and computer personnel. To prepare required reports and disclosures, parties may need personnel with these skills, as well as personnel skilled in financial, accounting, and legal matters. Some degree of personnel training may be necessary, such as to enable employees to determine when parties enter into covered agreements, and how to retain, record, redact, and compile information about agreements.

OTS cannot predict exactly how savings associations, affiliates, and NGEPs will comply with the final rule since the requirements are new. For example, OTS cannot assess the extent to which savings associations, affiliates, and NGEPs will avoid entering into covered agreements as a result of the final rule. A common concern expressed by commenters was that the statute and rule would have precisely this effect.

As discussed below, the final rule contains many provisions designed to minimize the compliance burden. These provisions are consistent with the directive in section 48(h)(2)(A) of the FDI Act that the Federal banking agencies ensure that the regulations prescribed do not impose an undue burden on the parties.

4. Significant Issues Raised in Response to Initial Regulatory Flexibility Analysis and Changes Made to Minimize Burden

The issues raised by the commenters addressing burden in general are described elsewhere in the Supplementary Information. Many NGEPs and insured depository institutions commented that the disclosure and reporting burdens would be heavy. The issues that were raised by commenters that specifically relate to the rule's impact on small businesses were the following:

- Tracking and reporting on covered agreements would require many NGEPs, particularly small ones, to hire outside CPAs for the first time. One NGEP estimated that an additional 100,000 or more nonprofits would find it necessary to hire outside CPA firms, and that the paperwork, accounting, and bookkeeping costs would amount to at least $3,000 annually for each nonprofit or $300 million annually for all.
- Disclosing and reporting covered agreements would require additional staff, both for NGEPs and insured depository institutions. One estimate was that a total of at least 5,000 additional bank employees would be needed. One financial institution indicated it would need at least one additional full-time employee. Several NGEPs indicated that nonprofits reliant on volunteers could least afford additional staff.

The proposed rule contained several provisions designed to avoid undue burdens. The final rule contains additional provisions that should minimize the need for new accounting systems and additional staff.

With regard to the disclosure burden, the final rule:

- Terminates the public disclosure requirement and the requirement for a NGEP to provide a copy to the relevant supervisory agencies upon request 12 months after the end of the term of the covered agreement.
- Does not mandate any particular method for disclosing the agreement to the public.
- Allows each party to charge reasonable copying and mailing fees when it discloses an agreement to the public.
- Requires an NGEP to provide a copy to the relevant supervisory agencies only if the agency requests a copy.
- Allows a savings association or affiliate to file with the relevant supervisory agencies a copy of a covered agreement 60 days after the end of each calendar quarter. (The proposed rule would have required filing 30 days after entering into the agreement.)
- Allows a savings association or affiliate to elect to file a list of its covered agreements, rather than the actual agreement with the relevant supervisory agencies. It would be required to submit a complete copy of an agreement only upon a request from the agency. (The proposed rule would not have offered the option of a list.)
- Allows a savings association or affiliate to publicly disclose by placing a copy of the covered agreement in its CRA public file and the savings association making it available under the public file procedures. (The proposed rule would not have extended this option to affiliates.)
- Allows two or more insured depository institutions or affiliates that are parties to a covered agreement to jointly file with each relevant supervisory agency.
- Enhances the protections for proprietary and confidential information. (The final rule, unlike the proposed rule, permits the parties to redact information before making agreements publicly available without the need for prior agency review and approval. It also lists the specific information that parties may not redact to provide clearer guidance. Finally, it provides procedures for parties to submit both redacted and unredacted copies to the agencies to facilitate release of information in accordance with FOIA and related safeguards.)
- Contains transition provisions to ease compliance with disclosure requirements for agreements entered into prior to the effective date of the final rule. (The proposed rule had no transition provisions.)

With regard to the reporting burden, the final rule:

- Does not mandate any particular form for the annual report.
- Allows each party to report on its own fiscal year basis or on the calendar year.
- Exempts a NGEP from filing a report for a fiscal year if the NGEP does not receive or use any funds or resources during that year.
- Exempts an institution or affiliate from filing a report for a fiscal year if the institution or affiliate does not receive or provide any payments, fees, or loans during that year and has no data to report on loans, investments, and services provided by a party to the agreement. An institution or affiliate has no data to report on another party's activities if it does not know of the information or the information is contained in another party's annual report. (The proposed rule would not have included this exemption.)
- Provides the option of special purpose reporting procedures rather than a detailed, itemized list for NGEPs that allocate and use funds or other resources under a covered agreement. (The proposed rule contained similar provisions but would have made special purpose reporting mandatory where applicable.)
- Allows a NGEP's report to consist of, or incorporate, reports prepared for other purposes, such as IRS Form 990 and financial statements. (The proposed rule contained similar provisions, but would not have specifically referred to IRS Form 990.)
- Permits a savings association, affiliate, or NGEP that is a party to two or more covered agreements to file a single consolidated annual report covering all its covered agreements, aggregating certain information. (The proposed rule only would have allowed

consolidated reporting for entities that are parties to five or more covered agreements.)

• Allows a savings association and its affiliates that are parties to the same covered agreement to file a single consolidated report.

• Allows a NGEP to file its report with the insured depository institution or affiliate that is a party to the agreement, rather than with the relevant supervisory agency, allotting six months to do so. The institution must then forward the report to the relevant supervisory agency within 30 days.

• Contains transition provisions to ease compliance with reporting requirements for agreements entered into prior to the effective date of the final rule. (The proposed rule had no transition provisions.)

The final rule also:

• Clarifies, through examples, that a covered agreement (including a written pledge) must reflect a mutual arrangement or understanding.

• Excludes an agreement from the definition of covered agreement if no NGEP that is a party has a CRA communication. (The final rule's definition of ''CRA communication'' is narrower than the proposed rule's definition of ''CRA contact'' in three ways: (1) The types of communications that concern the CRA are somewhat clarified and narrowed; (2) CRA communications must be known about by particular employees and officers of the parties (in some instances, a depository institution or affiliate may be deemed to have knowledge); and (3) CRA communications must occur no earlier than one to three years prior to entering into the agreement depending on the type of CRA communication.)

• Does not subject a party to a multiparty agreement to the requirements of the rule if the party has not had a CRA communication and does not know about any CRA communication among other parties to the agreement. (The proposed rule would have had no comparable provision.)

• Clarifies that agreements that relate to activities of affiliates that are not CRA affiliates at the time a covered agreement is entered into are not covered.

• Implements the ''fulfillment'' provision to cover activities of the type that are likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement. (The proposed rule would not have had implemented the provision in this manner.)

• Provides flexibility to the parties to determine the value of an agreement that does not specify the amount of payments, grants, loans, or other consideration.

• Excludes from the definition of covered agreement any individual loan secured by real estate.

• Excludes from the definition of covered agreement, specific contracts or commitments for a loan or extension of credit if certain requirements are met, provides flexibility to the parties to determine if the loans are ''substantially below market rates,'' and clarifies that the terms of the loan application and other loan documents establish whether the restriction against relending is satisfied.

• In determining whether an agreement that combines an exempt loan and other consideration is covered, the exempt loan may be excluded from consideration.

5. Significant Alternatives to the Final Rule

The requirements in the final rule parallel those in the GLB Act. The final rule clarifies the statutory requirements in some areas and restates the requirements in a more understandable manner in other areas. The final rule does not impose any requirements that differ substantially from the statute. Since the requirements are set by statute, OTS has only limited discretion to consider alternatives. To the extent that OTS does have discretion, it has exercised that discretion to minimize the burden as discussed above.

Congress has decided that ''each'' insured depository institution, affiliate, or person that is a party to a covered agreement must disclose and report the agreement. The GLB Act does not expressly authorize OTS to exempt small savings associations, affiliates, or NGEPs from these requirements. OTS does not interpret the statute to permit such an exemption.

6. Duplicative, Overlapping, or Conflicting Federal Rules

This final rule does not appear to duplicate or overlap with any other Federal rules. To the extent that required information is already contained in reports prepared for other purposes, the final rule allows a NGEP's report to consist of, or incorporate, these existing reports. The final rule also allows insured depository institutions and affiliates to use the CRA public file established under the CRA Regulations as a mechanism for disclosing agreements. The rule is not intended to otherwise affect the CRA.

OTS lacks sufficient information about the contents of covered agreements, however, to conclude whether the final requirements conflict with other Federal rules. One area of potential conflict on which comment was solicited was the rule's requirement to make a ''complete copy'' of a covered agreement available to the public and to the relevant supervisory agencies. OTS solicited specific comment on whether covered agreements contain information that savings associations, affiliates, or persons may be barred from disclosing under other Federal rules (*e.g.,* private customer information), or may be permitted to refrain from disclosing to the public or a Federal banking agency under other Federal rules (*e.g.,* proprietary information). OTS also generally sought comment on any Federal rules that may duplicate, overlap, or conflict with the proposal.

Several commenters indicated that covered agreements are likely to contain proprietary and confidential information. Several commenters requested that the final rule accord full FOIA protections to information in covered agreements. As discussed above, the agencies have enhanced the procedures for protecting proprietary and confidential information in the final rule.

V. Executive Order 12866 Determination

OCC: The Comptroller of the Currency has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866 because it does not satisfy any of the elements of the definition of ''significant regulatory action'' provided by the Executive Order.

OTS: OTS has determined that this final rule does not constitute a significant regulatory action for the purpose of Executive Order 12866. Reporting and disclosure are mandated by section 48 of the FDI Act. Most of the final rule's provisions closely follow the requirements of this section. OTS has exercised its discretion, to the extent possible, to minimize costs and burdens. While OTS acknowledges that the rule will impose costs on insured depository institutions, affiliates, and NGEPs by requiring these entities to disclose and report on covered agreements, OTS believes that the impact of the rule does not meet the thresholds of the Executive Order.

VI. Paperwork Reduction Act

The agencies may not conduct or sponsor, and an organization is not

required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers are listed below:

OCC: 1557–0219
Board: 7100–0298
FDIC: 3064–0139
OTS: 1550–0105

The agencies sought comment on all aspects of the burden estimates for the information collections in the reporting and disclosure provisions of the proposed rule, including how burdensome it would be for NGEPs, insured depository institutions, and affiliates of insured depository institutions to comply with the burden elements. Many commenters suggested, in response to specific proposed sections, that the disclosure and reporting requirements of the rule would impose significant burden on them. Several asserted that the agencies had underestimated the burden associated with complying with the rule.

Many commenters recommended changes in the procedures of the proposed rule for disclosing covered agreements to the public and the relevant supervisory agencies and for submitting annual reports relating to covered agreements. The agencies have addressed several of these concerns by amending the relevant provisions of the rule as discussed above.

The final rule contains four disclosure requirements and two reporting requirements for insured depository institutions and affiliates of insured depository institutions, as well as three disclosure requirements and one reporting requirement for NGEPs. Below is a brief summary of the paperwork burdens implemented by this final rule.

The final rule requires each NGEP, insured depository institution, and affiliate of an insured depository institution that is a party to a covered agreement to make the agreement available to the public upon request at any time during the term of the agreement and continuing until 12 months after the term of the agreement (§§ ____.6(b)(1) and ____.6(b)(5)).

A NGEP is required to disclose a covered agreement to the relevant supervisory agency within 30 days of a request from the agency (§§ ____.6(c)(1)). An insured depository institution or affiliate that enters into a covered agreement must, within 60 days after the close of the relevant calendar quarter, provide to each relevant supervisory agency either (1) a complete copy of each agreement entered into during the calendar quarter (§§ ____.6(d)(1)(i)), or (2) a list of all covered agreements entered into during the calendar quarter (§§ ____.6(d)(1)(ii)). Some commenters felt that allowing insured depository institutions or affiliates to submit a list of their covered agreements would help to decrease burden on the organization. If an institution or affiliate submits a list of its agreement, the institution or affiliate must provide any relevant supervisory agency with a complete copy of any covered agreement referenced in the list within 7 calendar days of receiving a request from the agency (§§ ____.6(d)(2)). The obligation of an institution or affiliate to provide an agency with a copy of a covered agreement referenced in a list terminates 36 months after the term of the agreement.

The final rule also requires each NGEP that is a party to a covered agreement to file an annual report that relates to the agreement for each fiscal year that the NGEP receives or uses funds received under the agreement (§§ ____.7(b)). Each insured depository institution or affiliate that is a party to a covered agreement must file an annual report for each fiscal year that the institution or affiliate makes or receives payments under the agreement or has data to report on loans, investments or services provided under the agreement (§§ ____.7(b)). Annual reports must be filed with each relevant supervisory agency for the covered agreement. The content requirements for the annual report for NGEPs, and insured depository institutions and affiliates of an insured depository institutions are contained in (§§ ____.7(d)) and (§§ ____.7(e)) respectively. The insured depository institution or affiliate must submit its annual report to the relevant supervisory agency within 6 months of the end of its fiscal year. A NGEP must, within 6 months of the end of its fiscal year, either file its annual report with each relevant supervisory agency directly or an insured depository institution or affiliate that is a party to the agreement with instructions for the institution or affiliate to file it with the relevant supervisory agency. The insured depository institution or affiliate must submit the annual report of a NGEP to each relevant supervisory agency within 30 days of receiving the report (§§ ____.7(f)(2)(ii)).

Finally, an insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity identified in section ____.4 (fulfillment) of a CRA affiliate is required to notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate (§§ ____.4(b)).

The estimated total annual reporting and disclosure burden of the final rule will depend on the number of covered agreements. The agencies specifically requested comment on the total number of NGEPs, insured depository institutions, and affiliates that may be parties to covered agreements, and the total number of covered agreements that may be subject to the disclosure and reporting requirements of the rule. The agencies received few estimates from NGEPs, insured depository institutions and affiliates concerning the number of agreements to which they are parties that would be covered under the rule. One large bank estimated that it was a party to over 500 agreements in 1999 that would have been considered covered agreements under the proposed rule. A national organization that promotes the availability of credit and capital in underserved communities commented that it and its 720 community organization members have negotiated 300 ''CRA agreements'' with insured depository institutions and their affiliates.

The agreements that trigger the disclosure and reporting requirements of the final rule are entered into by private parties on a voluntary basis, are not enforced by the agencies and, to date, have not been required to be disclosed to the agencies. The agencies believe that larger banking organizations and NGEPs are likely to be party to a higher proportion of covered agreements than smaller banking organizations and NGEPs. Although some commenters provided estimates on the number of covered agreements that might exist under the proposed rule, as noted above, the final rule clarifies in several important areas the types of agreements that are covered by section 48, and the types of agreements that are exempt from coverage.

Accordingly, the agencies do not believe they have received enough information at this time to definitively estimate the total number of insured depository institutions, affiliates or NGEPs that are parties to covered agreements or the total number of covered agreements that may be subject to the disclosure and reporting requirements of the rule. Nevertheless, solely for purposes of complying with the requirements of the Paperwork Reduction Act, each agency has computed the estimate of annual paperwork burden assuming that each insured depository institution it regulates is involved, either as a party or as a source of funds, with two covered agreements. This would take

into account that large banking organizations may be parties to substantially more covered agreements and many small banking organizations may be party to no covered agreements. In addition, the agencies have assumed that one NGEP is a party to each of these agreements. After the agencies have gained some experience with collecting information under the rule, they will re-examine the paperwork burden.

There are other requirements for NGEPs, insured depository institutions, and affiliates of an insured depository institutions which are not considered to be paperwork requirements. These requirements are discussed in detail in the regulation text and earlier in this preamble.

OCC: OMB has reviewed and approved the collections of information contained in the rule under control number 1557–0219, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB clearance will expire on July 31, 2003.

The potential respondents include national banks and subsidiaries of national banks, and NGEPs that are a party to a covered agreement with any of the foregoing.

Estimated number of financial institution respondents: 2,400.

Estimated number of NGEP respondents: 4,800.

Estimated average annual burden hours for financial institution respondents per agreement: 9 hours.

Estimated burden hours for NGEPs per agreement: 6 hours.

Estimated total annual reporting and disclosure burden: 72,000 hours.

Board: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320, appendix A.1), the Board approved the rule under the authority delegated to the Board by the OMB. The OMB control number is 7100–0298. OMB clearance will expire on January 31, 2004.

The potential respondents are state member banks and subsidiaries of state member banks; bank holding companies; affiliates of bank holding companies other than savings associations, national banks, insured nonmember banks, and subsidiaries of such associations and banks, and NGEPs that are a party to a covered agreement with any of the foregoing.

Estimated number of financial institution respondents: 994.

Estimated number of NGEP respondents: 1,988.

Estimated average annual burden hours for financial institution respondents per agreement: 9 hours.

Estimated burden hours for NGEPs per agreement: 6 hours.

Estimated total annual reporting and disclosure burden: 29,820 hours.

FDIC: OMB has reviewed and approved the collections of information contained in the rule under control number 3064–0139, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB clearance will expire on July 31, 2003.

The potential respondents are insured nonmember banks, subsidiaries of insured nonmember banks, and NGEPs that are a party to a covered agreement with any of the foregoing.

Estimated number of financial institution respondents: 5,130.

Estimated number of NGEP respondents: 10,260.

Estimated average annual burden hours for financial institution respondents per agreement: 9 hours.

Estimated burden hours for NGEPs per agreement: 6 hours.

Estimated total annual reporting and disclosure burden: 153,900 hours.

OTS: OMB has reviewed and approved the collections of information contained in the rule under control number 1550–0105, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB clearance will expire on July 31, 2003.

The potential respondents are savings associations and their subsidiaries, savings and loan holding companies, affiliates of savings associations and savings and loan holding companies other than bank holding companies, banks and subsidiaries of bank holding companies, and NGEPs that are a party to a covered agreement with any of the foregoing.

Estimated number of financial institution respondents: 1,075.

Estimated number of NGEP respondents: 2,150.

Estimated average annual burden hours for financial institution respondents per agreement: 9 hours.

Estimated burden hours for NGEPs respondents per agreement: 6 hours.

Estimated total annual reporting and disclosure burden: 32,250 hours.

The agencies have a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspect of these collections of information. Comments may be sent to:

OCC: Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 8–4, Washington, DC 20219.

Board: Mary M. West, Federal Reserve Board Clearance Officer, Mailstop 97, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080, 550 17th Street, NW., Washington, DC 20429.

OTS: Dissemination Branch (1550–0106), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

A copy of all comments should also be sent to the Office of Management and Budget, Paperwork Reduction Project (include OMB control number), Washington, DC 20503.

VII. Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act requires the agencies to use ''plain language'' in all final rules published after January 1, 2000. The agencies requested comments on whether the proposed rule meets the plain language standard, whether changes should be made to the organization or format of the rule and whether terms used in the rule are clear.

Some commenters recommended that agencies move the section that defines terms used in the rule to the front of the rule. The agencies believe that including the substantive provisions of the rule, including the key definitions of what agreements are ''covered agreements'' and ''in fulfillment of the CRA,'' at the front of the rule will assist users in rapidly identifying whether a particular agreement meets the requirements to be a covered agreement. Accordingly, the agencies have not moved the section including other definitions to the front of the rule. Some commenters requested that the agencies clarify the scope of certain terms used in the proposed rule or examples included in the proposed rule or accompanying **SUPPLEMENTARY INFORMATION.** These comments are addressed in Part III of this preamble.

VIII. Unfunded Mandates Act of 1995

OCC: Section 202 of the Unfunded Mandates Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures 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 budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

This final rule does not apply to state, local or tribal governments. The OCC is not required to assess the effects of its regulatory actions on the private sector

to the extent those regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. The provisions in the final rule incorporate the requirements of Section 711 of the GLBA. Moreover, as described elsewhere in the Supplementary Information, the final rule contains provisions intended to minimize costs and burdens on the private sector entities to which it applies. Therefore, the OCC has determined that this rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year and, accordingly, has not prepared a budgetary impact statement.

OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures 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 budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The final rule does not apply to state, local or tribal governments. Although the final rule applies to insured depository institutions, affiliates, and NGEPs, OTS is not required to assess the effects of its regulatory actions on the private sector to the extent such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Most of the final rule's provisions closely follow the requirements of section 711 of the GLB Act. Moreover, OTS has exercised its discretion, to the extent possible, to minimize costs and burdens. Therefore, OTS has determined that this final rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

IX. Compliance Chart

DISCLOSURE OF COVERED AGREEMENTS TO THE PUBLIC

	NGEP	Insured Depository Institution or affiliate
Which agreements must be disclosed to the public?	Covered agreements entered into after 11/12/99	Covered agreements entered into after 11/12/99.
When does my duty to disclose a covered agreement to the public begin?	4/1/01	4/1/01.
What event triggers my obligation to disclose a covered agreement to a member of the public?	An individual or entity must request you to make a covered agreement available.	An individual or entity must request you to make a covered agreement available.
How do I disclose a covered agreement to the public?	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at § .6(b)(3).	You must promptly make a copy of the covered agreement available. You may withhold information that is confidential and proprietary under FOIA standards. However, you must disclose certain enumerated items of information identified at § .6(b)(3). An IDI or affiliate may make an agreement available by placing a copy of the covered agreement in the IDI's CRA public file. The IDI must make the agreement available in accordance with the CRA rule on public files.
When does my duty to disclose a covered agreement to the public end?	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, your obligation to disclose terminates 4/1/02.	Twelve months after the end of the term of the agreement. However if your agreement terminated before 4/1/01, your obligation to disclose terminates 4/1/02.

DISCLOSURE OF COVERED AGREEMENTS TO THE RELEVANT SUPERVISORY AGENCY (RSA)

	NGEP	Insured Depository Institution or affiliate
What agreements must be disclosed to the RSA?.	Covered agreements entered into after 11/12/99	Covered agreements entered into after 11/12/99.
When does my duty to disclose a covered agreement to the RSA begin?.	4/1/01	4/1/01.
When must I disclose a covered agreement to the RSA?.	You must disclose your covered agreement to the RSA within 30 days after the RSA requests a copy of the agreement.	You must disclose your covered agreement to the RSA within 60 days of the end of the calendar quarter in which the agreement is entered into. However, if your agreement terminated before 4/1/01, you must disclose your agreement to the RSA by 6/30/01.

DISCLOSURE OF COVERED AGREEMENTS TO THE RELEVANT SUPERVISORY AGENCY (RSA)—Continued

	NGEP	Insured Depository Institution or affiliate
How do I disclose a covered agreement to the RSA?.	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include the information identified at § .6(b)(3).	You must provide the RSA with a complete copy of the agreement. If you propose the withholding of any information that can be withheld from disclosure under FOIA, you must also provide a public version of the agreement that excludes such information and an explanation justifying the exclusion. The public version must include the information identified at § .6(b)(3). Alternatively, you may provide a list of all covered agreements that you entered into during the calendar quarter, and include the information described at § .6(d)(1)(ii). If the RSA requests a copy of an agreement referenced in the list, you must provide a copy of the agreement and a public version (if applicable) within seven calendar days.
When does my duty to disclose a covered agreement to the RSA end?.	Twelve months after the end of the term of the agreement. However, if your agreement terminated before 4/1/01, you must make the agreement available to the RSA until 4/l/02.	If you file a list, your obligation to provide a copy of an agreement referenced in the list terminates thirty-six months after the end of the term of the agreement.

ANNUAL REPORTS

	NGEP	Insured Depository Institution or Affiliate
What agreements are subject to annual reporting requirements?	Covered agreements entered into on or after 5/12/00 ...	Covered agreements entered into on or after 5/12/00.
What periods require an annual report?	You must file a report for each fiscal year in which you receive or use funds or other resources under the covered agreement. Alternatively, you may file your report on a calendar year basis.	You must file a report for each fiscal year in which you have any reportable data concerning the covered agreement described in § .7(e)(1)(iii), (e)(1)(iv) or (e)(1)(vi). Alternatively, you may file your report on a calendar year basis.
When must I file the annual report?	*For fiscal years that end on or after 1/1/01,* you must file the report with each RSA within six months after the end of the fiscal year covered by the report. Alternatively, you may, within this six month period, provide the report to an IDI or affiliate that is a party to the agreement. You must include written instructions requiring the IDI or affiliate to promptly forward the report to the RSA(s). *For fiscal years that end between 5/12/00 and 12/31/00,* you must file the report with each RSA (or with an IDI or affiliate that is party to the agreement) no later than 6/30/01.	*For fiscal years that end on or after 1/1/01*, you must file the report with each RSA within six months after the end of the fiscal year covered by the report. *If a NGEP has provided its report to you, you must also file that report with the RSA(s)on behalf of the NGEP within 30 days of receipt.* *For fiscal years that end between 5/12/00 and 12/31/00,* you must file the report with each RSA no later than 6/30/01.
May I file a consolidated annual report?	If you are a party to two or more covered agreements, you may file a single consolidated annual report concerning all the covered agreements.	If you are a party to two or more covered agreements, you may file a single consolidated annual report concerning all the covered agreements. If you and your affiliates are parties to the same covered agreement, you may file a single consolidated annual report relating to the agreement.
What must I include in the annual report?	You must include the information described at § .7(d).	You must include the information described at § .7(e).

List of Subjects

12 CFR Part 35

Community development, Credit, Freedom of information, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 207

Banks, Banking, Community development, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 346

Banks, Banking; Community development; and Reporting and recordkeeping.

12 CFR Part 533

Administrative practice and procedure, Business and industry, Community development, Confidential business information, Credit, Freedom of information, Holding companies, Investments, Mortgages, Nonprofit organizations, Penalties, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter I, of the Code of Federal Regulations is amended by adding a new part 35 to read as follows:

PART 35—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.
35.1 Purpose and scope of this part.
35.2 Definition of covered agreement.
35.3 CRA communications.
35.4 Fulfillment of the CRA.
35.5 Related agreements considered a single agreement.
35.6 Disclosure of covered agreements.
35.7 Annual reports.
35.8 Release of information under FOIA.
35.9 Compliance provisions.
35.10 Transition provisions.
35.11 Other definitions and rules of construction used in this part.

Authority: 12 U.S.C. 1831y.

§ 35.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to national banks, subsidiaries of national banks, and nongovernmental entities or persons that enter into covered agreements with a national bank or a subsidiary of a national bank.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*), part 25 of this chapter (Community Reinvestment Act and Interstate Deposit Production Regulations) or the OCC's interpretations or administration of that Act or regulation.

(d) *Examples.*—(1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

§ 35.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more nongovernmental entities or persons (referred to hereafter as NGEPs).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in § 35.4.

(5) The agreement is with a NGEP that has had a CRA communication as described in § 35.3 prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings.*—(1) *Example 1.* A NGEP meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEP's community. The NGEP and insured depository institution do not reach an agreement concerning the community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the institution unilaterally issues a press release announcing that it has established a general goal of making $100 million of community development grants in low- and moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGEP is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGEP meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEP's community. The NGEP and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGEP's community. The institution tells the NGEP that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGEP and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGEP and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) *Example 3.* An NGEP sends a letter to an insured depository institution requesting that the institution provide a $15,000 grant to the NGEP. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

(1) Any individual loan that is secured by real estate; or

(2) Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities, if—

(i) The funds are loaned at rates that are not substantially below market rates; and

(ii) The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

(d) *Examples concerning loan agreements.*—(1) *Example 1.* An insured depository institution provides an organization with a $1 million loan that is documented in writing and is secured by real estate owned or to-be-acquired by the organization. The agreement is an individual mortgage loan and is exempt from coverage under paragraph (c)(1) of this section, regardless of the interest rate on the loan or whether the organization intends or is authorized to re-loan the funds to a third party.

(2) *Example 2.* An insured depository institution commits to provide a $500,000 line of credit to a small business that is documented by a written agreement. The loan is made at rates that are within the range of rates offered by the institution to similarly situated small businesses in the market and the loan documentation does not indicate that the small business intends or is authorized to re-lend the borrowed funds. The agreement is exempt from coverage under paragraph (c)(2) of this section.

(3) *Example 3.* An insured depository institution offers small business loans that are guaranteed by the Small Business Administration (SBA). A small business obtains a $75,000 loan,

documented in writing, from the institution under the institution's SBA loan program. The loan documentation does not indicate that the borrower intends or is authorized to re-lend the funds. Although the rate charged on the loan is well below that charged by the institution on commercial loans, the rate is within the range of rates that the institution would charge a similarly situated small business for a similar loan under the SBA loan program. Accordingly, the loan is not made at substantially below market rates and is exempt from coverage under paragraph (c)(2) of this section.

(4) *Example 4.* A bank holding company enters into a written agreement with a community development organization that provides that insured depository institutions owned by the bank holding company will make $250 million in small business loans in the community over the next 5 years. The written agreement is not a specific contract or commitment for a loan or an extension of credit and, thus, is not exempt from coverage under paragraph (c)(2) of this section. Each small business loan made by the insured depository institution pursuant to this general commitment would, however, be exempt from coverage if the loan is made at rates that are not substantially below market rates and the loan documentation does not indicate that the borrower intended or was authorized to re-lend the funds.

(e) *Agreements that include exempt loan agreements.* If an agreement includes a loan, extension of credit or loan commitment that, if documented separately, would be exempt under paragraph (c) of this section, the exempt loan, extension of credit or loan commitment may be excluded for purposes of determining whether the agreement is a covered agreement.

(f) *Determining annual value of agreements that lack schedule of disbursements.* For purposes of paragraph (a)(3) of this section, a multi-year agreement that does not include a schedule for the disbursement of payments, grants, loans or other consideration by the insured depository institution or affiliate, is considered to have a value in the first year of the agreement equal to all payments, grants, loans and other consideration to be provided at any time under the agreement.

§ 35.3 CRA communications.

(a) *Definition of CRA communication.* A CRA communication is any of the following—

(1) Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(2) Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.

(3) Any discussion or other contact with the insured depository institution or any affiliate about—

(i) Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;

(ii) Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or

(iii) The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(b) *Discussions or contacts that are not CRA communications*—(1) *Timing of contacts with a Federal banking agency.* An oral or written communication with a Federal banking agency is not a CRA communication if it occurred more than 3 years before the parties entered into the agreement.

(2) *Timing of contacts with insured depository institutions and affiliates.* A communication with an insured depository institution or affiliate is not a CRA communication if the communication occurred—

(i) More than 3 years before the parties entered into the agreement, in the case of any written communication;

(ii) More than 3 years before the parties entered into the agreement, in the case of any oral communication in which the NGEP discusses providing (or refraining from providing) comments or testimony to a Federal banking agency or written comments that must be included in the institution's CRA public file in connection with a request to, or agreement by, the institution or affiliate to take (or refrain from taking) any action that is in fulfillment of the CRA; or

(iii) More than 1 year before the parties entered into the agreement, in the case of any other oral communication not described in paragraph (b)(2)(ii).

(3) *Knowledge of communication by insured depository institution or affiliate.*—(i) A communication is only a CRA communication under paragraph (a) of this section if the insured depository institution or its affiliate has knowledge of the communication under this paragraph (b)(3)(ii) or (b)(3)(iii) of this section.

(ii) *Communication with insured depository institution or affiliate.* An insured depository institution or affiliate has knowledge of a communication by the NGEP to the institution or its affiliate under this paragraph only if one of the following representatives of the insured depository institution or any affiliate has knowledge of the communication—

(A) An employee who approves, directs, authorizes, or negotiates the agreement with the NGEP; or

(B) An employee designated with responsibility for compliance with the CRA or executive officer if the employee or executive officer knows that the institution or affiliate is negotiating, intends to negotiate, or has been informed by the NGEP that it expects to request that the institution or affiliate negotiate an agreement with the NGEP.

(iii) *Other communications.* An insured depository institution or affiliate is deemed to have knowledge of—

(A) Any testimony provided to a Federal banking agency at a public meeting or hearing;

(B) Any comment submitted to a Federal banking agency that is conveyed in writing by the agency to the insured depository institution or affiliate; and

(C) Any written comment submitted to the insured depository institution that must be and is included in the institution's CRA public file.

(4) *Communication where NGEP has knowledge.* A NGEP has a CRA communication with an insured depository institution or affiliate only if any of the following individuals has knowledge of the communication—

(i) A director, employee, or member of the NGEP who approves, directs, authorizes, or negotiates the agreement with the insured depository institution or affiliate;

(ii) A person who functions as an executive officer of the NGEP and who knows that the NGEP is negotiating or intends to negotiate an agreement with the insured depository institution or affiliate; or

(iii) Where the NGEP is an individual, the NGEP.

(c) *Examples of CRA communications.*—(1) *Examples of actions that are CRA communications.* The following are examples of CRA

communications. These examples are not exclusive and assume that the communication occurs within the relevant time period as described in paragraph (b)(1) or (b)(2) of this section and the appropriate representatives have knowledge of the communication as specified in paragraphs (b)(3) and (b)(4) of this section.

(i) *Example 1.* A NGEP files a written comment with a Federal banking agency that states than an insured depository institution successfully addresses the credit needs of its community. The written comment is in response to a general request from the agency for comments on an application of the insured depository institution to open a new branch and a copy of the comment is provided to the institution.

(ii) *Example 2.* A NGEP meets with an executive officer of an insured depository institution and states that the institution must improve its CRA performance.

(iii) *Example 3.* A NGEP meets with an executive officer of an insured depository institution and states that the institution needs to make more mortgage loans in low- and moderate-income neighborhoods in its community.

(iv) *Example 4.* A bank holding company files an application with a Federal banking agency to acquire an insured depository institution. Two weeks later, the NGEP meets with an executive officer of the bank holding company to discuss the adequacy of the performance under the CRA of the target insured depository institution. The insured depository institution was an affiliate of the bank holding company at the time the NGEP met with the target institution. (*See* § 35.11(a).) Accordingly, the NGEP had a CRA communication with an affiliate of the bank holding company.

(2) *Examples of actions that are not CRA communications.* The following are examples of actions that are not by themselves CRA communications. These examples are not exclusive.

(i) *Example 1.* A NGEP provides to a Federal banking agency comments or testimony concerning an insured depository institution or affiliate in response to a direct request by the agency for comments or testimony from that NGEP. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902(3)) by, an insured depository institution or an application by a company to acquire an insured depository institution.

(ii) *Example 2.* A NGEP makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions, affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(iii) *Example 3.* A NGEP, such as a civil rights group, community group providing housing and other services in low- and moderate-income neighborhoods, veterans organization, community theater group, or youth organization, sends a fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work by supporting the fundraising efforts of the NGEP.

(iv) *Example 4.* A NGEP discusses with an insured depository institution or affiliate whether particular loans, services, investments, community development activities, or other activities are generally eligible for consideration by a Federal banking agency under the CRA. The NGEP and insured depository institution or affiliate do not discuss the adequacy of the CRA performance of the insured depository institution or affiliate.

(v) *Example 5.* A NGEP engaged in the sale or purchase of loans in the secondary market sends a general offering circular to financial institutions offering to sell or purchase a portfolio of loans. An insured depository institution that receives the offering circular discusses with the NGEP the types of loans included in the loan pool, whether such loans are generally eligible for consideration under the CRA, and which loans are made to borrowers in the institution's local community. The NGEP and insured depository institution do not discuss the adequacy of the institution's CRA performance.

(d) *Multiparty covered agreements.*—(1) A NGEP that is a party to a covered agreement that involves multiple NGEPs is not required to comply with the requirements of this part if—

(i) The NGEP has not had a CRA communication; and

(ii) No representative of the NGEP identified in paragraph (b)(4) of this section has knowledge at the time of the agreement that another NGEP that is a party to the agreement has had a CRA communication.

(2) An insured depository institution or affiliate that is a party to a covered agreement that involves multiple insured depository institutions or affiliates is not required to comply with the disclosure and annual reporting requirements in §§ 35.6 and 35.7 if—

(i) No NGEP that is a party to the agreement has had a CRA communication concerning the insured depository institution or any affiliate; and

(ii) No representative of the insured depository institution or any affiliate identified in paragraph (b)(3) of this section has knowledge at the time of the agreement that an NGEP that is a party to the agreement has had a CRA communication concerning any other insured depository institution or affiliate that is a party to the agreement.

§ 35.4 Fulfillment of the CRA.

(a) *List of factors that are in fulfillment of the CRA.* Fulfillment of the CRA, for purposes of this part, means the following list of factors—

(1) *Comments to a Federal banking agency or included in CRA public file.* Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution; or

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 25.22 (12 CFR 25.22), including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 25.23 (12 CFR 25.23);

(iii) Delivering retail banking services, as described in § 25.24(d) (12 CFR 25.24(d));

(iv) Providing community development services, as described in § 25.24(e) (12 CFR 25.24(e));

(v) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 25.25(c) (12 CFR 25.25(c));

(vi) In the case of a small insured depository institution, any lending or other activity described in § 25.26(a) (12 CFR 25.26(a)); or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 25.27(f) (12 CFR 25.27(f)).

(b) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns any activity described in paragraph (a) of this section of a CRA affiliate must, prior to the time the agreement is entered into, notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate.

§ 35.5 Related agreements considered a single agreement.

The following rules must be applied in determining whether an agreement is a covered agreement under § 35.2.

(a) *Agreements entered into by same parties.* All written agreements to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the agreements—

(1) Are entered into with the same NGEP;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a NGEP is a party to each contract.

§ 35.6 Disclosure of covered agreements.

(a) *Applicability date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* Each NGEP and each insured depository institution or affiliate that enters into a covered agreement must promptly make a copy of the covered agreement available to any individual or entity upon request.

(2) *Nondisclosure of confidential and proprietary information permitted.* In responding to a request for a covered agreement from any individual or entity under paragraph (b)(1) of this section, a NGEP, insured depository institution, or affiliate may withhold from public disclosure confidential or proprietary information that the party believes the relevant supervisory agency could withhold from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA).

(3) *Information that must be disclosed.* Notwithstanding paragraph (b)(2) of this section, a party must disclose any of the following information that is contained in a covered agreement—

(i) The names and addresses of the parties to the agreement;

(ii) The amount of any payments, fees, loans, or other consideration to be made or provided by any party to the agreement;

(iii) Any description of how the funds or other resources provided under the agreement are to be used;

(iv) The term of the agreement (if the agreement establishes a term); and

(v) Any other information that the relevant supervisory agency determines is not properly exempt from public disclosure.

(4) *Request for review of withheld information.* Any individual or entity may request that the relevant supervisory agency review whether any information in a covered agreement withheld by a party must be disclosed. Any requests for agency review of withheld information must be filed, and will be processed in accordance with, the relevant supervisory agency's rules concerning the availability of information (*see* subpart B of part 4 of the OCC's rules regarding the availability of information under the Freedom of Information Act (12 CFR part 4, subpart B).

(5) *Duration of obligation.* The obligation to disclose a covered agreement to the public terminates 12 months after the end of the term of the agreement.

(6) *Reasonable copy and mailing fees.* Each NGEP and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(7) *Use of CRA public file by insured depository institution or affiliate.* An insured depository institution and any affiliate of an insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file if the institution makes the agreement available in accordance with the procedures set forth in § 25.43 (12 CFR 25.43);

(c) *Disclosure by NGEPs of covered agreements to the relevant supervisory agency.*—(1) Each NGEP that is a party to a covered agreement must provide the following within 30 days of receiving a request from the relevant supervisory agency—

(i) A complete copy of the agreement; and

(ii) In the event the NGEP proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information and an explanation justifying the exclusions. Any public version must include the information described in paragraph (b)(3) of this section.

(2) The obligation of a NGEP to provide a covered agreement to the relevant supervisory agency terminates 12 months after the end of the term of the covered agreement.

(d) *Disclosure by insured depository institution or affiliate of covered agreements to the relevant supervisory agency.*—(1) *In general.* Within 60 days of the end of each calendar quarter, each insured depository institution and affiliate must provide each relevant supervisory agency with—

(i)(A) A complete copy of each covered agreement entered into by the insured depository institution or affiliate during the calendar quarter; and

(B) In the event the institution or affiliate proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information (other than any information described in paragraph (b)(3) of this section) and an explanation justifying the exclusions; or

(ii) A list of all covered agreements entered into by the insured depository institution or affiliate during the calendar quarter that contains—

(A) The name and address of each insured depository institution or affiliate that is a party to the agreement;

(B) The name and address of each NGEP that is a party to the agreement;

(C) The date the agreement was entered into;

(D) The estimated total value of all payments, fees, loans and other consideration to be provided by the institution or any affiliate of the institution under the agreement; and

(E) The date the agreement terminates.

(2) *Prompt filing of covered agreements contained in list required.*—(i) If an insured depository institution or affiliate files a list of the covered agreements entered into by the institution or affiliate pursuant to paragraph (d)(1)(ii) of this section, the institution or affiliate must provide any relevant supervisory agency a complete copy and public version of any covered agreement referenced in the list within 7 calendar days of receiving a request from the agency for a copy of the agreement.

(ii) The obligation of an insured depository institution or affiliate to provide a covered agreement to the relevant supervisory agency under this paragraph (d)(2) terminates 36 months after the end of the term of the agreement.

(3) *Joint filings.* In the event that 2 or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file the documents required by this paragraph (d). Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the filings are being made.

§ 35.7 Annual reports.

(a) *Applicability date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each NGEP and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *NGEPs.* A NGEP must file an annual report for a covered agreement for any fiscal year in which the NGEP receives or uses funds or other resources under the agreement.

(2) *Insured depository institutions and affiliates.* An insured depository institution or affiliate must file an annual report for a covered agreement for any fiscal year in which the institution or affiliate—

(i) provides or receives any payments, fees, or loans under the covered agreement that must be reported under paragraphs (e)(1)(iii) and (iv) of this section; or

(ii) has data to report on loans, investments, and services provided by a party to the covered agreement under the covered agreement under paragraph (e)(1)(vi) of this section.

(d) *Annual reports filed by NGEP*—(1) *Contents of report.* The annual report filed by a NGEP under this section must include the following—

(i) The name and mailing address of the NGEP filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) A detailed, itemized list of how any funds or resources received by the NGEP under the covered agreement were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses and uses (specify expense or use).

(2) *More detailed reporting of uses of funds or resources permitted*—(i) *In general.* If a NGEP allocated and used funds received under a covered agreement for a specific purpose, the NGEP may fulfill the requirements of paragraph (d)(1)(iv) of this section with respect to such funds by providing—

(A) A brief description of each specific purpose for which the funds or other resources were used; and

(B) The amount of funds or resources used during the fiscal year for each specific purpose.

(ii) *Specific purpose defined.* A NGEP allocates and uses funds for a specific purpose if the NGEP receives and uses the funds for a purpose that is more specific and limited than the categories listed in paragraph (d)(1)(iv) of this section.

(3) *Use of other reports.* The annual report filed by a NGEP may consist of or incorporate a report prepared for any other purpose, such as the Internal Revenue Service Return of Organization Exempt From Income Tax on Form 990, or any other Internal Revenue Service form, state tax form, report to members or shareholders, audited or unaudited financial statements, audit report, or other report, so long as the annual report filed by the NGEP contains all of the information required by this paragraph (d).

(4) *Consolidated reports permitted.* A NGEP that is a party to 2 or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information reported under paragraphs (d)(1)(iv) and (d)(2) of this section may be reported on an aggregate basis for all covered agreements.

(5) *Examples of annual report requirements for NGEPs*—(i) *Example 1.* A NGEP receives an unrestricted grant of $15,000 under a covered agreement, includes the funds in its general operating budget and uses the funds during its fiscal year. The NGEP's annual report for the fiscal year must provide the name and mailing address of the NGEP, information sufficient to identify the covered agreement, and state that the NGEP received $15,000 during the fiscal year. The report must also indicate the total expenditures made by the NGEP during the fiscal year for compensation, administrative expenses, travel expenses, entertainment expenses, consulting and professional fees, and other expenses and uses. The NGEP's annual report may provide this information by submitting an Internal Revenue Service Form 990 that includes the required information. If the Internal Revenue Service Form does not include information for all of the required categories listed in this part, the NGEP must report the total expenditures in the remaining categories either by providing that information directly or by providing another form or report that includes the required information.

(ii) *Example 2.* An organization receives $15,000 from an insured depository institution under a covered agreement and allocates and uses the $15,000 during the fiscal year to purchase computer equipment to support its functions. The organization's annual report must include the name and address of the organization, information sufficient to identify the agreement, and a statement that the organization received $15,000 during the year. In addition, since the organization allocated and used the funds for a specific purpose that is more narrow and limited than the categories of expenses included in the detailed, itemized list of expenses, the organization would have the option of providing either the total amount it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section, or a statement that it used the $15,000 to purchase

computer equipment and a brief description of the equipment purchased.

(iii) *Example 3.* A community group receives $50,000 from an insured depository institution under a covered agreement. During its fiscal year, the community group specifically allocates and uses $5,000 of the funds to pay for a particular business trip and uses the remaining $45,000 for general operating expenses. The group's annual report for the fiscal year must include the name and address of the group, information sufficient to identify the agreement, and a statement that the group received $50,000. Because the group did not allocate and use all of the funds for a specific purpose, the group's annual report must provide the total amount of funds it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section. The group's annual report also could state that it used $5,000 for a particular business trip and include a brief description of the trip.

(iv) *Example 4.* A community development organization is a party to two separate covered agreements with two unaffiliated insured depository institutions. Under each agreement, the organization receives $15,000 during its fiscal year and uses the funds to support its activities during that year. If the organization elects to file a consolidated annual report, the consolidated report must identify the organization and the two covered agreements, state that the organization received $15,000 during the fiscal year under each agreement, and provide the total amount that the organization used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement (or a list identifying the agreement) was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by another party under this section.

(2) *Consolidated reports permitted.*—(i) *Party to multiple agreements.* An insured depository institution or affiliate that is a party to 2 or more covered agreements may file a single consolidated annual report with each relevant supervisory agency concerning all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iv) and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing.*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEP.*—(i) A NGEP may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than six months following the end of the NGEP's fiscal year—

(A) A copy of the NGEP's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEP.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEP pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

§ 35.8 Release of information under FOIA.

The OCC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the OCC's rules regarding the availability of information under the Freedom of Information Act (12 CFR part 4, subpart B). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 35.9 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.*—(1) If the OCC determines that a NGEP has willfully failed to comply in a material way with §§ 35.6 or 35.7, the OCC will notify the NGEP in writing of that determination and provide the NGEP a period of 90 days (or such longer period as the OCC finds to be reasonable under the circumstances) to comply.

(2) If the NGEP does not comply within the time period established by the OCC, the agreement shall thereafter be unenforceable by that NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The OCC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEP's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction

determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the OCC may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the OCC will provide written notice and an opportunity to present information to the OCC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the OCC under §§ 35.6 or 35.7 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the OCC to enforce the provisions of any covered agreement.

§ 35.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEP and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 35.6 until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.*—(i) Each NGEP that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 35.6 until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 35.6(d)(1)(i); or

(B) The information described in § 35.6(d)(1)(ii) for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEP, insured depository institution or affiliate has any information to report under § 35.7 for a fiscal year that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEP, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 35.7(f)(2).

§ 35.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* ''Affiliate'' means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 35.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA communication, as described in § 35.3.

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

(d) *CRA public file.* ''CRA public file'' means the public file maintained by an insured depository institution and described in § 25.43 (12 CFR 25.43).

(e) *Executive officer.* The term ''executive officer'' has the same meaning as in § 215.2(e)(1) of Regulation O issued by the Board of Governors of the Federal Reserve System (12 CFR 215.2(e)(1)).

(f) *Federal banking agency; appropriate Federal banking agency.* The terms ''Federal banking agency'' and ''appropriate Federal banking agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year.

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(h) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *NGEP.* ''NGEP'' means a nongovernmental entity or person.

(j) *Nongovernmental entity or person*—(1) *General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (i)(2)(i) through (iii) of this section.

(k) *Party.* The term ''party'' with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(l) *Relevant supervisory agency.* The ''relevant supervisory agency'' for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or

subsidiary thereof) that is a party to the covered agreement.

(m) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

Dated: December 21, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter II, of the Code of Federal Regulations is amended by adding a new part 207 to read as follows:

PART 207—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS (REGULATION G)

Sec.

207.1 Purpose and scope of this part.
207.2 Definition of covered agreement.
207.3 CRA communications.
207.4 Fulfillment of the CRA.
207.5 Related agreements considered a single agreement.
207.6 Disclosure of covered agreements.
207.7 Annual reports.
207.8 Release of information under FOIA.
207.9 Compliance provisions.
207.10 Transition provisions.
207.11 Other definitions and rules of construction used in this part.

Authority: 12 U.S.C. 1831y.

§ 207.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

(1) State member banks and their subsidiaries;

(2) Bank holding companies;

(3) Affiliates of bank holding companies, other than banks, savings associations and subsidiaries of banks and savings associations; and

(4) Nongovernmental entities or persons that enter into covered agreements with any company listed in paragraph (b)(1) through (3) of this section.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*), the Board's Regulation BB (12 CFR part 228), or the Board's interpretations or administration of that Act or regulation.

(d) *Examples.*—(1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

§ 207.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more nongovernmental entities or persons (referred to hereafter as NGEPs).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in § 207.4.

(5) The agreement is with a NGEP that has had a CRA communication as described in § 207.3 prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings.*—(1) *Example 1.* A NGEP meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEP's community. The NGEP and insured depository institution do not reach an agreement concerning the community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the institution unilaterally issues a press release announcing that it has established a general goal of making $100 million of community development grants in low- and moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGEP is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGEP meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEP's community. The NGEP and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGEP's community. The institution tells the NGEP that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGEP and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGEP and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) *Example 3.* An NGEP sends a letter to an insured depository institution requesting that the institution provide a $15,000 grant to the NGEP. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

(1) Any individual loan that is secured by real estate; or

(2) Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities, if—

(i) The funds are loaned at rates that are not substantially below market rates; and

(ii) The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

(d) *Examples concerning loan agreements.*—(1) *Example 1.* An insured depository institution provides an organization with a $1 million loan that is documented in writing and is secured by real estate owned or to-be-acquired by the organization. The agreement is an individual mortgage loan and is exempt from coverage under paragraph (c)(1) of this section, regardless of the interest rate on the loan or whether the organization intends or is authorized to re-loan the funds to a third party.

(2) *Example 2.* An insured depository institution commits to provide a $500,000 line of credit to a small business that is documented by a written agreement. The loan is made at rates that are within the range of rates offered by the institution to similarly situated small businesses in the market and the loan documentation does not indicate that the small business intends or is authorized to re-lend the borrowed funds. The agreement is exempt from coverage under paragraph (c)(2) of this section.

(3) *Example 3.* An insured depository institution offers small business loans that are guaranteed by the Small Business Administration (SBA). A small business obtains a $75,000 loan, documented in writing, from the institution under the institution's SBA loan program. The loan documentation does not indicate that the borrower intends or is authorized to re-lend the funds. Although the rate charged on the loan is well below that charged by the institution on commercial loans, the rate is within the range of rates that the institution would charge a similarly situated small business for a similar loan under the SBA loan program. Accordingly, the loan is not made at substantially below market rates and is exempt from coverage under paragraph (c)(2) of this section.

(4) *Example 4.* A bank holding company enters into a written agreement with a community development organization that provides that insured depository institutions owned by the bank holding company will make $250 million in small business loans in the community over the next 5 years. The written agreement is not a specific contract or commitment for a loan or an extension of credit and, thus, is not exempt from coverage under paragraph (c)(2) of this section. Each small business loan made by the insured depository institution pursuant to this general commitment would, however, be exempt from coverage if the loan is made at rates that are not substantially below market rates and the loan documentation does not indicate that the borrower intended or was authorized to re-lend the funds.

(e) *Agreements that include exempt loan agreements.* If an agreement includes a loan, extension of credit or loan commitment that, if documented separately, would be exempt under paragraph (c) of this section, the exempt loan, extension of credit or loan commitment may be excluded for purposes of determining whether the agreement is a covered agreement.

(f) *Determining annual value of agreements that lack schedule of disbursements.* For purposes of paragraph (a)(3) of this section, a multi-year agreement that does not include a schedule for the disbursement of payments, grants, loans or other consideration by the insured depository institution or affiliate, is considered to have a value in the first year of the agreement equal to all payments, grants, loans and other consideration to be provided at any time under the agreement.

§ 207.3 CRA communications.

(a) *Definition of CRA communication.* A CRA communication is any of the following—

(1) Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(2) Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.

(3) Any discussion or other contact with the insured depository institution or any affiliate about—

(i) Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;

(ii) Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or

(iii) The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(b) *Discussions or contacts that are not CRA communications.*—(1) *Timing of contacts with a Federal banking agency.* An oral or written communication with a Federal banking agency is not a CRA communication if it occurred more than 3 years before the parties entered into the agreement.

(2) *Timing of contacts with insured depository institutions and affiliates.* A communication with an insured depository institution or affiliate is not a CRA communication if the communication occurred—

(i) More than 3 years before the parties entered into the agreement, in the case of any written communication;

(ii) More than 3 years before the parties entered into the agreement, in the case of any oral communication in which the NGEP discusses providing (or refraining from providing) comments or testimony to a Federal banking agency or written comments that must be included in the institution's CRA public file in connection with a request to, or agreement by, the institution or affiliate to take (or refrain from taking) any action that is in fulfillment of the CRA; or

(iii) More than 1 year before the parties entered into the agreement, in the case of any other oral communication not described in paragraph (b)(2)(ii) of this section.

(3) *Knowledge of communication by insured depository institution or affiliate.*—(i) A communication is only a CRA communication under paragraph (a) of this section if the insured depository institution or its affiliate has knowledge of the communication under this paragraph (b)(3)(ii) or (b)(3)(iii) of this section.

(ii) *Communication with insured depository institution or affiliate.* An insured depository institution or affiliate has knowledge of a communication by the NGEP to the institution or its affiliate under this paragraph only if one of the following representatives of the insured depository institution or any affiliate has knowledge of the communication.

(A) An employee who approves, directs, authorizes, or negotiates the agreement with the NGEP; or

(B) An employee designated with responsibility for compliance with the CRA or executive officer if the employee or executive officer knows that the institution or affiliate is negotiating, intends to negotiate, or has been informed by the NGEP that it expects to request that the institution or affiliate negotiate an agreement with the NGEP.

(iii) *Other communications.* An insured depository institution or affiliate is deemed to have knowledge of—

(A) Any testimony provided to a Federal banking agency at a public meeting or hearing;

(B) Any comment submitted to a Federal banking agency that is conveyed in writing by the agency to the insured depository institution or affiliate; and

(C) Any written comment submitted to the insured depository institution that must be and is included in the institution's CRA public file.

(4) *Communication where NGEP has knowledge.* A NGEP has a CRA communication with an insured depository institution or affiliate only if any of the following individuals has knowledge of the communication—

(i) A director, employee, or member of the NGEP who approves, directs, authorizes, or negotiates the agreement with the insured depository institution or affiliate;

(ii) A person who functions as an executive officer of the NGEP and who knows that the NGEP is negotiating or intends to negotiate an agreement with the insured depository institution or affiliate; or

(iii) Where the NGEP is an individual, the NGEP.

(c) *Examples of CRA communications.*—(1) *Examples of actions that are CRA communications.* The following are examples of CRA communications. These examples are not exclusive and assume that the communication occurs within the relevant time period as described in paragraph (b)(1) or (b)(2) of this section and the appropriate representatives have knowledge of the communication as specified in paragraphs (b)(3) and (b)(4) of this section.

(i) *Example 1.* A NGEP files a written comment with a Federal banking agency that states than an insured depository institution successfully addresses the credit needs of its community. The written comment is in response to a general request from the agency for comments on an application of the insured depository institution to open a new branch and a copy of the comment is provided to the institution.

(ii) *Example 2.* A NGEP meets with an executive officer of an insured depository institution and states that the institution must improve its CRA performance.

(iii) *Example 3.* A NGEP meets with an executive officer of an insured depository institution and states that the institution needs to make more mortgage loans in low- and moderate-income neighborhoods in its community.

(iv) *Example 4.* A bank holding company files an application with a Federal banking agency to acquire an insured depository institution. Two weeks later, the NGEP meets with an executive officer of the bank holding company to discuss the adequacy of the performance under the CRA of the target insured depository institution. The insured depository institution was an affiliate of the bank holding company at the time the NGEP met with the target institution. (See § 207.11(a).) Accordingly, the NGEP had a CRA communication with an affiliate of the bank holding company.

(2) *Examples of actions that are not CRA communications.* The following are examples of actions that are not by themselves CRA communications. These examples are not exclusive.

(i) *Example 1.* A NGEP provides to a Federal banking agency comments or testimony concerning an insured depository institution or affiliate in response to a direct request by the agency for comments or testimony from that NGEP. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902(3)) by, an insured depository institution or an application by a company to acquire an insured depository institution.

(ii) *Example 2.* A NGEP makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions, affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(iii) *Example 3.* A NGEP, such as a civil rights group, community group providing housing and other services in low- and moderate-income neighborhoods, veterans organization, community theater group, or youth organization, sends a fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work by supporting the fundraising efforts of the NGEP.

(iv) *Example 4.* A NGEP discusses with an insured depository institution or affiliate whether particular loans, services, investments, community development activities, or other activities are generally eligible for consideration by a Federal banking agency under the CRA. The NGEP and insured depository institution or affiliate do not discuss the adequacy of the CRA performance of the insured depository institution or affiliate.

(v) *Example 5.* A NGEP engaged in the sale or purchase of loans in the secondary market sends a general offering circular to financial institutions offering to sell or purchase a portfolio of loans. An insured depository institution that receives the offering circular discusses with the NGEP the types of loans included in the loan pool, whether such loans are generally eligible for consideration under the CRA, and which loans are made to borrowers in the institution's local community. The NGEP and insured depository institution do not discuss the adequacy of the institution's CRA performance.

(d) *Multiparty covered agreements.*—(1) A NGEP that is a party to a covered agreement that involves multiple NGEPs is not required to comply with the requirements of this part if—

(i) The NGEP has not had a CRA communication; and

(ii) No representative of the NGEP identified in paragraph (b)(4) of this section has knowledge at the time of the agreement that another NGEP that is a party to the agreement has had a CRA communication.

(2) An insured depository institution or affiliate that is a party to a covered agreement that involves multiple insured depository institutions or affiliates is not required to comply with the disclosure and annual reporting requirements in §§ 207.6 and 207.7 if—

(i) No NGEP that is a party to the agreement has had a CRA communication concerning the insured depository institution or any affiliate; and

(ii) No representative of the insured depository institution or any affiliate identified in paragraph (b)(3) of this section has knowledge at the time of the agreement that an NGEP that is a party to the agreement has had a CRA communication concerning any other insured depository institution or affiliate that is a party to the agreement.

§ 207.4 Fulfillment of the CRA.

(a) *List of factors that are in fulfillment of the CRA.* Fulfillment of the CRA, for purposes of this part, means the following list of factors—

(1) *Comments to a Federal banking agency or included in CRA public file.* Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository

institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution; or

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 228.22 of Regulation BB (12 CFR 228.22), including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 228.23 of Regulation BB (12 CFR 228.23);

(iii) Delivering retail banking services, as described in § 228.24(d) of Regulation BB (12 CFR 228.24(d));

(iv) Providing community development services, as described in § 228.24(e) of Regulation BB (12 CFR 228.24(e));

(v) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 228.25(c) of Regulation BB (12 CFR 228.25(c));

(vi) In the case of a small insured depository institution, any lending or other activity described in § 228.26(a) of Regulation BB (12 CFR 228.26(a)); or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 228.27(f) of Regulation BB (12 CFR 228.27(f)).

(b) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns any activity described in paragraph (a) of this section of a CRA affiliate must, prior to the time the agreement is entered into, notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate.

§ 207.5 Related agreements considered a single agreement.

The following rules must be applied in determining whether an agreement is a covered agreement under § 207.2.

(a) *Agreements entered into by same parties.* All written agreements to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the agreements—

(1) Are entered into with the same NGEP;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a NGEP is a party to each contract.

§ 207.6 Disclosure of covered agreements.

(a) *Applicability date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* Each NGEP and each insured depository institution or affiliate that enters into a covered agreement must promptly make a copy of the covered agreement available to any individual or entity upon request.

(2) *Nondisclosure of confidential and proprietary information permitted.* In responding to a request for a covered agreement from any individual or entity under paragraph (b)(1) of this section, a NGEP, insured depository institution, or affiliate may withhold from public disclosure confidential or proprietary information that the party believes the relevant supervisory agency could withhold from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA).

(3) *Information that must be disclosed.* Notwithstanding paragraph (b)(2) of this section, a party must disclose any of the following information that is contained in a covered agreement—

(i) The names and addresses of the parties to the agreement;

(ii) The amount of any payments, fees, loans, or other consideration to be made or provided by any party to the agreement;

(iii) Any description of how the funds or other resources provided under the agreement are to be used;

(iv) The term of the agreement (if the agreement establishes a term); and

(v) Any other information that the relevant supervisory agency determines is not properly exempt from public disclosure.

(4) *Request for review of withheld information.* Any individual or entity may request that the relevant supervisory agency review whether any information in a covered agreement withheld by a party must be disclosed. Any requests for agency review of withheld information must be filed, and will be processed in accordance with, the relevant supervisory agency's rules concerning the availability of information (*see* § 261.12 of the Board's Rules Regarding the Availability of Information (12 CFR 261.12)).

(5) *Duration of obligation.* The obligation to disclose a covered agreement to the public terminates 12 months after the end of the term of the agreement.

(6) *Reasonable copy and mailing fees.* Each NGEP and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(7) *Use of CRA public file by insured depository institution or affiliate.* An insured depository institution and any affiliate of an insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file if the institution makes the agreement available in accordance with the procedures set forth in § 228.43 of Regulation BB (12 CFR 228.43).

(c) *Disclosure by NGEPs of covered agreements to the relevant supervisory agency.* (1) Each NGEP that is a party to a covered agreement must provide the following within 30 days of receiving a request from the relevant supervisory agency—

(i) A complete copy of the agreement; and

(ii) In the event the NGEP proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information and an explanation justifying the exclusions. Any public version must include the information described in paragraph (b)(3) of this section.

(2) The obligation of a NGEP to provide a covered agreement to the relevant supervisory agency terminates 12 months after the end of the term of the covered agreement.

(d) *Disclosure by insured depository institution or affiliate of covered agreements to the relevant supervisory agency*—(1) *In general.* Within 60 days of the end of each calendar quarter, each insured depository institution and affiliate must provide each relevant supervisory agency with—

(i)(A) A complete copy of each covered agreement entered into by the insured depository institution or affiliate during the calendar quarter; and

(B) In the event the institution or affiliate proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information (other than any information described in paragraph (b)(3) of this section) and an explanation justifying the exclusions; or

(ii) A list of all covered agreements entered into by the insured depository institution or affiliate during the calendar quarter that contains—

(A) The name and address of each insured depository institution or affiliate that is a party to the agreement;

(B) The name and address of each NGEP that is a party to the agreement;

(C) The date the agreement was entered into;

(D) The estimated total value of all payments, fees, loans and other consideration to be provided by the institution or any affiliate of the institution under the agreement; and

(E) The date the agreement terminates.

(2) *Prompt filing of covered agreements contained in list required.* (i) If an insured depository institution or affiliate files a list of the covered agreements entered into by the institution or affiliate pursuant to paragraph (d)(1)(ii) of this section, the institution or affiliate must provide any relevant supervisory agency a complete copy and public version of any covered agreement referenced in the list within 7 calendar days of receiving a request from the agency for a copy of the agreement.

(ii) The obligation of an insured depository institution or affiliate to provide a covered agreement to the relevant supervisory agency under this paragraph (d)(2) terminates 36 months after the end of the term of the agreement.

(3) *Joint filings.* In the event that 2 or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file the documents required by this paragraph (d). Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the filings are being made.

§ 207.7 Annual reports.

(a) *Applicability date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each NGEP and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *NGEPs.* A NGEP must file an annual report for a covered agreement for any fiscal year in which the NGEP receives or uses funds or other resources under the agreement.

(2) *Insured depository institutions and affiliates.* An insured depository institution or affiliate must file an annual report for a covered agreement for any fiscal year in which the institution or affiliate—

(i) provides or receives any payments, fees, or loans under the covered agreement that must be reported under paragraphs (e)(1)(iii) and (iv) of this section; or

(ii) has data to report on loans, investments, and services provided by a party to the covered agreement under the covered agreement under paragraph (e)(1)(vi) of this section.

(d) *Annual reports filed by NGEP.*—(1) *Contents of report.* The annual report filed by a NGEP under this section must include the following—

(i) The name and mailing address of the NGEP filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) A detailed, itemized list of how any funds or resources received by the NGEP under the covered agreement were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses and uses (specify expense or use).

(2) *More detailed reporting of uses of funds or resources permitted*—(i) *In general.* If a NGEP allocated and used funds received under a covered agreement for a specific purpose, the NGEP may fulfill the requirements of paragraph (d)(1)(iv) of this section with respect to such funds by providing—

(A) A brief description of each specific purpose for which the funds or other resources were used; and

(B) The amount of funds or resources used during the fiscal year for each specific purpose.

(ii) *Specific purpose defined.* A NGEP allocates and uses funds for a specific purpose if the NGEP receives and uses the funds for a purpose that is more specific and limited than the categories listed in paragraph (d)(1)(iv) of this section.

(3) *Use of other reports.* The annual report filed by a NGEP may consist of or incorporate a report prepared for any other purpose, such as the Internal Revenue Service Return of Organization Exempt From Income Tax on Form 990, or any other Internal Revenue Service form, state tax form, report to members or shareholders, audited or unaudited financial statements, audit report, or other report, so long as the annual report filed by the NGEP contains all of the information required by this paragraph (d).

(4) *Consolidated reports permitted.* A NGEP that is a party to 2 or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information reported under paragraphs (d)(1)(iv) and (d)(2) of this section may be reported on an aggregate basis for all covered agreements.

(5) *Examples of annual report requirements for NGEPs*—(i) *Example 1.* A NGEP receives an unrestricted grant of $15,000 under a covered agreement, includes the funds in its general operating budget and uses the funds during its fiscal year. The NGEP's annual report for the fiscal year must provide the name and mailing address of the NGEP, information sufficient to identify the covered agreement, and state that the NGEP received $15,000 during the fiscal year. The report must also indicate the total expenditures made by the NGEP during the fiscal year for compensation, administrative expenses, travel expenses, entertainment expenses, consulting and professional fees, and other expenses and uses. The NGEP's annual report may provide this information by submitting an Internal Revenue Service Form 990 that includes the required information. If the Internal Revenue

Service Form does not include information for all of the required categories listed in this part, the NGEP must report the total expenditures in the remaining categories either by providing that information directly or by providing another form or report that includes the required information.

(ii) *Example 2.* An organization receives $15,000 from an insured depository institution under a covered agreement and allocates and uses the $15,000 during the fiscal year to purchase computer equipment to support its functions. The organization's annual report must include the name and address of the organization, information sufficient to identify the agreement, and a statement that the organization received $15,000 during the year. In addition, since the organization allocated and used the funds for a specific purpose that is more narrow and limited than the categories of expenses included in the detailed, itemized list of expenses, the organization would have the option of providing either the total amount it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section, or a statement that it used the $15,000 to purchase computer equipment and a brief description of the equipment purchased.

(iii) *Example 3.* A community group receives $50,000 from an insured depository institution under a covered agreement. During its fiscal year, the community group specifically allocates and uses $5,000 of the funds to pay for a particular business trip and uses the remaining $45,000 for general operating expenses. The group's annual report for the fiscal year must include the name and address of the group, information sufficient to identify the agreement, and a statement that the group received $50,000. Because the group did not allocate and use all of the funds for a specific purpose, the group's annual report must provide the total amount of funds it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section. The group's annual report also could state that it used $5,000 for a particular business trip and include a brief description of the trip.

(iv) *Example 4.* A community development organization is a party to two separate covered agreements with two unaffiliated insured depository institutions. Under each agreement, the organization receives $15,000 during its fiscal year and uses the funds to support its activities during that year. If the organization elects to file a consolidated annual report, the consolidated report must identify the organization and the two covered agreements, state that the organization received $15,000 during the fiscal year under each agreement, and provide the total amount that the organization used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement (or a list identifying the agreement) was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by another party under this section.

(2) *Consolidated reports permitted*—(i) *Party to multiple agreements.* An insured depository institution or affiliate that is a party to 2 or more covered agreements may file a single consolidated annual report with each relevant supervisory agency concerning all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iv) and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing.*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEP*—(i) A NGEP may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than six months following the end of the NGEP's fiscal year—

(A) A copy of the NGEP's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEP.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEP pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

§ 207.8 Release of information under FOIA.

The Board will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the Board's Rules Regarding the Availability of Information (12 CFR part 261). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 207.9 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations*—(1) If the Board determines that a NGEP has willfully failed to comply in a material way with §§ 207.6 or 207.7, the Board will notify the NGEP in writing of that determination and provide the NGEP a period of 90 days (or such longer period as the Board finds to be reasonable under the circumstances) to comply.

(2) If the NGEP does not comply within the time period established by the Board, the agreement shall thereafter be unenforceable by that NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The Board may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEP's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the Board may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the Board will provide written notice and an opportunity to present information to the Board concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the Board under §§ 207.6 or 207.7 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the Board to enforce the provisions of any covered agreement.

§ 207.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEP and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 207.6 until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency*—(i) Each NGEP that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 207.6 until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 207.6(d)(1)(i); or

(B) The information described in § 207.6(d)(1)(ii) for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEP, insured depository institution or affiliate has any information to report under § 207.7 for a fiscal year that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEP, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 207.7(f)(2).

§ 207.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* ''Affiliate'' means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 207.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA communication, as described in § 207.3.

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

(d) *CRA public file.* ''CRA public file'' means the public file maintained by an insured depository institution and described in § 228.43 of Regulation BB (12 CFR 228.43).

(e) *Executive officer.* The term ''executive officer'' has the same meaning as in § 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)).

(f) *Federal banking agency; appropriate Federal banking agency.* The terms ''Federal banking agency'' and ''appropriate Federal banking agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year.

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(h) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *NGEP.* ''NGEP'' means a nongovernmental entity or person.

(j) *Nongovernmental entity or person*—(1) *General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds

appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (i)(2)(i) through (iii) of this section.

(k) *Party.* The term ''party'' with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(l) *Relevant supervisory agency.* The ''relevant supervisory agency'' for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(m) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

By order of the Board of Governors of the Federal Reserve System, December 21, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter III, of the Code of Federal Regulations is amended by adding a new part 346 to read as follows:

PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

346.1 Purpose and scope of this part.
346.2 Definition of covered agreement.
346.3 CRA communications.
346.4 Fulfillment of the CRA.
346.5 Related agreements considered a single agreement.
346.6 Disclosure of covered agreements.
346.7 Annual reports.
346.8 Release of information under FOIA.
346.9 Compliance provisions.
346.10 Transition provisions.
346.11 Other definitions and rules of construction used in this part.

Authority: 12 U.S.C. 1831y.

§ 346.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

(1) State nonmember insured banks;

(2) Subsidiaries of state nonmember insured banks;

(3) Nongovernmental entities or persons that enter into covered agreements with any company listed in paragraph (b)(1) and (2) of this section.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) or the FDIC's Community Reinvestment regulation found at 12 CFR part 345, or the FDIC's interpretations or administration of that Act or regulation.

(d) Examples.—(1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

§ 346.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more nongovernmental entities or persons (referred to hereafter as NGEPs).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in § 346.4.

(5) The agreement is with a NGEP that has had a CRA communication as described in § 346.3 prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings*—(1) *Example 1.* A NGEP meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEP's community. The NGEP and insured depository institution do not reach an agreement concerning the community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the institution unilaterally issues a press release announcing that it has established a general goal of making $100 million of community development grants in low- and moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGEP is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGEP meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEP's community. The NGEP and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGEP's community. The institution tells the NGEP that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGEP and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGEP and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) *Example 3.* An NGEP sends a letter to an insured depository institution requesting that the institution provide a

$15,000 grant to the NGEP. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

(1) Any individual loan that is secured by real estate; or

(2) Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities if—

(i) The funds are loaned at rates that are not substantially below market rates; and

(ii) The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

(d) *Examples concerning loan agreements.*—(1) *Example 1.* An insured depository institution provides an organization with a $1 million loan that is documented in writing and is secured by real estate owned or to-be-acquired by the organization. The agreement is an individual mortgage loan and is exempt from coverage under paragraph (c)(1) of this section, regardless of the interest rate on the loan or whether the organization intends or is authorized to re-loan the funds to a third party.

(2) *Example 2.* An insured depository institution commits to provide a $500,000 line of credit to a small business that is documented by a written agreement. The loan is made at rates that are within the range of rates offered by the institution to similarly situated small businesses in the market and the loan documentation does not indicate that the small business intends or is authorized to re-lend the borrowed funds. The agreement is exempt from coverage under paragraph (c)(2) of this section.

(3) *Example 3.* An insured depository institution offers small business loans that are guaranteed by the Small Business Administration (SBA). A small business obtains a $75,000 loan, documented in writing, from the institution under the institution's SBA loan program. The loan documentation does not indicate that the borrower intends or is authorized to re-lend the funds. Although the rate charged on the loan is well below that charged by the institution on commercial loans, the rate is within the range of rates that the institution would charge a similarly situated small business for a similar loan under the SBA loan program. Accordingly, the loan is not made at substantially below market rates and is exempt from coverage under paragraph (c)(2) of this section.

(4) *Example 4.* A bank holding company enters into a written agreement with a community development organization that provides that insured depository institutions owned by the bank holding company will make $250 million in small business loans in the community over the next 5 years. The written agreement is not a specific contract or commitment for a loan or an extension of credit and, thus, is not exempt from coverage under paragraph (c)(2) of this section. Each small business loan made by the insured depository institution pursuant to this general commitment would, however, be exempt from coverage if the loan is made at rates that are not substantially below market rates and the loan documentation does not indicate that the borrower intended or was authorized to re-lend the funds.

(e) *Agreements that include exempt loan agreements.* If an agreement includes a loan, extension of credit or loan commitment that, if documented separately, would be exempt under paragraph (c) of this section, the exempt loan, extension of credit or loan commitment may be excluded for purposes of determining whether the agreement is a covered agreement.

(f) *Determining annual value of agreements that lack schedule of disbursements.* For purposes of paragraph (a)(3) of this section, a multi-year agreement that does not include a schedule for the disbursement of payments, grants, loans or other consideration by the insured depository institution or affiliate, is considered to have a value in the first year of the agreement equal to all payments, grants, loans and other consideration to be provided at any time under the agreement.

§ 346.3 CRA communications.

(a) *Definition of CRA communication.* A CRA communication is any of the following—

(1) Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(2) Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.

(3) Any discussion or other contact with the insured depository institution or any affiliate about—

(i) Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;

(ii) Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or

(iii) The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(b) *Discussions or contacts that are not CRA communications*—(1) *Timing of contacts with a Federal banking agency.* An oral or written communication with a Federal banking agency is not a CRA communication if it occurred more than 3 years before the parties entered into the agreement.

(2) *Timing of contacts with insured depository institutions and affiliates.* A communication with an insured depository institution or affiliate is not a CRA communication if the communication occurred—

(i) More than 3 years before the parties entered into the agreement, in the case of any written communication;

(ii) More than 3 years before the parties entered into the agreement, in the case of any oral communication in which the NGEP discusses providing (or refraining from providing) comments or testimony to a Federal banking agency or written comments that must be included in the institution's CRA public file in connection with a request to, or agreement by, the institution or affiliate to take (or refrain from taking) any action that is in fulfillment of the CRA; or

(iii) More than 1 year before the parties entered into the agreement, in the case of any other oral communication not described in paragraph (b)(2)(ii) of this section.

(3) *Knowledge of communication by insured depository institution or affiliate.*—(i) A communication is only a CRA communication under paragraph (a) of this section if the insured depository institution or its affiliate has knowledge of the communication under this paragraph (b)(3)(ii) or (b)(3)(iii) of this section.

(ii) *Communication with insured depository institution or affiliate.* An

insured depository institution or affiliate has knowledge of a communication by the NGEP to the institution or its affiliate under this paragraph only if one of the following representatives of the insured depository institution or any affiliate has knowledge of the communication—

(A) An employee who approves, directs, authorizes, or negotiates the agreement with the NGEP; or

(B) An employee designated with responsibility for compliance with the CRA or executive officer if the employee or executive officer knows that the institution or affiliate is negotiating, intends to negotiate, or has been informed by the NGEP that it expects to request that the institution or affiliate negotiate an agreement with the NGEP.

(iii) *Other communications.* An insured depository institution or affiliate is deemed to have knowledge of—

(A) Any testimony provided to a Federal banking agency at a public meeting or hearing;

(B) Any comment submitted to a Federal banking agency that is conveyed in writing by the agency to the insured depository institution or affiliate; and

(C) Any written comment submitted to the insured depository institution that must be and is included in the institution's CRA public file.

(4) *Communication where NGEP has knowledge.* A NGEP has a CRA communication with an insured depository institution or affiliate only if any of the following individuals has knowledge of the communication—

(i) A director, employee, or member of the NGEP who approves, directs, authorizes, or negotiates the agreement with the insured depository institution or affiliate;

(ii) A person who functions as an executive officer of the NGEP and who knows that the NGEP is negotiating or intends to negotiate an agreement with the insured depository institution or affiliate; or

(iii) Where the NGEP is an individual, the NGEP.

(c) *Examples of CRA communications*—(1) *Examples of actions that are CRA communications.* The following are examples of CRA communications. These examples are not exclusive and assume that the communication occurs within the relevant time period as described in paragraph (b)(1) or (b)(2) of this section and the appropriate representatives have knowledge of the communication as specified in paragraphs (b)(3) and (b)(4) of this section.

(i) *Example 1.* A NGEP files a written comment with a Federal banking agency that states than an insured depository institution successfully addresses the credit needs of its community. The written comment is in response to a general request from the agency for comments on an application of the insured depository institution to open a new branch and a copy of the comment is provided to the institution.

(ii) *Example 2.* A NGEP meets with an executive officer of an insured depository institution and states that the institution must improve its CRA performance.

(iii) *Example 3.* A NGEP meets with an executive officer of an insured depository institution and states that the institution needs to make more mortgage loans in low- and moderate-income neighborhoods in its community.

(iv) *Example 4.* A bank holding company files an application with a Federal banking agency to acquire an insured depository institution. Two weeks later, the NGEP meets with an executive officer of the bank holding company to discuss the adequacy of the performance under the CRA of the target insured depository institution. The insured depository institution was an affiliate of the bank holding company at the time the NGEP met with the target institution. (See § 346.11(a).) Accordingly, the NGEP had a CRA communication with an affiliate of the bank holding company.

(2) *Examples of actions that are not CRA communications.* The following are examples of actions that are not by themselves CRA communications. These examples are not exclusive.

(i) *Example 1.* A NGEP provides to a Federal banking agency comments or testimony concerning an insured depository institution or affiliate in response to a direct request by the agency for comments or testimony from that NGEP. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902(3)) by, an insured depository institution or an application by a company to acquire an insured depository institution.

(ii) *Example 2.* A NGEP makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions, affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(iii) *Example 3.* A NGEP, such as a civil rights group, community group providing housing and other services in low- and moderate-income neighborhoods, veterans organization, community theater group, or youth organization, sends a fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work by supporting the fundraising efforts of the NGEP.

(iv) *Example 4.* A NGEP discusses with an insured depository institution or affiliate whether particular loans, services, investments, community development activities, or other activities are generally eligible for consideration by a Federal banking agency under the CRA. The NGEP and insured depository institution or affiliate do not discuss the adequacy of the CRA performance of the insured depository institution or affiliate.

(v) *Example 5.* A NGEP engaged in the sale or purchase of loans in the secondary market sends a general offering circular to financial institutions offering to sell or purchase a portfolio of loans. An insured depository institution that receives the offering circular discusses with the NGEP the types of loans included in the loan pool, whether such loans are generally eligible for consideration under the CRA, and which loans are made to borrowers in the institution's local community. The NGEP and insured depository institution do not discuss the adequacy of the institution's CRA performance.

(d) *Multiparty covered agreements.*—(1) A NGEP that is a party to a covered agreement that involves multiple NGEPs is not required to comply with the requirements of this part if—

(i) The NGEP has not had a CRA communication; and

(ii) No representative of the NGEP identified in paragraph (b)(4) of this section has knowledge at the time of the agreement that another NGEP that is a party to the agreement has had a CRA communication.

(2) An insured depository institution or affiliate that is a party to a covered agreement that involves multiple insured depository institutions or affiliates is not required to comply with the disclosure and annual reporting requirements in §§ 346.6 and 346.7 if—

(i) No NGEP that is a party to the agreement has had a CRA communication concerning the insured depository institution or any affiliate; and

(ii) No representative of the insured depository institution or any affiliate identified in paragraph (b)(3) of this section has knowledge at the time of the agreement that an NGEP that is a party to the agreement has had a CRA communication concerning any other insured depository institution or affiliate that is a party to the agreement.

§ 346.4 Fulfillment of the CRA.

(a) *List of factors that are in fulfillment of the CRA.* Fulfillment of the CRA, for purposes of this part, means the following list of factors—

(1) *Comments to a Federal banking agency or included in CRA public file.* Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution; or

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 345.22, including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 345.23;

(iii) Delivering retail banking services, as described in 12 CFR 345.24(d);

(iv) Providing community development services, as described in 12 CFR 345.24(e);

(v) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in 12 CFR 345.25(c);

(vi) In the case of a small insured depository institution, any lending or other activity described in 12 CFR 345.26(a); or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in 12 CFR 345.27(f).

(b) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns any activity described in paragraph (a) of this section of a CRA affiliate must, prior to the time the agreement is entered into, notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate.

§ 346.5 Related agreements considered a single agreement.

The following rules must be applied in determining whether an agreement is a covered agreement under § 346.2.

(a) *Agreements entered into by same parties.* All written agreements to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the agreements—

(1) Are entered into with the same NGEP;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a NGEP is a party to each contract.

§ 346.6 Disclosure of covered agreements.

(a) *Applicability date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* Each NGEP and each insured depository institution or affiliate that enters into a covered agreement must promptly make a copy of the covered agreement available to any individual or entity upon request.

(2) *Nondisclosure of confidential and proprietary information permitted.* In responding to a request for a covered agreement from any individual or entity under paragraph (b)(1) of this section, a NGEP, insured depository institution, or affiliate may withhold from public disclosure confidential or proprietary information that the party believes the relevant supervisory agency could withhold from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA).

(3) *Information that must be disclosed.* Notwithstanding paragraph (b)(2) of this section, a party must disclose any of the following information that is contained in a covered agreement—

(i) The names and addresses of the parties to the agreement;

(ii) The amount of any payments, fees, loans, or other consideration to be made or provided by any party to the agreement;

(iii) Any description of how the funds or other resources provided under the agreement are to be used;

(iv) The term of the agreement (if the agreement establishes a term); and

(v) Any other information that the relevant supervisory agency determines is not properly exempt from public disclosure.

(4) *Request for review of withheld information.* Any individual or entity may request that the relevant supervisory agency review whether any information in a covered agreement withheld by a party must be disclosed. Any requests for agency review of withheld information must be filed, and will be processed in accordance with, the relevant supervisory agency's rules concerning the availability of information (*see* the FDIC's rules regarding Disclosure of Information (12 CFR part 309)).

(5) *Duration of obligation.* The obligation to disclose a covered agreement to the public terminates 12 months after the end of the term of the agreement.

(6) *Reasonable copy and mailing fees.* Each NGEP and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(7) *Use of CRA public file by insured depository institution or affiliate.* An insured depository institution and any affiliate of an insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file if the institution makes the agreement available in accordance with the procedures set forth in 12 CFR 345.43.

(c) *Disclosure by NGEPs of covered agreements to the relevant supervisory agency*—(1) Each NGEP that is a party to a covered agreement must provide the

following within 30 days of receiving a request from the relevant supervisory agency—

(i) A complete copy of the agreement; and

(ii) In the event the NGEP proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information and an explanation justifying the exclusions. Any public version must include the information described in paragraph (b)(3) of this section.

(2) The obligation of a NGEP to provide a covered agreement to the relevant supervisory agency terminates 12 months after the end of the term of the covered agreement.

(d) *Disclosure by insured depository institution or affiliate of covered agreements to the relevant supervisory agency*—(1) *In general.* Within 60 days of the end of each calendar quarter, each insured depository institution and affiliate must provide each relevant supervisory agency with—

(i)(A) A complete copy of each covered agreement entered into by the insured depository institution or affiliate during the calendar quarter; and

(B) In the event the institution or affiliate proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information (other than any information described in paragraph (b)(3) of this section) and an explanation justifying the exclusions; or

(ii) A list of all covered agreements entered into by the insured depository institution or affiliate during the calendar quarter that contains—

(A) The name and address of each insured depository institution or affiliate that is a party to the agreement;

(B) The name and address of each NGEP that is a party to the agreement;

(C) The date the agreement was entered into;

(D) The estimated total value of all payments, fees, loans and other consideration to be provided by the institution or any affiliate of the institution under the agreement; and

(E) The date the agreement terminates.

(2) *Prompt filing of covered agreements contained in list required.*—(i) If an insured depository institution or affiliate files a list of the covered agreements entered into by the institution or affiliate pursuant to paragraph (d)(1)(ii) of this section, the institution or affiliate must provide any relevant supervisory agency a complete copy and public version of any covered agreement referenced in the list within 7 calendar days of receiving a request from the agency for a copy of the agreement.

(ii) The obligation of an insured depository institution or affiliate to provide a covered agreement to the relevant supervisory agency under this paragraph (d)(2) terminates 36 months after the end of the term of the agreement.

(3) *Joint filings.* In the event that 2 or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file the documents required by this paragraph (d). Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the filings are being made.

§ 346.7 Annual reports.

(a) *Applicability date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each NGEP and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *NGEPs.* A NGEP must file an annual report for a covered agreement for any fiscal year in which the NGEP receives or uses funds or other resources under the agreement.

(2) *Insured depository institutions and affiliates.* An insured depository institution or affiliate must file an annual report for a covered agreement for any fiscal year in which the institution or affiliate—

(i) provides or receives any payments, fees, or loans under the covered agreement that must be reported under paragraphs (e)(1)(iii) and (iv) of this section; or

(ii) has data to report on loans, investments, and services provided by a party to the covered agreement under the covered agreement under paragraph (e)(1)(vi) of this section.

(d) *Annual reports filed by NGEP*—(1) *Contents of report.* The annual report filed by a NGEP under this section must include the following—

(i) The name and mailing address of the NGEP filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) A detailed, itemized list of how any funds or resources received by the NGEP under the covered agreement were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses and uses (specify expense or use).

(2) *More detailed reporting of uses of funds or resources permitted*—(i) *In general.* If a NGEP allocated and used funds received under a covered agreement for a specific purpose, the NGEP may fulfill the requirements of paragraph (d)(1)(iv) of this section with respect to such funds by providing—

(A) A brief description of each specific purpose for which the funds or other resources were used; and

(B) The amount of funds or resources used during the fiscal year for each specific purpose.

(ii) *Specific purpose defined.* A NGEP allocates and uses funds for a specific purpose if the NGEP receives and uses the funds for a purpose that is more specific and limited than the categories listed in paragraph (d)(1)(iv) of this section.

(3) *Use of other reports.* The annual report filed by a NGEP may consist of or incorporate a report prepared for any other purpose, such as the Internal Revenue Service Return of Organization Exempt From Income Tax on Form 990, or any other Internal Revenue Service form, state tax form, report to members or shareholders, audited or unaudited financial statements, audit report, or other report, so long as the annual report filed by the NGEP contains all of the information required by this paragraph (d).

(4) *Consolidated reports permitted.* A NGEP that is a party to 2 or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information reported under paragraphs (d)(1)(iv) and (d)(2) of this section may be reported on an aggregate basis for all covered agreements.

(5) *Examples of annual report requirements for NGEPs.*—(i) *Example 1.* A NGEP receives an unrestricted

grant of $15,000 under a covered agreement, includes the funds in its general operating budget, and uses the funds during its fiscal year. The NGEP's annual report for the fiscal year must provide the name and mailing address of the NGEP, information sufficient to identify the covered agreement, and state that the NGEP received $15,000 during the fiscal year. The report must also indicate the total expenditures made by the NGEP during the fiscal year for compensation, administrative expenses, travel expenses, entertainment expenses, consulting and professional fees, and other expenses and uses. The NGEP's annual report may provide this information by submitting an Internal Revenue Service Form 990 that includes the required information. If the Internal Revenue Service Form does not include information for all of the required categories listed in this part, the NGEP must report the total expenditures in the remaining categories either by providing that information directly or by providing another form or report that includes the required information.

(ii) *Example 2.* An organization receives $15,000 from an insured depository institution under a covered agreement and allocates and uses the $15,000 during the fiscal year to purchase computer equipment to support its functions. The organization's annual report must include the name and address of the organization, information sufficient to identify the agreement, and a statement that the organization received $15,000 during the year. In addition, since the organization allocated and used the funds for a specific purpose that is more narrow and limited than the categories of expenses included in the detailed, itemized list of expenses, the organization would have the option of providing either the total amount it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section, or a statement that it used the $15,000 to purchase computer equipment and a brief description of the equipment purchased.

(iii) *Example 3.* A community group receives $50,000 from an insured depository institution under a covered agreement. During its fiscal year, the community group specifically allocates and uses $5,000 of the funds to pay for a particular business trip and uses the remaining $45,000 for general operating expenses. The group's annual report for the fiscal year must include the name and address of the group, information sufficient to identify the agreement, and a statement that the group received $50,000. Because the group did not allocate and use all of the funds for a specific purpose, the group's annual report must provide the total amount of funds it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section. The group's annual report also could state that it used $5,000 for a particular business trip and include a brief description of the trip.

(iv) *Example 4.* A community development organization is a party to two separate covered agreements with two unaffiliated insured depository institutions. Under each agreement, the organization receives $15,000 during its fiscal year and uses the funds to support its activities during that year. If the organization elects to file a consolidated annual report, the consolidated report must identify the organization and the two covered agreements, state that the organization received $15,000 during the fiscal year under each agreement, and provide the total amount that the organization used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section.

(e) *Annual report filed by insured depository institution or affiliate.*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement (or a list identifying the agreement) was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by another party under this section.

(2) *Consolidated reports permitted*—(i) *Party to multiple agreements.* An insured depository institution or affiliate that is a party to 2 or more covered agreements may file a single consolidated annual report with each relevant supervisory agency concerning all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iv) and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEP.*—(i) A NGEP may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than six months following the end of the NGEP's fiscal year—

(A) A copy of the NGEP's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEP.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEP pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

§ 346.8 Release of information under FOIA.

The FDIC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the FDIC's rules regarding Disclosure of Information (12 CFR part 309). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 346.9 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.*—(1) If the FDIC determines that a NGEP has willfully failed to comply in a material way with §§ 346.4 or 346.5, the FDIC will notify the NGEP in writing of that determination and provide the NGEP a period of 90 days (or such longer period as the FDIC finds to be reasonable under the circumstances) to comply.

(2) If the NGEP does not comply within the time period established by the FDIC, the agreement shall thereafter be unenforceable by that NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The FDIC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEP's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the FDIC may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the FDIC will provide written notice and an opportunity to present information to the FDIC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the FDIC under §§ 346.6 or 346.7 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the FDIC to enforce the provisions of any covered agreement.

§ 346.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEP and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 346.6 until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.*—(i) Each NGEP that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 346.6 until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 346.6(d)(1)(i); or

(B) The information described in § 346.6(d)(1)(ii) for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEP, insured depository institution or affiliate has any information to report under § 346.7 for a fiscal year that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEP, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 346.7(f)(2).

§ 346.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* ''Affiliate'' means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 346.2, an ''affiliate'' includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA communication, as described in § 346.3.

(b) *Control.* ''Control'' is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A ''CRA affiliate'' of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

(d) *CRA public file.* ''CRA public file'' means the public file maintained by an insured depository institution and described in 12 CFR 345.43.

(e) *Executive officer.* The term ''executive officer'' has the same meaning as in § 215.2(e)(1) of the Board of Governors of the Federal Reserve System's Regulation O (12 CFR 215.2(e)(1)).

(f) *Federal banking agency; appropriate Federal banking agency.* The terms ''Federal banking agency'' and ''appropriate Federal banking agency'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year.

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(h) *Insured depository institution.* ''Insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *NGEP.* ''NGEP'' means a nongovernmental entity or person.

(j) *Nongovernmental entity or person—(1) General.* A ''nongovernmental entity or person'' is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (h)(2)(i) through (iii) of this section.

(k) *Party.* The term ''party''. The authority citation for part 405 continues to read as follows: with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(l) *Relevant supervisory agency.* The ''relevant supervisory agency'' for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(m) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 21st day of December, 2000.

Robert E. Feldman,

Executive Secretary.

Department of Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter V, of the Code of Federal Regulations is amended by adding a new part 533 to read as follows:

PART 533—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

533.1 Purpose and scope of this part.
533.2 Definition of covered agreement.
533.3 CRA communications.
533.4 Fulfillment of the CRA.
533.5 Related agreements considered a single agreement.
533.6 Disclosure of covered agreements.
533.7 Annual reports.
533.8 Release of information under FOIA.
533.9 Compliance provisions.
533.10 Transition provisions.
533.11 Other definitions and rules of construction used in this part.

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831y.

§ 533.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person (NGEP), insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

(1) Savings associations and their subsidiaries;

(2) Savings and loan holding companies;

(3) Affiliates of savings associations and savings and loan holding companies, other than bank holding companies, banks, and subsidiaries of bank holding companies and banks; and

(4) NGEPs that enter into covered agreements with any company listed in paragraphs (b)(1) through (b)(3) of this section.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (CRA) (12 U.S.C. 2901 *et seq.*), OTS's Community Reinvestment rule (12 CFR Part 563e), or OTS's interpretations or administration of the CRA or Community Reinvestment rule.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

(2) Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issues that may arise in this part.

§ 533.2 Definition of covered agreement.

(a) *General definition of covered agreement.* A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) One or more insured depository institutions or affiliates of an insured depository institution; and

(ii) One or more NGEPs.

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the CRA, as defined in § 533.4 of this part.

(5) The agreement is with a NGEP that has had a CRA communication as described in § 533.3 of this part prior to entering into the agreement.

(b) *Examples concerning written arrangements or understandings.* (1) *Example 1.* A NGEP meets with an insured depository institution and states that the institution needs to make more community development investments in the NGEP's community. The NGEP and insured depository institution do not reach an agreement concerning the community development investments the institution should make in the community, and the parties do not reach any mutual arrangement or understanding. Two weeks later, the institution unilaterally issues a press release announcing that it has established a general goal of making $100 million of community development grants in low- and

moderate-income neighborhoods served by the insured depository institution over the next 5 years. The NGEP is not identified in the press release. The press release is not a written arrangement or understanding.

(2) *Example 2.* A NGEP meets with an insured depository institution and states that the institution needs to offer new loan programs in the NGEP's community. The NGEP and the insured depository institution reach a mutual arrangement or understanding that the institution will provide additional loans in the NGEP's community. The institution tells the NGEP that it will issue a press release announcing the program. Later, the insured depository institution issues a press release announcing the loan program. The press release incorporates the key terms of the understanding reached between the NGEP and the insured depository institution. The written press release reflects the mutual arrangement or understanding of the NGEP and the insured depository institution and is, therefore, a written arrangement or understanding.

(3) *Example 3.* An NGEP sends a letter to an insured depository institution requesting that the institution provide a $15,000 grant to the NGEP. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written arrangement or understanding.

(c) *Loan agreements that are not covered agreements.* A covered agreement does not include—

(1) Any individual loan that is secured by real estate; or

(2) Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities, if—

(i) The funds are loaned at rates that are not substantially below market rates; and

(ii) The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

(d) *Examples concerning loan agreements.* (1) *Example 1.* An insured depository institution provides an organization with a $1 million loan that is documented in writing and is secured by real estate owned or to-be-acquired by the organization. The agreement is an individual mortgage loan and is exempt from coverage under paragraph (c)(1) of this section, regardless of the interest rate on the loan or whether the organization intends or is authorized to re-loan the funds to a third party.

(2) *Example 2.* An insured depository institution commits to provide a $500,000 line of credit to a small business that is documented by a written agreement. The loan is made at rates that are within the range of rates offered by the institution to similarly situated small businesses in the market and the loan documentation does not indicate that the small business intends or is authorized to re-lend the borrowed funds. The agreement is exempt from coverage under paragraph (c)(2) of this section.

(3) *Example 3.* An insured depository institution offers small business loans that are guaranteed by the Small Business Administration (SBA). A small business obtains a $75,000 loan, documented in writing, from the institution under the institution's SBA loan program. The loan documentation does not indicate that the borrower intends or is authorized to re-lend the funds. Although the rate charged on the loan is well below that charged by the institution on commercial loans, the rate is within the range of rates that the institution would charge a similarly situated small business for a similar loan under the SBA loan program. Accordingly, the loan is not made at substantially below market rates and is exempt from coverage under paragraph (c)(2) of this section.

(4) *Example 4.* A bank holding company enters into a written agreement with a community development organization that provides that insured depository institutions owned by the bank holding company will make $250 million in small business loans in the community over the next 5 years. The written agreement is not a specific contract or commitment for a loan or an extension of credit and, thus, is not exempt from coverage under paragraph (c)(2) of this section. Each small business loan made by the insured depository institution pursuant to this general commitment would, however, be exempt from coverage if the loan is made at rates that are not substantially below market rates and the loan documentation does not indicate that the borrower intended or was authorized to re-lend the funds.

(e) *Agreements that include exempt loan agreements.* If an agreement includes a loan, extension of credit or loan commitment that, if documented separately, would be exempt under paragraph (c) of this section, the exempt loan, extension of credit or loan commitment may be excluded for purposes of determining whether the agreement is a covered agreement.

(f) *Determining annual value of agreements that lack schedule of disbursements.* For purposes of paragraph (a)(3) of this section, a multi-year agreement that does not include a schedule for the disbursement of payments, grants, loans or other consideration by the insured depository institution or affiliate, is considered to have a value in the first year of the agreement equal to all payments, grants, loans and other consideration to be provided at any time under the agreement.

§ 533.3 CRA communications.

(a) *Definition of CRA communication.* A CRA communication is any of the following—

(1) Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(2) Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.

(3) Any discussion or other contact with the insured depository institution or any affiliate about—

(i) Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;

(ii) Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or

(iii) The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

(b) *Discussions or contacts that are not CRA communications.* (1) *Timing of contacts with a Federal banking agency.* An oral or written communication with a Federal banking agency is not a CRA communication if it occurred more than 3 years before the parties entered into the agreement.

(2) *Timing of contacts with insured depository institutions and affiliates.* A communication with an insured depository institution or affiliate is not a CRA communication if the communication occurred—

(i) More than 3 years before the parties entered into the agreement, in the case of any written communication;

(ii) More than 3 years before the parties entered into the agreement, in the case of any oral communication in which the NGEP discusses providing (or refraining from providing) comments or testimony to a Federal banking agency or written comments that must be included in the institution's CRA public file in connection with a request to, or agreement by, the institution or affiliate to take (or refrain from taking) any action that is in fulfillment of the CRA; or

(iii) More than 1 year before the parties entered into the agreement, in the case of any other oral communication not described in paragraph (b)(2)(ii).

(3) *Knowledge of communication by insured depository institution or affiliate.* (i) A communication is only a CRA communication under paragraph (a) of this section if the insured depository institution or its affiliate has knowledge of the communication under paragraph (b)(3)(ii) or (b)(3)(iii) of this section.

(ii) *Communication with insured depository institution or affiliate.* An insured depository institution or affiliate has knowledge of a communication by the NGEP to the institution or its affiliate under this paragraph only if one of the following representatives of the insured depository institution or any affiliate has knowledge of the communication—

(A) An employee who approves, directs, authorizes, or negotiates the agreement with the NGEP; or

(B) An employee designated with responsibility for compliance with the CRA or executive officer if the employee or executive officer knows that the institution or affiliate is negotiating, intends to negotiate, or has been informed by the NGEP that it expects to request that the institution or affiliate negotiate an agreement with the NGEP.

(iii) *Other communications.* An insured depository institution or affiliate is deemed to have knowledge of—

(A) Any testimony provided to a Federal banking agency at a public meeting or hearing;

(B) Any comment submitted to a Federal banking agency that is conveyed in writing by the agency to the insured depository institution or affiliate; and

(C) Any written comment submitted to the insured depository institution that must be and is included in the institution's CRA public file.

(4) *Communication where NGEP has knowledge.* A NGEP has a CRA communication with an insured depository institution or affiliate only if any of the following individuals has knowledge of the communication—

(i) A director, employee, or member of the NGEP who approves, directs, authorizes, or negotiates the agreement with the insured depository institution or affiliate;

(ii) A person who functions as an executive officer of the NGEP and who knows that the NGEP is negotiating or intends to negotiate an agreement with the insured depository institution or affiliate; or

(iii) Where the NGEP is an individual, the NGEP.

(c) *Examples of CRA communications*—(1) *Examples of actions that are CRA communications.* The following are examples of CRA communications. These examples are not exclusive and assume that the communication occurs within the relevant time period as described in paragraph (b)(1) or (b)(2) of this section and the appropriate representatives have knowledge of the communication as specified in paragraphs (b)(3) and (b)(4) of this section.

(i) *Example 1.* A NGEP files a written comment with a Federal banking agency that states than an insured depository institution successfully addresses the credit needs of its community. The written comment is in response to a general request from the agency for comments on an application of the insured depository institution to open a new branch and a copy of the comment is provided to the institution.

(ii) *Example 2.* A NGEP meets with an executive officer of an insured depository institution and states that the institution must improve its CRA performance.

(iii) *Example 3.* A NGEP meets with an executive officer of an insured depository institution and states that the institution needs to make more mortgage loans in low- and moderate-income neighborhoods in its community.

(iv) *Example 4.* A bank holding company files an application with a Federal banking agency to acquire an insured depository institution. Two weeks later, the NGEP meets with an executive officer of the bank holding company to discuss the adequacy of the performance under the CRA of the target insured depository institution. The insured depository institution was an affiliate of the bank holding company at the time the NGEP met with the target institution. (*See* § 533.11(a) of this part.) Accordingly, the NGEP had a CRA communication with an affiliate of the bank holding company.

(2) *Examples of actions that are not CRA communications.* The following are examples of actions that are not by themselves CRA communications. These examples are not exclusive.

(i) *Example 1.* A NGEP provides to a Federal banking agency comments or testimony concerning an insured depository institution or affiliate in response to a direct request by the agency for comments or testimony from that NGEP. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902(3)) by, an insured depository institution or an application by a company to acquire an insured depository institution.

(ii) *Example 2.* A NGEP makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions, affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(iii) *Example 3.* A NGEP, such as a civil rights group, community group providing housing and other services in low- and moderate-income neighborhoods, veterans organization, community theater group, or youth organization, sends a fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work by supporting the fundraising efforts of the NGEP.

(iv) *Example 4.* A NGEP discusses with an insured depository institution or affiliate whether particular loans, services, investments, community development activities, or other activities are generally eligible for consideration by a Federal banking agency under the CRA. The NGEP and insured depository institution or affiliate do not discuss the adequacy of the CRA performance of the insured depository institution or affiliate.

(v) *Example 5.* A NGEP engaged in the sale or purchase of loans in the secondary market sends a general offering circular to financial institutions offering to sell or purchase a portfolio of loans. An insured depository institution that receives the offering circular discusses with the NGEP the types of

loans included in the loan pool, whether such loans are generally eligible for consideration under the CRA, and which loans are made to borrowers in the institution's local community. The NGEP and insured depository institution do not discuss the adequacy of the institution's CRA performance.

(d) *Multiparty covered agreements.* (1) A NGEP that is a party to a covered agreement that involves multiple NGEPs is not required to comply with the requirements of this part if—

(i) The NGEP has not had a CRA communication; and

(ii) No representative of the NGEP identified in paragraph (b)(4) of this section has knowledge at the time of the agreement that another NGEP that is a party to the agreement has had a CRA communication.

(2) An insured depository institution or affiliate that is a party to a covered agreement that involves multiple insured depository institutions or affiliates is not required to comply with the requirements in §§ 533.6 and 533.7 if—

(i) No NGEP that is a party to the agreement has had a CRA communication concerning the insured depository institution or any affiliate; and

(ii) No representative of the insured depository institution or any affiliate identified in paragraph (b)(3) of this section has knowledge at the time of the agreement that an NGEP that is a party to the agreement has had a CRA communication concerning any other insured depository institution or affiliate that is a party to the agreement.

§ 533.4 Fulfillment of the CRA

(a) *List of factors that are in fulfillment of the CRA.* Fulfillment of the CRA, for purposes of this part, means the following list of factors—

(1) *Comments to a Federal banking agency or included in CRA public file.* Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution; or

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 563e.22 of this chapter, including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 563e.23 of this chapter;

(iii) Delivering retail banking services, as described in § 563.24(d) of this chapter;

(iv) Providing community development services, as described in § 563e.24(e) of this chapter;

(v) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 563e.25(c) of this chapter;

(vi) In the case of a small insured depository institution, any lending or other activity described in § 563e.26(a) of this chapter; or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 563e.27(f) of this chapter.

(b) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns any activity described in paragraph (a) of this section of a CRA affiliate must, prior to the time the agreement is entered into, notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate.

§ 533.5 Related agreements considered a single agreement.

The following rules must be applied in determining whether an agreement is a covered agreement under § 533.2 of this part.

(a) *Agreements entered into by same parties.* All written agreements to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the agreements—

(1) Are entered into with the same NGEP;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a NGEP is a party to each contract.

§ 533.6 Disclosure of covered agreements.

(a) *Applicability date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public.* (1) *Disclosure required.* Each NGEP and each insured depository institution or affiliate that enters into a covered agreement must make a copy of the covered agreement available to any individual or entity upon request.

(2) *Nondisclosure of confidential and proprietary information permitted.* In responding to a request for a covered agreement from any individual or entity under paragraph (b)(1) of this section, a NGEP, insured depository institution, or affiliate may withhold from public disclosure confidential or proprietary information that the party believes the relevant supervisory agency could withhold from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA).

(3) *Information that must be disclosed.* Notwithstanding paragraph (b)(2) of this section, a party must disclose any of the following information that is contained in a covered agreement—

(i) The names and addresses of the parties to the agreement;

(ii) The amount of any payments, fees, loans, or other consideration to be made or provided by any party to the agreement;

(iii) Any description of how the funds or other resources provided under the agreement are to be used;

(iv) The term of the agreement (if the agreement establishes a term); and

(v) Any other information that the relevant supervisory agency determines is not properly exempt from public disclosure.

(4) *Request for review of withheld information.* Any individual or entity may request that the relevant supervisory agency review whether any information in a covered agreement withheld by a party must be disclosed. Any requests for agency review of withheld information must be filed, and will be processed in accordance with, the relevant supervisory agency's rules concerning the availability of

information (*see* part 505 of this chapter and the Department of Treasury's rules (31 CFR part 1)).

(5) *Duration of obligation.* The obligation to disclose a covered agreement to the public terminates 12 months after the end of the term of the agreement.

(6) *Reasonable copy and mailing fees.* Each NGEP and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(7) *Use of CRA public file by insured depository institution or affiliate.* An insured depository institution and any affiliate of an insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file if the institution makes the agreement available in accordance with the procedures set forth in § 563e.43 of this chapter.

(c) *Disclosure by NGEPs of covered agreements to the relevant supervisory agency.* (1) Each NGEP that is a party to a covered agreement must provide the following within 30 days of receiving a request from the relevant supervisory agency—

(i) A complete copy of the agreement; and

(ii) In the event the NGEP proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information and an explanation justifying the exclusions. Any public version must include the information described in paragraph (b)(3) of this section.

(2) The obligation to provide a covered agreement to the relevant supervisory agency terminates 12 months after the end of the term of the covered agreement.

(d) *Disclosure by insured depository institution or affiliate of covered agreements to the relevant supervisory agency.* (1) *In general.* Within 60 days of the end of each calendar quarter, each insured depository institution and affiliate must provide each relevant supervisory agency with—

(i)(A) A complete copy of each covered agreement entered into by the insured depository institution or affiliate during the calendar quarter; and

(B) In the event the institution or affiliate proposes the withholding of any information contained in the agreement in accordance with paragraph (b)(2) of this section, a public version of the agreement that excludes such information (other than any information described in paragraph (b)(3) of this section) and an explanation justifying the exclusions; or

(ii) A list of all covered agreements entered into by the insured depository institution or affiliate during the calendar quarter that contains—

(A) The name and address of each insured depository institution or affiliate that is a party to the agreement;

(B) The name and address of each NGEP that is a party to the agreement;

(C) The date the agreement was entered into;

(D) The estimated total value of all payments, fees, loans and other consideration to be provided by the institution or any affiliate of the institution under the agreement; and

(E) The date the agreement terminates.

(2) *Prompt filing of covered agreements contained in list required.* (i) If an insured depository institution or affiliate files a list of the covered agreements entered into by the institution or affiliate pursuant to paragraph (d)(1)(ii) of this section, the institution or affiliate must provide any relevant supervisory agency a complete copy and public version of any covered agreement referenced in the list within 7 calendar days of receiving a request from the agency for a copy of the agreement.

(ii) The obligation of an insured depository institution or affiliate to provide a covered agreement to the relevant supervisory agency under this paragraph (d)(2) terminates 36 months after the end of the term of the covered agreement.

(3) *Joint filings.* In the event that 2 or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file the documents required by this paragraph (d) of this section. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the filings are being made.

§ 533.7 Annual reports.

(a) *Applicability date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each NGEP and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement.* (1) *NGEPs.* A NGEP must file an annual report for a covered agreement for any fiscal year in which the NGEP receives or uses funds or other resources under the agreement.

(2) *Insured depository institutions and affiliates.* An insured depository institution or affiliate must file an annual report for a covered agreement for any fiscal year in which the institution or affiliate—

(i) Provides or receives any payments, fees, or loans under the covered agreement that must be reported under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section; or

(ii) Has data to report on loans, investments, and services provided by a party to the covered agreement under the covered agreement under paragraph (e)(1)(vi) of this section.

(d) *Annual reports filed by NGEP.* (1) *Contents of report.* The annual report filed by a NGEP under this section must include the following—

(i) The name and mailing address of the NGEP filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) A detailed, itemized list of how the funds or resources received by the NGEP under the covered agreement were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses and uses (specify expense or use).

(2) *More detailed reporting of uses of funds or resources permitted.* (i) *In general.* If a NGEP allocated and used funds received under a covered agreement for a specific purpose, the NGEP may fulfill the requirements of paragraph (d)(1)(iv) of this section with respect to such funds by providing—

(A) A brief description of each specific purpose for which the funds or other resources were used; and

(B) The amount of funds or resources used during the fiscal year for each specific purpose.

(ii) *Specific purpose defined.* A NGEP allocates and uses funds for a specific purpose if the NGEP receives and uses the funds for a purpose that is more specific and limited than the categories listed in paragraph (d)(1)(iv) of this section.

(3) *Use of other reports.* The annual report filed by a NGEP may consist of or incorporate a report prepared for any other purpose, such as the Internal Revenue Service Return of Organization Exempt From Income Tax on Form 990, or any other Internal Revenue Service form, state tax form, report to members or shareholders, audited or unaudited financial statements, audit report, or other report, so long as the annual report filed by the NGEP contains all of the information required by this paragraph (d).

(4) *Consolidated reports permitted.* A NGEP that is a party to 2 or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information reported under paragraphs (d)(1)(iv) and (d)(2) of this section may be reported on an aggregate basis for all covered agreements.

(5) *Examples of annual report requirements for NGEPs*

(i) *Example 1.* A NGEP receives an unrestricted grant of $15,000 under a covered agreement, includes the funds in its general operating budget and uses the funds during its fiscal year. The NGEP's annual report for the fiscal year must provide the name and mailing address of the NGEP, information sufficient to identify the covered agreement, and state that the NGEP received $15,000 during the fiscal year. The report must also indicate the total expenditures made by the NGEP during the fiscal year for compensation, administrative expenses, travel expenses, entertainment expenses, consulting and professional fees, and other expenses and uses. The NGEP's annual report may provide this information by submitting an Internal Revenue Service Form 990 that includes the required information. If the Internal Revenue Service Form does not include information for all of the required categories listed in this part, the NGEP must report the total expenditures in the remaining categories either by providing that information directly or by providing another form or report that includes the required information.

(ii) *Example 2.* An organization receives $15,000 from an insured depository institution under a covered agreement and allocates and uses the $15,000 during the fiscal year to purchase computer equipment to support its functions. The organization's annual report must include the name and address of the organization, information sufficient to identify the agreement, and a statement that the organization received $15,000 during the year. In addition, since the organization allocated and used the funds for a specific purpose that is more narrow and limited than the categories of expenses included in the detailed, itemized list of expenses, the organization would have the option of providing either the total amount it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section, or a statement that it used the $15,000 to purchase computer equipment and a brief description of the equipment purchased.

(iii) *Example 3.* A community group receives $50,000 from an insured depository institution under a covered agreement. During its fiscal year, the community group specifically allocates and uses $5,000 of the funds to pay for a particular business trip and uses the remaining $45,000 for general operating expenses. The group's annual report for the fiscal year must include the name and address of the group, information sufficient to identify the agreement, and a statement that the group received $50,000. Because the group did not allocate and use all of the funds for a specific purpose, the group's annual report must provide the total amount of funds it used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section. The group's annual report also could state that it used $5,000 for a particular business trip and include a brief description of the trip.

(iv) *Example 4.* A community development organization is a party to two separate covered agreements with two unaffiliated insured depository institutions. Under each agreement, the organization receives $15,000 during its fiscal year and uses the funds to support its activities during that year. If the organization elects to file a consolidated annual report, the consolidated report must identify the organization and the two covered agreements, state that the organization received $15,000 during the fiscal year under each agreement, and provide the total amount that the organization used during the year for each category of expenses included in paragraph (d)(1)(iv) of this section.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement (or a list identifying the agreement) was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by another party under this section.

(2) *Consolidated reports permitted.* (i) *Party to multiple agreements.* An insured depository institution or affiliate that is a party to 2 or more covered agreements may file a single consolidated annual report with each relevant supervisory agency concerning all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iv) and (e)(1)(vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing.* (1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEP.* (i) A NGEP may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement

no later than six months following the end of the NGEP's fiscal year—

(A) A copy of the NGEP's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEP.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEP pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

§ 533.8 Release of information under FOIA.

OTS will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*), OTS's rules (part 505 of this chapter), and the Department of Treasury's rules (31 CFR part 1). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 533.9 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If OTS determines that a NGEP has willfully failed to comply in a material way with §§ 533.6 or 533.7 of this part, OTS will notify the NGEP in writing of that determination and provide the NGEP a period of 90 days (or such longer period as OTS finds to be reasonable under the circumstances) to comply.

(2) If the NGEP does not comply within the time period established by OTS, the agreement shall thereafter be unenforceable by that NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) OTS may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEP's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, OTS may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, OTS will provide written notice and an opportunity to present information to OTS concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with OTS under §§ 533.6 or 533.7 of this part will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing OTS to enforce the provisions of any covered agreement.

§ 533.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEP and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 533.6 of this part until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.* (i) Each NGEP that was a party to the agreement must make the agreement available to the relevant supervisory agency under § 533.6 of this part until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under § 533.6(d)(1)(i) of this part; or

(B) The information described in § 533.6(d)(1)(ii) of this part for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEP, insured depository institution or affiliate has any information to report under § 533.7 of this part for a fiscal that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and December 31, 2000, the annual report for that fiscal year must be provided, no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEP, to an insured depository institution or affiliate that is a party to the agreement in accordance with § 533.7(f)(2) of this part.

§ 533.11 Other definitions and rules of construction used in this part.

(a) *Affiliate. Affiliate* means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 533.2, an *affiliate* includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA communication, as described in § 533.3 of this part.

(b) *Control. Control* is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A *CRA affiliate* of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEP that is a party to the agreement of such designation.

(d) *CRA public file. CRA public file* means the public file maintained by an insured depository institution and described in § 563.43 of this chapter.

(e) *Executive officer.* The term *executive officer* has the same meaning as in § 215.2(e)(1) of the Board of Governors of the Federal Reserve's Regulation O (12 CFR 215.2(e)(1)). In applying this definition under this part, the term *savings association* shall be used in place of the term *bank.*

(f) *Federal banking agency; appropriate Federal banking agency.* The terms *Federal banking agency* and *appropriate Federal banking agency* have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year.

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(h) *Insured depository institution. Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(i) *Nongovernmental entity or person* or *NGEP*—(1) *General.* A *nongovernmental entity or person* or *NGEP* is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives Federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (i)(2)(i), (i)(2)(ii), or (i)(2)(iii) of this section.

(j) *Party.* The term *party* with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(k) *Relevant supervisory agency.* The *relevant supervisory agency* for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

(l) *Term of agreement.* An agreement that does not have a fixed termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the relevant supervisory agency for the agreement otherwise notifies each party in writing.

Dated: December 20, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–3 Filed 1–9–01; 8:45 am]

BILLING CODE 4810–33–U; 6210–01–U; 6714–01–U; 6720–01–U

Federal Register

Wednesday,
January 10, 2001

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1

Federal Acquisition Regulation (FAR); Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Federal Acquisition Circular 97–22; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97–22. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–22 and specific FAR case numbers. Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Definitions	1999–403	Olson.
II	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage	2000–301	Nelson.
III	Advance Payments for Non-Commercial Items	1999–016	Olson.
IV	Part 12 and Assignment of Claims	1999–021	Moss.
V	Clause Flowdown—Commercial Items	1996–023	Moss.
VI	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–22 amends the FAR as specified below:

Item I—Definitions (FAR Case 1999–403)

This final rule clarifies the applicability of definitions used in the FAR, eliminates redundant or conflicting definitions, and makes definitions easier to find. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the ''Definitions'' section of the highest level FAR division (part, subpart, or section) where the term as defined is used. For example, if a term was defined in a FAR section, but the term is used as defined in another section of that subpart, then the definition was moved to the ''Definitions'' section of that subpart;
- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or unless another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;
- Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the FAR; and
- Makes technical corrections throughout the FAR.

Item II—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000–301)

The interim rule published as Item VIII of FAC 97–18 (65 FR 36028, June 6, 2000) is converted to a final rule without change. This rule amends FAR Subpart 30.2, CAS Program Requirements, and the FAR clause at 52.230–1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the Cost Accounting Standards (CAS) Board's final rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with CAS by—

- Removing the requirement at FAR 52.230–1, Cost Accounting Standards Notices and Certification, that a contractor or subcontractor must have received at least one CAS-covered contract exceeding $1 million (''trigger contract'') to be subject to ''full CAS coverage.'' The CAS Board added a new ''trigger contract'' dollar amount of $7.5 million at paragraph (b)(7) of 48 CFR 9903.201–1, CAS applicability, which is already referenced at FAR 30.201–1;
- Revising FAR 30.201–4(b), Disclosure and consistency of cost accounting practices, and FAR 52.230–1 to increase the dollar threshold for full CAS coverage from $25 million to $50 million; and
- Revising the CAS waiver procedures and conditions at FAR 30.201–5.

Item III—Advance Payments for Non-Commercial Items (FAR Case 99–016)

This final rule amends the FAR to permit federally insured credit unions, in addition to banks, to participate in the maintenance of special accounts for advance payments. The rule will only affect contracting officers that provide contract financing using advance payments for non-commercial items.

Item IV—Part 12 and Assignment of Claims (FAR Case 1999–021)

This final rule amends the FAR to correct an inconsistency between two clauses related to the assignment of claims. FAR 52.232–36, Payment by Third Party, prohibits a contractor from assigning its rights to receive payment under the contract if payment is made by a third party, such as when a Governmentwide commercial purchase card is used. This clause is cited in the contract clause at FAR 52.212–5 that addresses terms and conditions required to implement statutes or Executive orders for commercial items.

FAR 52.212–4, Contract Terms and Conditions—Commercial Items, addresses assignment of claims but does not include the third party prohibition.

This rule revises FAR 52.212–4(b) to add the prohibition.

Item V—Clause Flowdown—Commercial Items (FAR Case 1996–023)

This final rule amends the clause at FAR 52.244–6, Subcontracts for Commercial Items, to revise the listing of clauses the contractor must flow down to subcontractors. The rule revises the listing to add the clause at FAR 52.219–8, Utilization of Small Business Concerns, when specified circumstances have been met. In addition, the rule adds language to inform contractors that they may flow down a minimal number of additional clauses to subcontractors to satisfy their contractual obligations.

Item VI—Technical Amendments

This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–22 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–22 are effective March 12, 2001, except for Items II and VI, which are effective January 10, 2001.

Dated: December 8, 2000

Deidre A. Lee,

Director, Defense Procurement.

Dated: December 8, 2000.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 7, 2000.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 01–282 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52

[FAC 97–22; FAR Case 1999–403; Item I]

RIN 9000–AJ08

Federal Acquisition Regulation; Definitions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the applicability of definitions, eliminate redundant or conflicting definitions, and make definitions easier to find.

DATES: *Effective Date:* March 12, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 97–22, FAR case 1999–403.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule clarifies the applicability of definitions, eliminates redundant or conflicting definitions, and makes definitions easier to find. The Councils do not intend to make any substantive policy changes to the FAR by these amendments. Nevertheless, in view of the extensive scope of these FAR improvements, comments are invited in the event any substantial policy change appears to have been made inadvertently. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the ''Definitions'' section of the highest level FAR division (part, subpart, or section) the term as defined is used in. For example, if a term was defined in a FAR section, but the term is used as defined in another section of that subpart, then the definition was moved to the ''Definitions'' section of that subpart;
- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;
- Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the FAR;
- Makes plain language revisions to the revised text in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998; and
- Makes technical corrections throughout the FAR.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–22, FAR case 1999–403), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 19, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 42, 43, 44, 46, 47, 48, 49, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.401 in paragraph (a) by removing ''52.101(a)'' each time it is used (twice) and adding ''2.101'' in its place; and in paragraphs (c) and (d) revise the text in the parenthetical to read as follows:

1.401 Definition.

* * * * *

(c) * * * (see definition of ''modification'' in 52.101(a) and definition of ''alternate'' in 2.101(a)).

(d) * * * (see definitions in 2.101 and 52.101(a))

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PART 2—DEFINITIONS OF WORDS AND TERMS

3a. Revise 2.000 to read as follows:

2.000 Scope of part.

(a) This part—

(1) Defines words and terms that are frequently used in the FAR;

(2) Provides cross-references to other definitions in the FAR of the same word or term; and

(3) Provides for the incorporation of these definitions in solicitations and contracts by reference.

(b) Other parts, subparts, and sections of this regulation (48 CFR chapter 1) may define other words or terms and those definitions only apply to the part, subpart, or section where the word or term is defined (see the Index for locations).

3b. Amend section 2.101 as follows:

—Revise paragraphs (a) and (b);

—Add, in alphabetical order, the following definitions:

''Acquisition planning,''
''Adequate evidence,''
''Alternate,''
''Architect-engineer services,''
''Assignment of claims,''
''Basic research,''
''Broad agency announcement,''
''Business unit,''
''Change-of-name agreement,''
''Change order,''
''Cognizant Federal agency,''
''Computer software,''
''Consent to subcontract,''
''Contract clause or clause,''
''Contract modification,''
''Conviction,''
''Cost or pricing data,''
''Cost realism,''
''Cost sharing,''
''Debarment,''
''Design-to-cost,''
''Drug-free workplace,''
''Effective date of termination,''
''Electronic data interchange (EDI),''
''Electronic Funds Transfer (EFT),''
''Federally Funded Research and Development Centers (FFRDCs),''
''Final indirect cost rate,''
''First article,''
''First article testing,''
''F.o.b.,''
''F.o.b. destination,''
''F.o.b. origin,
''F.o.b. . . .,''
''Forward pricing rate agreement,''
''Forward pricing rate recommendation,''
''Freight,''
''Full and open competition,''
''General and administrative (G&A) expense,''
''Historically black college or university,''
''HUBZone,''
''HUBZone small business concern,''
''Indirect cost,''
''Indirect cost rate,''
''Ineligible,''
''Information other than cost or pricing data,''
''Inherently governmental function,''
''Inspection,''
''Insurance,''
''Invoice,''
''Irrevocable letter of credit,''
''Labor surplus area,''
''Labor surplus area concern,''
''Latent defect,''
''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,''
''Make-or-Buy program,''
''Master solicitation,''
''Minority Institution,''
''Neutral person,''
''Novation agreement,''
''Option,''
''Organizational conflict of interest,''
''Overtime,''
''Overtime premium,''
''Ozone-depleting substance,''
''Performance-based contracting,''
''Personal services contract,''
''Power of attorney,''
''Preaward survey,''
''Preponderance of the evidence,''
''Pricing,''
''Procurement,''
''Procuring activity,''
''Projected average loss,''
''Proper invoice,''
''Purchase order,''
''Qualification requirement,''
''Qualified products list (QPL),''
''Residual value,''
''Responsible audit agency,''
''Responsible prospective contractor,''
''Segment,''
''Self-insurance,''
''Shipment,''
''Shop drawings,''
''Should,''
''Single, Governmentwide point of entry,''
''Small business subcontractor,''
''Small disadvantaged business concern,''
''Sole source acquisition,''
''Solicitation provision or provision,''
''Special competency,''
''State and local taxes,''
''Substantial evidence,''
''Substantially as follows or substantially the same as,''
''Supplemental agreement,''
''Surety,''
''Suspension,''
''Taxpayer Identification Number (TIN),''
''Unallowable cost,''
''Unique and innovative concept,''
''Unsolicited proposal,''
''Value engineering,''
''Value engineering change proposal (VECP),''
''Warranty,''
''Women-owned small business concern,''
''Writing or written,''

—Amend the definitions listed below as follows:

Definition/paragraph	Remove paragraph designation(s) or word	Add in its/their place
''Contract administration office,''	''(a)'' and ''(b)''	''(1)'' and ''(2)'', respectively.
''Contracting officer,''	''(a)'' and ''(b)''	''(1)'' and ''(2)'', respectively.
''Federal Acquisition Computer Network (FACNET) Architecture''	''is''	''means''.
''Head of the contracting activity''	''includes''	''means''.
''Pollution prevention,''	''(a)(1)'' and ''(2)''	''(1)(i)'' and ''(ii)'', respectively.
	''(b)'' and ''(c)''	''(2)'' and ''(3)'', respectively.

Definition/paragraph	Remove paragraph designation(s) or word	Add in its/their place
''Virgin material,''	''(a)'' and ''(b)''	''(1)'' and ''(2)'', respectively.

—Revise the definitions ''Affiliates,'' ''Agency head or head of the agency,'' ''Commercial item,'' ''Contracting office,'' ''Head of the agency,'' ''In writing, writing, or written,'' ''Information technology,'' ''Major system,'' and ''Nondevelopmental item''. For the convenience of the user, the section is set out in its entirety to read as follows:

2.101 Definitions.

(a) A word or a term, defined in this section, has the same meaning throughout this regulation (48 CFR chapter 1), unless—

(1) The context in which the word or term is used clearly requires a different meaning; or

(2) Another FAR part, subpart, or section provides a different definition for the particular part or portion of the part.

(b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of this regulation (48 CFR chapter 1, the definition in—

(1) This section includes a cross-reference to the other definitions; and

(2) That part, subpart, or section applies to the word or term when used in that part, subpart, or section.

Acquisition means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Acquisition planning means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Advisory and assistance services means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.,* contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.,* contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.,* contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505–1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A–109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

Affiliates means associated business concerns or individuals if, directly or indirectly—

(1) Either one controls or can control the other; or

(2) A third party controls or can control both.

Agency head or *head of the agency* means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.

Alternate means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It adds wording to, deletes wording from, or substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

Architect-engineer services, as defined in 40 U.S.C. 541, means—

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering,

construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Assignment of claims means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance.

Basic research means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

Best value means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

Broad agency announcement means a general announcement of an agency's research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government's needs (see 6.102(d)(2)).

Bundled contract means a contract where the requirements have been consolidated by bundling. (See the definition of *bundling*.)

Bundling means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) ''Separate smaller contract'' as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

Business unit means any segment of an organization, or an entire business organization that is not divided into segments.

Change-of-name agreement means a legal instrument executed by the contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

Change order means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

Cognizant Federal agency means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

Commercial component means any component that is a commercial item.

Commercial item means—

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (1), (2), (3), or (4) of this definition, and if the source of such services—

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225–9 and 52.225–11, see the definitions in 52.225–9(a) and 52.225–11(a).

Computer software means computer programs, computer data bases, and related documentation.

Consent to subcontract means the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms ''buildings, structures, or other real property'' include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of

vessels, aircraft, or other kinds of personal property.

Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see part 16.

Contract administration office means an office that performs—

(1) Assigned postaward functions related to the administration of contracts; and

(2) Assigned preaward functions.

Contract clause or *clause* means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

Contract modification means any written change in the terms of a contract (see 43.103).

Contracting means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Contracting activity means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

Contracting office means an office that awards or executes a contract for supplies or services and performs postaward functions not assigned to a contract administration office (except for use in part 48, see also 48.001).

Contracting officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. ''Administrative contracting officer (ACO)'' refers to a contracting officer who is administering contracts. ''Termination contracting officer (TCO)'' refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR chapter 1) to administrative contracting officer or termination contracting officer does not—

(1) Require that a duty be performed at a particular office or activity; or

(2) Restrict in any way a contracting officer in the performance of any duty properly assigned.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere.* For use in subpart 23.5, see the definition at 23.503.

Cost or pricing data (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.406–2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

(1) Vendor quotations;

(2) Nonrecurring costs;

(3) Information on changes in production methods and in production or purchasing volume;

(4) Data supporting projections of business prospects and objectives and related operations costs;

(5) Unit-cost trends such as those associated with labor efficiency;

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

(8) Information on management decisions that could have a significant bearing on costs.

Cost realism means that the costs in an offeror's proposal—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements; and

(3) Are consistent with the various elements of the offeror's technical proposal.

Cost sharing means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

Day means, unless otherwise specified, a calendar day.

Debarment means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is ''debarred.''

Delivery order means an order for supplies placed against an established contract or with Government sources.

Design-to-cost means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

Drug-free workplace means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Effective date of termination means the date on which the notice of termination requires the contractor to stop performance under the contract. If the contractor receives the termination notice after the date fixed for termination, then the effective date of termination means the date the contractor receives the notice.

Electronic commerce means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

Electronic data interchange (EDI) means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is

initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term ''electronic funds transfer'' includes a Governmentwide commercial purchase card transaction.

End product means supplies delivered under a line item of a Government contract.

Energy-efficient product means a product in the upper 25 percent of efficiency for all similar products or, if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard.

Environmentally preferable means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Executive agency means an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Facsimile means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; *e.g.,* facsimile bid, the terms refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

Federal Acquisition Computer Network (FACNET) Architecture is a Governmentwide system that provides universal user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government. FACNET qualifies as the single, Governmentwide point of entry pending designation by the Administrator of the Office of Federal Procurement Policy (OFPP).

Federal agency means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

Federally Funded Research and Development Centers (FFRDC's) means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—

(1) A long-term relationship is contemplated;

(2) Most or all of the facilities are owned or funded by the Government; and

(3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

Final indirect cost rate means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor's fiscal year (unless the parties decide upon a different period) to which it applies. For cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

First article means a preproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

First article testing means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

F.o.b. means free on board. This term is used in conjunction with a physical point to determine—

(1) The responsibility and basis for payment of freight charges; and

(2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

F.o.b. destination means free on board at destination; *i.e.,* the seller or consignor delivers the goods on seller's or consignor's conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss. For use in the clause at 52.247–34, see the definition at 52.247–34(a).

F.o.b. origin means free on board at origin; *i.e.,* the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is responsible for the cost of shipping and risk of loss. For use in the clause at 52.247–29, see the definition at 52.247–29(a).

F.o.b. * * * (For other types of F.o.b., see 47.303).

Forward pricing rate agreement means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. These rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

Forward pricing rate recommendation means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

Freight means supplies, goods, and transportable property.

Full and open competition, when used with respect to a contract action, means that all responsible sources are permitted to compete.

General and administrative (G&A) expense means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

Head of the agency (see ''agency head'').

Head of the contracting activity includes the official who has overall responsibility for managing the contracting activity.

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration,

and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

HUBZone means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

In writing, writing, or *written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Indirect cost means any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective.

Indirect cost rate means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also ''final indirect cost rate'').

Ineligible means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation (48 CFR chapter 1) and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

Information other than cost or pricing data means any type of information that is not required to be certified in accordance with 15.406–2 and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

Information technology means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term ''information technology'' includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term ''information technology'' does not include any equipment that—

(i) Is acquired by a contractor incidental to a contract; or

(ii) Contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

Inherently governmental function means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.,* the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) Significantly affect the life, liberty, or property of private persons;

(iv) Commission, appoint, direct, or control officers or employees of the United States; or

(v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A–76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions.

Inspection means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

Insurance means a contract that provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

Invoice means a contractor's bill or written request for payment under the contract for supplies delivered or services performed (see also ''proper invoice'').

Irrevocable letter of credit means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government's (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

Labor surplus area means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern means a concern that together with its first-tier

subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Latent defect means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs means a list compiled, maintained, and distributed by the General Services Administration containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

Major system means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $115,000,000 (based on fiscal year 1990 constant dollars) or the eventual total expenditure for the acquisition exceeds $540,000,000 (based on fiscal year 1990 constant dollars);

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a ''major system'' established by the agency pursuant to Office of Management and Budget Circular A–109, entitled ''Major System Acquisitions,'' whichever is greater; or

(3) The system is designated a ''major system'' by the head of the agency responsible for the system (10 U.S.C. 2302 and 41 U.S.C. 403).

Make-or-buy program means that part of a contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted.

Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

Master solicitation means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

May denotes the permissive. However, the words ''no person may * * *'' mean that no person is required, authorized, or permitted to do the act described.

Micro-purchase means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed $2,500, except that in the case of construction, the limit is $2,000.

Micro-purchase threshold means $2,500.

Minority Institution means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in section 316(b)(1) of the Act (20 U.S.C. 1101a).

Must (see ''shall'').

National defense means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space.

Neutral person means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person must have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

Nondevelopmental item means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraphs (1) or (2) solely because the item is not yet in use.

Novation agreement means a legal instrument—

(1) Executed by the—

(i) Contractor (transferor);

(ii) Successor in interest (transferee); and

(iii) Government; and

(2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

Offer means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called ''bids'' or ''sealed bids'' responses to requests for proposals (negotiation) are offers called ''proposals'' responses to requests for quotations (negotiation) are not offers and are called ''quotes.'' For unsolicited proposals, see subpart 15.6.

Option means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Overtime means time worked by a contractor's employee in excess of the employee's normal workweek.

Overtime premium means the difference between the contractor's regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium, *i.e.,* the difference between the contractor's regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

Ozone-depleting substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work will be

performed or broad and imprecise statements of work.

Personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see 37.104).

Pollution prevention means any practice that—

(1)(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(3) Protects natural resources by conservation.

Possessions include the Virgin Islands, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the Guano Islands, but does not include Puerto Rico, leased bases, or trust territories.

Power of attorney means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also ''attorney-in-fact'' at 28.001).

Preaward survey means an evaluation of a prospective contractor's capability to perform a proposed contract.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Pricing means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

Procurement (see ''acquisition'').

Procuring activity means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term ''procuring activity'' is synonymous with ''contracting activity.''

Projected average loss means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

Proper invoice means a bill or written request for payment that meets the minimum standards specified in the clause at 52.232–25, Prompt Payment, 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, or 52.232–27, Prompt Payment for Construction Contracts (also see 32.905(e)), and other terms and conditions contained in the contract for invoice submission.

Purchase order, when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

Qualification requirement means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

Qualified products list (QPL) means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in subpart 11.3 for paper and paper products, see the definition at 11.301.

Residual value means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

Responsible audit agency means the agency that is responsible for performing all required contract audit services at a business unit.

Responsible prospective contractor means a contractor that meets the standards in 9.104.

Segment means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

(1) Government-owned contractor-operated (GOCO) facilities; and

(2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—

(i) A majority ownership; or

(ii) Less than a majority ownership, but over which it exercises control.

Self-insurance means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

Senior procurement executive means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Shall denotes the imperative.

Shipment means freight transported or to be transported.

Shop drawings means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

(1) The proposed fabrication and assembly of structural elements.

(2) The installation (*i.e.,* form, fit, and attachment details) of materials or equipment.

Should means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

Signature or *signed* means the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

Simplified acquisition procedures means the methods prescribed in part 13 for making purchases of supplies or services.

Simplified acquisition threshold means $100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in

10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(8) and 41 U.S.C. 259(d)), the term means $200,000.

Single, Governmentwide point of entry, means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

Small business subcontractor means a concern, including affiliates, that for subcontracts valued at—

(1) $10,000 or less, does not have more than 500 employees; and

(2) More than $10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR part 121 (see 19.102) for the product or service it is providing on the subcontract.

Small disadvantaged business concern (except for 52.212–3(c)(2) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(7)(ii), 52.219–22(b)(2), and 52.219–23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the data base maintained by the Small Business Administration (PRO–Net); or

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award.

Sole source acquisition means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

Solicitation provision or *provision* means a term or condition used only in solicitations and applying only before contract award.

Special competency means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

State and local taxes means taxes levied by the States, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

Substantial evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Substantially as follows or *substantially the same as,* when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

Supplemental agreement means a contract modification that is accomplished by the mutual action of the parties.

Supplies means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

Surety means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

Suspension means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is ''suspended.''

Task order means an order for services placed against an established contract or with Government sources.

Taxpayer Identification Number (TIN) means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

Unallowable cost means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

Unique and innovative concept, when used relative to an unsolicited research proposal, means that—

(1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—

(i) Is the product of original thinking submitted confidentially by one source;

(ii) Contains new, novel, or changed concepts, approaches, or methods;

(iii) Was not submitted previously by another; and

(iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in subpart 22.8, see the definition at 22.801.

(2) For use in subpart 22.10, see the definition at 22.1001.

(3) For use in part 25, see the definition at 25.003.

(4) For use in subpart 47.4, see the definition at 47.401.

Unsolicited proposal means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

Value engineering means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (section 36 of the Office of Federal Procurement Policy Act, 41 U.S.C. 401, *et seq.*). For use in the clause at 52.248–2, see the definition at 52.248–2(b).

Value engineering change proposal (VECP)–(1) means a proposal that—

(i) Requires a change to the instant contract to implement; and

(ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided that it does not involve a change—

(A) In deliverable end item quantities only;

(B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or

(C) To the contract type only.

(2) For use in the clauses at—

(i) 52.248–2, see the definition at 52.248–2(b); and

(ii) 52.248–3, see the definition at 52.248–3(b).

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Virgin material means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

Warranty means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Women-owned small business concern means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

Writing or *written* (see ''in writing'').

3c. Revise section 2.201 to read as follows:

2.201 Contract clause.

Insert the clause at 52.202–1, Definitions, in solicitations and contracts that exceed the simplified acquisition threshold. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, use the clause with its Alternate I. The contracting officer may include additional definitions, provided they are consistent with the clause and the FAR.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

4. In section 3.302, add an introductory paragraph to read as follows:

3.302 Definitions.

As used in this subpart—

* * * * *

5. Amend section 3.401 by adding an introductory paragraph; and by removing '', as used in this subpart,'' from the definitions ''Bona fide agency'', ''Bona fide employee'', ''Contingent fee'', and ''Improper influence'' by. The added text reads as follows:

3.401 Definitions.

As used in this subpart—

* * * * *

6. In section 3.501–1, revise the introductory paragraph; and redesignate paragraphs (a) and (b) as (1) and (2), respectively. The revised text reads as follows:

3.501–1 Definition.

Buying-in, as used in this section, means submitting an offer below anticipated costs, expecting to—

* * * * *

7. Amend section 3.502–1 by adding an introductory paragraph; removing '', as used in this section,'' from the definitions ''Kickback'', ''Person'', ''Prime contract'', ''Prime Contractor'', ''Prime Contractor employee'', and ''Subcontract''; removing '', as used in this section, '' from the definition ''Subcontractor''; and redesignating paragraphs (a) and (b) as (1) and (2), respectively. The added text reads as follows:

3.502–1 Definitions.

As used in this section—

* * * * *

8. Add an introductory paragraph to section 3.901 to read as follows:

3.901 Definitions.

As used in this subpart—

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.501 [Reserved]

9. Remove and reserve section 4.501.

4.901 Definition.

10. In section 4.901, revise the section heading as set forth above; and remove the definition ''Taxpayer Identification Number (TIN).''

PART 5—PUBLICIZING CONTRACT ACTIONS

5.202 [Amended]

11. In section 5.202, amend paragraph (a)(8) by removing ''6.003'' and adding ''2.101'' in its place.

12. Amend section 5.501, by adding an introductory paragraph; by removing '', as used in this subpart,'' from the definitions ''Advertisement'' and ''Publication''; and by redesignating paragraphs (a) and (b) in the definition ''Publication'' as (1) and (2), respectively. The added text reads as follows:

5.501 Definitions.

As used in this subpart—

* * * * *

PART 6—COMPETITION REQUIREMENTS

13. Revise section 6.000 to read as follows:

6.000 Scope of part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. This part does not deal with the results of competition (*e.g.,* adequate price competition), that are addressed in other parts (*e.g.,* part 15).

6.003 [Removed and Reserved]

14. Remove and reserve section 6.003.

15. Amend section 6.302–1 by revising paragraph (a)(2)(i)(A) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) * * *
(2) * * *
(i) * * *
(A) Demonstrates a unique and innovative concept (see definition at 2.101), or, demonstrates a unique capability of the source to provide the particular research services proposed;
* * * * *

6.302–3 [Amended]

16. Amend section 6.302–3 in paragraph (a)(2)(iii) by removing ''(see 33.201)''.

PART 7—ACQUISITION PLANNING

17. Amend section 7.101 by adding an introductory paragraph; removing the definitions ''Acquisition planning'' and ''Design to cost''; and by removing '', as used in this subpart,'' from the definitions ''Acquisition streamlining'', and ''Planner''. The added text reads as follows:

7.101 Definitions.

As used in this subpart—
* * * * *

7.501 [Reserved]

18. Remove and reserve section 7.501.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

19. In section 8.501, add an introductory paragraph; and remove '', as used in this subpart,'' from the definition ''Bureau of Land Management''. The added text reads as follows:

8.501 Definitions.

As used in this subpart—
* * * * *

20. In section 8.701, add an introductory paragraph; and amend the definitions ''Allocation'', ''Central nonprofit agency'', ''Committee'', and ''Procurement List'' by removing '', as used in this subpart,''. The added text reads as follows:

8.701 Definitions.

As used in this subpart—
* * * * *

21. Amend section 8.801 by adding an introductory paragraph; and '' removing '', as used in this subpart,'' from the definition ''Related supplies''. The added text reads as follows:

8.801 Definitions.

As used in this subpart—
* * * * *

22. Amend section 8.1101 by adding an introductory paragraph; removing from the definition ''Leasing'' '', as used in this subpart,''; and redesignating paragraphs (a) and (b) in the definition ''Motor vehicle'' as (1) and (2), respectively. The added text reads as follows:

8.1101 Definitions.

As used in this subpart—
* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.101 [Amended]

23. Amend section 9.101 by revising the section heading to read ''Definition''; by removing the definitions ''Preaward survey'' and ''Responsible prospective contractor''; and by adding '', as used in this subpart,'' after the word ''activity'' in the definition ''Surveying activity.''

24. Amend section 9.201 by adding an introductory paragraph; and by removing the definitions ''Procuring activity'', ''Qualification requirement'', and ''Qualified products list (QPL).'' The added text reads as follows:

9.201 Definitions.

As used in this subpart—
* * * * *

9.301 Definition.

25. Amend section 9.301 by revising the section heading to read as set forth above; and by removing the definitions ''First article'' and ''First article testing.''

9.400 [Amended]

26. Amend section 9.400 in paragraph (a)(2) by removing ''9.403'' and adding ''2.101'' in its place.

27. Amend section 9.403 as follows:
a. Add an introductory paragraph;
b. Remove the definitions ''Adequate evidence'', ''Conviction'', ''Debarment'', ''Ineligible'', ''List of Parties Excluded from Federal Procurement and Nonprocurement
Programs'', ''Preponderance of the evidence'', and ''Suspension'';
c. In the definitions ''Affiliates'', ''Contractor'', ''Debarring official'', and ''Suspending official'', redesignate paragraphs (a) and (b) as (1) and (2), respectively;
d. Amend the definitions ''Agency'', ''Contractor'', and ''Unfair trade practices'' by removing '', as used in this subpart,'' and
e. In the definition ''Indictment'' remove ''shall be'' and add ''is'' in its place.
The added text reads as follows:

9.403 Definitions.

As used in this subpart—
* * * * *

9.501 Definition.

28. Amend section 9.501 as follows:
a. Revise the section heading as set forth above;
b. In the definition ''Marketing consultant'' remove ''means'' and add '', as used in this subpart, means'' in its place; and redesignate paragraphs (a) through (d) as (1) through (4), respectively; and
c. Remove the definition ''Organizational conflict of interest''.

9.601 [Amended]

29. Amend section 9.601 in the definition ''Contractor team arrangement'' by adding '', as used in this subpart,'' after the word ''arrangement'' the first time it is used; and by redesignating paragraphs (a) and (b) as (1) and (2), respectively.

9.701 [Amended]

30. Amend section 9.701 by redesignating paragraphs (a) and (b) as (1) and (2), respectively, and paragraphs (c) introductory text, (c)(1), and (c)(2) as (3), (3)(i), and (3)(ii), respectively.

PART 11—DESCRIBING AGENCY NEEDS

31. Amend section 11.601 by adding an introductory paragraph; and by removing '', as used in this subpart,'' from the definitions ''Authorized program'', ''Controlled materials'', and ''Delegate Agency''. The added text reads as follows:

11.601 Definitions.

As used in this subpart—
* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.001 [Amended]

32. Amend section 13.001 by removing the definition ''Purchase order''.

13.501 [Amended]

33. Amend section 13.501 in paragraph (a)(1)(i) by removing ''6.003'' and adding ''2.101'' in its place.

PART 14—SEALED BIDDING

34. Revise section 14.203–3 to read as follows:

14.203–3 Master solicitation.

The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations must reference the date of the current master solicitation and identify any changes. The contracting officer must—

(a) Make available copies of the master solicitation on request; and

(b) Provide the cognizant contract administration activity a current copy of the master solicitation.

PART 15—CONTRACTING BY NEGOTIATION

35. Amend section 15.001 by adding, in alphabetical order, the definitions ''Deficiency'' and ''Weakness'' to read as follows:

15.001 Definitions.

Deficiency is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

* * * * *

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A ''significant weakness'' in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

15.301 [Reserved]

36. Remove and reserve section 15.301.

37. Amend section 15.401 as follows:

a. Add an introductory paragraph;

b. Remove the definitions ''Cost or pricing data'', ''Cost realism'', ''Forward pricing rate agreement'', ''Forward pricing rate recommendation'', and ''Information other than cost or pricing data''; and

c. Remove '', as used in this subpart,'' from the definitions ''Price'' and ''Subcontract''. The added text reads as follows:

15.401 Definitions.

As used in this subpart—

* * * * *

15.402 [Amended]

38. Amend section 15.402 as follows:

a. In the introductory paragraph remove ''shall'' and add ''must'' in its place;

b. In the introductory text of paragraph (a) remove ''shall'' each time it is used (twice) and add ''must'' in its place;

c. In paragraph (a)(2)(ii) remove ''15.401'' and add ''2.101'' in its place; and

d. In paragraph (a)(3), second sentence, remove ''shall'' and add ''must'' in its place.

15.403–1 [Amended]

39. Amend section 15.403–1 in the first sentence of paragraph (c)(3) by removing ''(c)(1) or (2)'' and adding ''(3)(i) or (ii)'' in its place.

15.403–4 [Amended]

40. Amend section 15.403–4 in paragraph (c) by removing ''shall'' each time it is used (twice) and adding ''must'' in its place; and by removing ''15.401'' and adding ''2.101'' in its place.

15.406–2 [Amended]

41. Amend section 15.406–2 paragraph (a) by removing ''shall'' each time it is used (twice) and adding ''must'' in its place; and by removing from the first sentence of the Certificate of Current Cost or Pricing Data ''15.401'' and adding ''2.101'' in its place.

42. Amend section 15.407–2 by revising paragraph (b) to read as follows:

15.407–2 Make-or-buy programs.

* * * * *

(b) *Definition. Make item*, as used in this subsection, means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

* * * * *

15.408 [Amended]

43. In section 15.408, amend Table 15–2, which follows paragraph (m)(4), by adding a comma after the word ''title'' in paragraph A. (11) of the General Instructions; and by removing from paragraph C. ''15.401'' and adding ''2.101'' in its place.

15.601 [Amended]

44. Amend section 15.601 by removing the definition ''Unsolicited proposal.''

15.604 [Amended]

45. Amend section 15.604 in the introductory text of paragraph (a), second sentence, by removing ''shall'' and adding ''must'' in its place; and in paragraph (a)(1) by removing ''15.601'' and adding ''2.101'' in its place.

PART 17—SPECIAL CONTRACTING METHODS

17.103 [Amended]

46. Amend section 17.103 in the definition ''Cancellation'' by redesignating paragraphs (a) and (b) as (1) and (2), respectively.

17.201 [Reserved]

47. Remove and reserve section 17.201.

17.501 [Amended]

48. In section 17.501, add '', as used in this subpart,'' after the word ''acquisition''.

PART 19—SMALL BUSINESS PROGRAMS

49. Amend section 19.001 as follows:

a. Add an introductory paragraph;

b. In the definitions ''Concern'', ''Fair market price'', and ''Industry'' remove '', as used in this part,''; and

c. Remove the definitions ''HUBZone'', ''HUBZone small business concern'', ''Labor surplus area'', ''Labor surplus area concern'', ''Small disadvantaged business concern'', and ''Women-owned small business concern''. The added text reads as follows:

19.001 Definitions.

As used in this part—

* * * * *

50. Amend section 19.101 as follows:

a. Add an introductory paragraph;

b. In the definition of ''Affiliates''—

- Remove ''As used in this subpart, business'' and add ''Business'' in its place;
- Redesignate paragraphs (a) through (g) as (1) through (7), respectively;
- In the newly designated paragraph (3), redesignate paragraphs (1) through (3) as (i) through (iii), respectively;
- In the newly designated paragraph (6), redesignate paragraphs (1) through (3) as (i) through (iii), respectively;
- In the newly designated paragraph (7), redesignate paragraphs (1) through (5) as (i) through (v), respectively;
- In the newly designated paragraph (7)(i) redesignate paragraphs (i) and (ii) as (A) and (B), respectively;
- In the newly designated paragraph (7)(i)(B), redesignate paragraphs (A) and (B) as (*1*) and (*2*), respectively; and
- In the newly designated paragraph (7)(v), remove ''(g)(1)(i) and (ii)'' and add ''(7)(i)(A) and (B)'' in its place; and

c. In the definition ''Annual receipts'', redesignate paragraphs (1) and (2) as (i) and (ii), respectively; redesignate paragraphs (a) and (b) as (1) and (2), respectively; and in the newly designated paragraph (2) remove ''paragraph (a) above'' and add ''paragraph (1) of this definition'' in its place. The added text reads as follows:

19.101 Explanation of terms.

As used in this subpart—

* * * * *

51. In section 19.701, add an introductory paragraph; and remove the definition ''Small business subcontractor''. The added text reads as follows:

19.701 Definitions.

As used in this subpart—

* * * * *

19.703 [Amended]

52. Amend section 19.703 in paragraph (a)(1) by removing ''in 2.101 or 19.001'' and adding ''(see 2.101 and 19.001)'' in its place.

53. Amend section 19.902 by revising the section heading and the introductory paragraph to read as follows:

19.902 Designated SBA district.

A designated SBA district is the geographic area served by any of the following SBA district offices:

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.103–1 Definition.

54. Amend section 22.103–1 by revising the section heading to read as set forth above; in the definition ''Normal workweek'' by redesignating paragraphs (a) and (b) as (1) and (2), respectively; and by removing the definitions ''Overtime'', ''Overtime premium'', and ''Shift premium''.

55. Amend section 22.401 as follows:

a. Add a new introductory paragraph;

b. Remove '', as used in this subpart,'' from the definitions ''Building'' or ''work'', ''Construction, alteration, or repair'', ''Public building'' or ''public work'', and ''Wages''.

c. Amend the definition ''Laborers or mechanics'' as follows—

- Remove '', as used in this subpart,'';
- Redesignate paragraphs (a) through (d) as (1) through (4), respectively;
- In the newly designated paragraph (2), redesignate paragraphs (1) and (2) as (i) and (ii), respectively; and redesignate paragraphs (i) and (ii) as (A) and (B), respectively; and
- In the newly designated paragraph (4), remove ''paragraph (c)'' and add ''paragraph (3)'' in its place; and

d. Amend the definition ''Site of the work'' as follows:

- Remove '', as used in this subpart,'';
- Redesignate paragraphs (a) through (c) as (1) through (3), respectively;
- In the newly designated paragraph (1), remove ''paragraph (b)'' and add ''paragraph (2)'' in its place; and
- In the newly designated paragraph (2), remove ''paragraph (c)'' and add ''paragraph (3)'' in its place. The added text reads as follows:

22.401 Definitions.

As used in this subpart—

* * * * *

56. Amend section 22.1001 by adding an introductory paragraph; revising the definition ''Act or Service Contract Act''; and removing '', as used in this subpart,'' from the definitions ''Contractor'', ''Multiple year contracts'', ''Notice'', ''Service contract'', and ''United States''. The added and revised text reads as follows:

22.1001 Definitions.

As used in this subpart—

Act or *Service Contract Act* means the Service Contract Act of 1965.

* * * * *

22.1102 [Amended]

57. In the first sentence of section 22.1102, add '', as used in this subpart,'' after ''Professional employee''.

58. Amend section 22.1202, by adding an introductory paragraph; and removing ''as used in this subpart,'' from the definitions ''Building service contract'', ''Public building'' and ''Service employee''. The added text reads as follows:

22.1202 Definitions.

As used in this subpart—

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

59. Amend section 23.503 by adding an introductory paragraph; removing '', as used in this subpart,'' from the definition ''Controlled substance''; and removing the definition ''Drug-free workplace''. The added text reads as follows:

23.503 Definitions.

As used in this subpart—

* * * * *

23.802 [Reserved]

60. Remove and reserve section 23.802.

23.904 [Amended]

61. In section 23.904, add '', as used in this subpart,'' after ''Toxic chemicals''.

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

62. Amend section 24.101 by adding an introductory paragraph; and by removing '', as used in this subpart,'' from the definitions ''Agency'', ''Individual'', ''Maintain'', ''Operation of a system of records'', ''Record'', and ''System of records on individuals''. The added text reads as follows:

24.101 Definitions.

As used in this subpart—

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.301 [Reserved]

63. Remove and reserve section 26.301.

PART 27—PATENTS, DATA, AND COPY RIGHTS

64. Amend section 27.301 by adding an introductory paragraph; and by removing '', as used in this subpart,'' from the definitions ''Invention'', ''Made'', ''Nonprofit organization'', ''Practical application'', ''Small business firm'', and ''Subject invention''. The added text reads as follows:

27.301 Definitions.

As used in this subpart—

* * * * *

65. Amend section 27.401 by adding an introductory paragraph; removing the definition ''Computer software''; and removing '', as used in this subpart,'' from the definitions ''Data'', ''Form, fit, and function data'', ''Limited rights'', ''Limited rights data'' (both definitions), ''Restricted computer software'', ''Restricted rights'', ''Technical data'', and ''Unlimited rights''. The added text reads as follows:

27.401 Definitions.

As used in this subpart—

* * * * *

PART 28—BONDS AND INSURANCE

66. Amend section 28.001 as follows:

a. Add an introductory paragraph;

b. Remove '', as used in this part,'' from the definition ''Attorney-in-fact''; and in the parenthetical add ''at 2.101'' after the word ''attorney'';

c. In the definition ''Bid guarantee'', redesignate paragraphs (a) and (b) as (1) and (2), respectively;

d. In the definition ''Bond'', redesignate paragraphs (a) through (f) as (1) through (6), respectively; and

e. Remove the definitions ''Insurance'', ''Irrevocable letter of credit

(ILC)'', ''Power of attorney'', and ''Surety''. The added text reads as follows:

28.001 Definitions.

As used in this part—

* * * * *

28.308 [Amended]

67. Amend section 28.308 in the first sentence of paragraph (a) by removing ''(see 31.001)''.

PART 29—TAXES

29.301 [Reserved]

68. Remove and reserve section 29.301.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

69. Amend section 31.001 as follows:

a. Add an introductory paragraph;

b. Revise the definition ''Actual costs'';

c. In the definition ''Actuarial cost method'', remove ''that uses'' and add ''which uses'', in its place;

d. Remove the definition ''Business unit'';

e. Revise the definitions ''Cost objective'' and ''Final cost objective'';

f. Remove '', as used in this part,'' from the definition ''Fiscal year'';

g. Remove the definition ''General and administrative (G&A) expense'';

h. Revise the definition ''Indirect cost pools'';

i. Remove '', as used in this part'' from the definitions ''Job''; Job class of employees''; and ''Labor market'';

j. Remove the definition ''Pricing'';

k. Revise the definition ''Profit center''; and

l. Remove the definitions ''Projected average loss'', ''Residual value'', ''Segment'', ''Self-insurance'', and ''Unallowable cost''.

The added text reads as follows:

31.001 Definitions.

As used in this part—

* * * * *

Actual costs means (except for subpart 31.6) amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

* * * * *

Cost objective means (except for subpart 31.6) a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

* * * * *

Final cost objective means (except for subparts 31.3 and 31.6) a cost objective that has allocated to it both direct and indirect costs and, in the contractors accumulation system, is one of the final accumulation points.

* * * * *

Indirect cost pools means (except for subparts 31.3 and 31.6) groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

* * * * *

Profit center means (except for subparts 31.3 and 31.6) the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

* * * * *

70. Amend section 31.205–17 as follows:

a. Add an introductory paragraph;

b. Remove the paragraph designation from paragraph ''(a)'';

c. Redesignate paragraphs (b) through (d) as (1) through (3), respectively; and in newly designated paragraph (1), redesignate paragraphs (1) and (2) as (i) and (ii), respectively; and

d. Remove '', as used in this subsection,'' from the definitions ''Costs of idle facilities or idle capacity'', ''Facilities'', ''Idle capacity'', and ''Idle facilities'';. The added text reads as follows:

31.205–17 Idle facilities and idle capacity costs.

As used in this subsection—

* * * * *

71. Amend section 31.205–18 in the heading of paragraph (a) by adding ''As used in this subsection—'' after the word ''Definitions.''; removing '', as used in this subsection,'' from the definitions ''Applied research'', ''Bid and proposal (B&P) costs'', ''Company'', ''Development'', ''Independent research and development (IR&D)'' and ''Systems and other concept formulation studies''; and revising the definition ''Basic research'' to read as follows:

31.205–18 Independent research and development and bid and proposal costs.

(a) * * *

Basic research (see 2.101).

* * * * *

31.205–32 [Amended]

72. Amend section 31.205–32 in the first sentence by removing ''are those'' and adding ''means costs'' in its place; and in the second sentence by removing ''Such'' and adding ''These'' in its place.

31.205–33 [Amended]

73. Amend section 31.205–33 in the first sentence of paragraph (a) by removing ''subpart, are'' and adding ''subsection, means'' in its place.

31.205–39 [Amended]

74. Amend the second sentence of section 31.205–39 by removing the word ''such''.

31.205–47 [Amended]

75. Amend section 31.205–47 in the heading of paragraph (a) by adding ''As used in this subpart—'' after ''Definitions.'', and by removing the definition ''Conviction''; and in paragraph (f)(5) by redesignating paragraphs (i) & (ii) as (A) and (B), and (1) and (2) as (i) and (ii), respectively. The added text reads as follows:

31.205–47 Costs related to legal and other proceedings.

(a) *Definitions.* As used in this subpart—

* * * * *

PART 32—CONTRACT FINANCING

76. Amend section 32.001 by adding an introductory paragraph; adding, in alphabetical order, the definitions ''Commercial interim payment'', ''Delivery payment'', and ''Due date''; and removing '', as used in this part,'' from the definition ''Contract action''. The added text reads as follows:

32.001 Definitions.

As used in this part—

Commercial interim payment means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (*i.e.,* not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

* * * * *

Delivery payment means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

Due date means the date on which payment should be made.

* * * * *

32.006–2 Definition.

77. Amend section 32.006–2 by revising the section heading

to read as set forth above; by removing the introductory paragraph; by adding ‘‘, as used in this section,’’ after the word ‘‘official’’ in the definition ‘‘Remedy coordination official’’; and by removing the definition ‘‘Substantial evidence’’.

32.113 [Amended]

78. Amend section 32.113 in paragraph (e) by removing ‘‘part 6’’ and adding ‘‘2.101’’ in its place.

79. Amend section 32.202–2, by revising the first sentence in the definition ‘‘Commercial advance payment’’; and by revising the definitions ‘‘Commercial interim payment’’ and ‘‘Delivery payment’’ to read as follows:

32.202–2 Types of payments for commercial item purchases.

* * * * *

Commercial advance payment, as used in this subsection, means a payment made before any performance of work under the contract. * * *

Commercial interim payment (see 32.001).

Delivery payment (see 32.001).

32.202–3 [Amended]

80. Amend section 32.202–3 in paragraphs (d) and (e) by removing ‘‘32.202–2’’ and adding ‘‘32.001’’ in its place.

81. Amend section 32.301 by adding an introductory paragraph; and by removing ‘‘, as used in this subpart,’’ from the definitions ‘‘Borrower’’, ‘‘Guaranteed loan’’ or ‘‘V loan’’, and ‘‘Guaranteeing agency’’. The added text reads as follows:

32.301 Definitions.

As used in this subpart—

* * * * *

32.801 [Amended]

82. Amend section 32.801 by removing the definition ‘‘Assignment of claims’’.

83. Amend section 32.902 by adding an introductory paragraph; removing ‘‘, as used in this subpart,’’ from the definitions ‘‘Contract financing payment’’, ‘‘Day’’, ‘‘Designated billing office,’’ and ‘‘Invoice payment’’; by removing the definitions ‘‘Due date’’, ‘‘Invoice’’, and ‘‘Proper invoice’’; and by removing ‘‘which’’ from the definition ‘‘Specified payment date’’ the first time it appears and adding ‘‘that’’ in its place. The added text reads as follows:

32.902 Definitions.

As used in this subpart—

* * * * *

84. Amend section 32.1102 as follows:

a. Add an introductory paragraph;

b. Remove the definition ‘‘Electronic Funds Transfer’’;

c. Remove from the definition ‘‘EFT information’’ ‘‘EFT information’’ and add ‘‘Electronic Funds Transfer information (EFT)’’ in its place; and

d. Remove ‘‘, as used in this part,’’ from the definition ‘‘Governmentwide commercial purchase card’’. The added text reads as follows:

32.1102 Definitions.

As used in this subpart—

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS

85. Amend section 33.101 as follows:

a. Add an introductory paragraph;

b. In the definition ‘‘Day’’ redesignate paragraphs (a) and (b) as (1) and (2), respectively; and in the newly designated paragraph (2), redesignate paragraphs (1) and (2) as (i) and (ii), respectively;

c. Remove ‘‘, as used in this subpart,’’ from the definitions ‘‘Day’’, ‘‘Filed’’, and ‘‘Interested party for the purpose of filing a protest’’; and

d. Remove ‘‘, as used in this subpart,’’ from the definition ‘‘Protest’’ and redesignate paragraphs (a) through (d), as (1) through (4), respectively. The added text reads as follows:

33.101 Definitions.

As used in this subpart—

* * * * *

86. Amend section 33.201 as follows:

a. Add an introductory paragraph;

b. Revise the first sentence of the definition ‘‘Accrual of a claim’’;

c. Remove ‘‘as used in this subpart,’’ from the definitions ‘‘Claim’’ and ‘‘Defective certification’’;

d. Remove ‘‘, as used in this part,’’ from the definition ‘‘Misrepresentation of fact’’;

e. In the introductory paragraph of the definition ‘‘Issue in controversy’’ remove ‘‘which’’ and add ‘‘that’’ in its place; and

f. Remove the definition ‘‘Neutral person’’.

The added and revised text reads as follows:

33.201 Definitions.

As used in this subpart—

Accrual of a claim means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. * * *

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION

34.001 [Amended]

87. Amend section 34.001 in the definition ‘‘Effective competition’’ by removing ‘‘which’’ and adding ‘‘that’’ (twice) in its place.

34.101 [Amended]

88. Amend section 34.101 in the definition ‘‘Item of supply’’ by removing ‘‘for the purpose of’’ and adding ‘‘as used in’’ in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.001 [Amended]

89. Amend section 35.001 by removing the definitions ‘‘Basic research’’, ‘‘Broad agency announcement’’, ‘‘Cost sharing’’, and ‘‘Federally Funded Research and Development Centers (FFRDC’s)’’.

90. Amend section 35.017 in paragraph (b) by adding an introductory paragraph; by removing ‘‘, as used in this section,’’ from the definitions ‘‘Nonsponsor’’ and ‘‘Primary sponsor’’; and by removing the definition ‘‘Special competency’’. The added text reads as follows:

35.017 Federally Funded Research and Development Centers.

* * * * *

(b) *Definitions.* As used in this section—

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

91. Amend section 36.102 as follows:

a. Add an introductory paragraph;

b. Remove ‘‘, as used in this part’’ from the definitions ‘‘Contract’’, ‘‘Design’’, ‘‘Design-bid-build’’, ‘‘Design-build’’, ‘‘Firm’’, ‘‘Plans and specifications’’, ‘‘Record drawings’’, and ‘‘Two-phase design-build selection procedures’’; and

c. Remove the definitions ‘‘Architect-engineer services’’, ‘‘As-built drawings’’, and ‘‘Shop drawings’’.

36.102 Definitions.

As used in this part—

* * * * *

36.601–3 [Amended]

92. Amend section 36.601–3 in paragraph (d) by removing ‘‘36.102’’ and adding ‘‘2.101’’ in its place.

PART 37—SERVICE CONTRACTING

93. Amend section 37.101 by adding an introductory paragraph; by removing the definitions ''Performance-based contracting'' and ''Personal services contract''; and in the definition ''Service contract'' by redesignating paragraphs (a) through (i) as (1) through (9), respectively. The added text reads as follows:

37.101 Definitions.

As used in this part—

* * * * *

37.103 [Amended]

94. Amend section 37.103 in paragraph (a)(1) by removing ''in 37.101'' and adding ''at 2.101 and 37.101'' in its place.

37.104 [Amended]

95. Amend section 37.104 in the first sentence of paragraph (a) by removing ''As indicated in 37.101, a'' and adding ''A'' in its place.

37.201 [Amended]

96. Amend section 37.201 by removing '', as used in this subpart,'' from the definition ''Covered personnel''; and by redesignating paragraphs (a)(1) through (a)(6) as (a)(i) through (a)(vi), paragraphs (a) through (c) as (1) through (3), respectively.

37.502 [Amended]

97. Amend section 37.502 in paragraph (a)(3) by removing ''36.102'' and adding ''2.101'' in its place.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

98. Amend section 39.002 as follows:

a. Add an introductory paragraph;

b. Remove '', as used in this part,'' from the definitions ''Modular contracting'' and ''National security system'';

c. In the definition ''National security system'', redesignate paragraphs (a) through (e) as (1) through (5), respectively; and

d. In the definition ''Year 2000 compliant'', remove ''as used in this part, means,'' and add ''means'' after the word ''technology,''.

The added text reads as follows:

39.002 Definitions.

As used in this part—

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.001 [Reserved]

99. Remove and reserve section 42.001.

42.302 [Amended]

100. Amend section 42.302 in the last sentence of the introductory text of paragraph (a) by removing ''(see 42.001)'' and adding ''(see 2.101)'' in its place.

42.503–2 [Amended]

101. Amend section 42.503–2 by removing ''(see 43.101)'' from the fourth sentence.

42.701 Definition.

102. Amend section 42.701 as follows:

a. Revise the section heading as set forth above;

b. In the introductory paragraph of the definition ''Billing rate'' remove ''means'' and add ''as used in this subpart means'', and redesignate paragraphs (a) and (b) as (1) and (2), respectively; and

c. Remove the definitions ''Business unit'', ''Final indirect cost rate'', ''Forward pricing rate agreement'', ''Indirect cost'', and ''Indirect cost rate''.

42.1201 [Reserved]

103. Remove and reserve section 42.1201.

PART 43—CONTRACT MODIFICATIONS

104. Amend section 43.101 by adding an introductory paragraph; by removing the definitions ''Change order'', ''Contract modification'', and ''Supplemental agreement'', and the introductory text of the definition ''Effective date'' including the heading *Effective date.*

The added text reads as follows:

43.101 Definitions.

As used in this part—

* * * * *

105. Amend section 43.103 by revising paragraph (b)(3) to read as follows:

43.103 Types of contract modifications.

* * * * *

(b) * * *

(3) Make changes authorized by clauses other than a changes clause (*e.g.,* Property clause, Options clause, or Suspension of Work clause); and

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

106. Amend section 44.101 by adding an introductory paragraph; by removing the definition ''Consent to subcontract''; and by removing '', as used in this part,'' from the definitions ''Contractor'', ''Subcontract'', and ''Subcontractor''. The added text reads as follows:

44.101 Definitions.

As used in this part—

* * * * *

PART 46—QUALITY ASSURANCE

107. Amend section 46.101 by adding an introductory paragraph; by removing '', as used in this part,'' from the definitions ''Acceptance'' and ''Conditional acceptance''; and by removing the definitions ''Commercial item'', ''Inspection'', and ''Latent defect''. The added text reads as follows:

46.101 Definitions.

As used in this part—

* * * * *

46.701 [Reserved]

108. Remove and reserve section 46.701.

109. Amend section 46.710 by adding a sentence to the end of paragraphs (a)(1) and (b)(1) to read as follows:

46.710 Contract clauses.

* * * * *

(a)(1) * * * If the contractor's design rather than the Government's design will be used, insert the word ''design'' before ''material'' in paragraph (b)(1)(i).

* * * * *

(b)(1) * * * If the contractor's design rather than the Government's design will be used, insert the word ''design'' before ''material'' in paragraph (b)(1).

* * * * *

PART 47—TRANSPORTATION

110. Amend section 47.001 by adding an introductory paragraph; by removing ''as used in this part'' from the definition ''Common carrier'', and removing the definitions ''F.o.b.'', ''F.o.b. origin'', ''F.o.b. destination'', ''Freight'', and ''Shipment''. The added text reads as follows:

47.001 Definitions.

As used in this part—

* * * * *

111. Amend section 47.201 by adding an introductory paragraph; and removing '', as used in this subpart'' from the definitions ''General freight'', ''Household goods'', and ''Office

furniture''. The added text reads as follows:

47.201 Definitions.

As used in this subpart—

* * * * *

112. Amend section 47.401 by adding an introductory paragraph; and by removing '', as used in this subpart,'' from the definition ''United States''. The added text reads as follows:

47.401 Definitions.

As used in this subpart—

* * * * *

113. Amend section 47.501 as follows:

a. Add an introductory paragraph;

b. Remove '', as used in this subpart'' from the definitions ''Government vessel'', ''Privately owned U.S.-flag commercial vessel'', and ''U.S.-flag vessel;

c. In the definition ''Privately owned U.S.-flag commercial vessel'' redesignate paragraphs (a) through (d) as (1) through (4).

The added text reads as follows:

47.501 Definitions.

As used in this subpart—

* * * * *

PART 48—VALUE ENGINEERING

114. Amend section 48.001 as follows:

a. Add an introductory paragraph;

b. Remove '', as used in this part,'' from the definitions ''Acquisition savings'', ''Collateral costs'', ''Collateral savings'', ''Contracting office'', ''Contractor's development and implementation costs'', and ''Value engineering proposal'';

c. In the definition ''Acquisition savings'' redesignate paragraphs (a) through (c) as (1) through (3), respectively;

d. Revise the newly designated paragraph (1);

e. In the newly designated paragraphs (2) and (3), remove ''which'' and add ''that'' in their places;

f. In the definition ''Future unit cost reduction'', ''Instant contract'', ''Sharing base'', ''Sharing period'', and ''Unit'', remove '', as used in this part,'';

g. In the definition ''Future unit cost reduction'', redesignate paragraphs (a) and (b) as (1) and (2), respectively; and in the newly designated paragraph (2) remove ''which'' and add ''that'' in its place;

h. Revise the definition ''Government costs''; and

i. Remove the definitions ''Value engineering'' and ''Value engineering change proposal (VECP)''.

The added and revised text reads as follows:

48.001 Definitions.

As used in this part—

* * * * *

Acquisition savings * * *

(1) Instant contract savings, that are the net cost reductions on the contract under which the VECP is submitted and accepted, and that are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the contractor's allowable development and implementation costs;

* * * * *

Government costs means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in instant contract cost or price resulting from negative instant contract savings, except that for use in 52.248–3, see the definition at 52.248–3(b).

* * * * *

PART 49—TERMINATION OF CONTRACTS

115. Amend section 49.001 as follows:

a. Add an introductory paragraph;

b. Remove '', as used in this part,'' from the definitions ''Claim'', ''Continued portion of the contract'', ''Other work'', and ''Settlement proposal'';

c. Remove the definitions ''Effective date of termination'' and ''Termination contracting officer''; and

d. Revise the definition ''Settlement agreement''.

The added and revised text reads as follows:

49.001 Definitions.

As used in this part—

* * * * *

Settlement agreement means a written agreement in the form of a contract modification settling all or a severable portion of a settlement proposal.

* * * * *

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

116. Amend section 50.001 by adding an introductory paragraph; and removing '', as used in this part,'' from the definitions ''Approving authority'' and ''Secretarial level''. The added text reads as follows:

50.001 Definitions.

As used in this part—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.101 [Amended]

117. Amend section 52.101 in the heading of paragraph (a) by removing ''Definitions'' and adding ''Definition'' in its place; and by removing the definitions ''Alternate'', ''Contract clause'' or ''clause'', ''Solicitation provision'' or ''provision'', and ''Substantially as follows'' or ''substantially the same as''.

118. Amend section 52.202–1 as follows:

a. Revise the introductory paragraph, the date of the clause, and paragraphs (a) and (d) of the clause;

b. Remove paragraph (f) and redesignate paragraph (e) as (f), and add a new paragraph (e);

c. In the newly designated paragraph (f)(2), remove ''(e)(1)'' and add ''(f)(1)'' in its place; and in the newly designated (f)(3) remove ''(e)(1) or (e)(2)'' and add ''(f)(1) or (f)(2)'' in its place; and

d. In Alternate I of the clause, remove ''(*Apr 1984*)'' and add ''(*Mar 2001*)'' in its place; and remove ''paragraph (c)'' and add ''paragraph (g)'' in its place. The revised and new text reads as follows:

52.202–1 Definitions.

As prescribed in section 2.201, insert the following clause:

DEFINITIONS (MAR 2001)

(a) *Agency head* or *head of the agency* means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

* * * * *

(d) *Component* means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225–9, and 52.225–11 see the definitions in 52.225–9(a) and 52.225–11(a).

(e) *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

* * * * *

(End of clause)

52.212–3 [Amended]

119. Amend section 52.212–3 in the heading of the clause by removing ''(OCT 2000)'' and adding ''(MAR 2001)'' in its place; and in paragraph (a) in the definition ''Women-owned small business concern'' by removing from paragraph (1) ''Which'' and ''women or''

and adding ''That'' and ''women; or'' in their places, respectively.

120. Amend section 52.214–21 by revising the date of the provision and the first sentence in paragraph (a).

52.214–21 Descriptive Literature.

* * * * *

DESCRIPTIVE LITERATURE (MAR 2001)

(a) *Descriptive Literature,* as used in this provision, means information (*e.g.,* cuts, illustrations, drawings, and brochures) that is submitted as part of a bid. * * *

* * * * *

121. Amend section 52.215–1 by revising the date of the provision; and in paragraph (a) of the provision by revising the definition ''In writing'' or ''written'' to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

INSTRUCTIONS TO OFFERORS—COMPETITIVE ACQUISITION (MAR 2001)

(a) * * *

In writing, writing, or *written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

* * * * *

52.219–1 [Amended]

122. Amend section 52.219–1 in the provision heading by removing ''(OCT 2000)'' and adding ''(MAR 2001)'' in its place; and in paragraph (c) under the definition ''Women-owned small business concern'', by removing from paragraph (1) ''Which'' and ''women or'' and adding ''That'' and ''women; or'' in their places, respectively.

123. Amend section 52.219–23 by revising the date of the clause; and in paragraph (a) of the clause by revising the definition ''Minority institution'' to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (MAR 2001)

(a) * * *

Minority institution means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

* * * * *

52.223–6 [Amended]

124.–125. Amend section 52.223–6 in the clause heading by removing ''(JAN 1997)'' and adding ''(MAR 2001)'' in its place; and in the definition ''drug-free workplace'' by removing ''at which'' and adding ''where'' in its place.

126. Amend section 52.223–11 by revising the date of the clause and paragraph (a) of the clause to read as follows:

52.223–11 Ozone-Depleting Substances.

* * * * *

OZONE-DEPLETING SUBSTANCES (MAR 2001)

(a) *Definition. Ozone-depleting substance,* as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

* * * * *

127. Revise section 52.226–2 to read as follows:

52.226–2 Historically Black College or University and Minority Institution Representation.

As prescribed in 26.304, insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION REPRESENTATION (MAR 2001)

(a) *Definitions.* As used in this provision—

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institution means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(b) *Representation.* The offeror represents that it—

[ ] is [ ] is not a historically black college or university;

[ ] is [ ] is not a minority institution.

(End of provision)

52.232–25, 52.232–26, and 52.232–27 [Amended]

128. Amend sections 52.232–25, 52.232–26, and 52.232–27 in the clause headings by removing ''(JUN 1997)'' and adding ''(MAR 2001)'' in its place; and in the third sentence of the undesignated introductory paragraph by removing ''section 32.902'' and adding ''sections 2.101 and 32.902'' in its place.

129. Amend section 52.242–3 in the clause heading by removing ''(OCT 1995)'' and adding ''(MAR 2001)'' in its place; and by revising paragraph (c) to read as follows:

52.242–3 Penalties for Unallowable Costs.

* * * * *

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

* * * * *

130. Amend section 52.246–3 as follows:

a. In the clause heading, remove ''(APR 1984)'' and add ''(MAR 2001)'' in its place;

b. In the heading of paragraph (a), add ''As used in this clause—'' after the word ''Definitions'';

c. In the definition ''Contractor's managerial personnel,'' remove '', as used in this clause,'', and in paragraph (2) remove ''at which'' and add ''where'' in its place; and

d. In the definition ''Supplies,'' remove '', as used in this clause,''.

131. Amend section 52.246–6 as follows:

a. In the clause heading, remove ''(Jan 1986)'' and add ''(Mar 2001)'' in its place;

b. In the heading of paragraph (a), add ''As used in this clause—'' after the word ''Definitions.'';

c. In the definition ''Contractor's managerial personnel,'' remove '', as used in this clause,'', and in paragraph (2) remove ''at which'' and add ''where'' in its place; and

d. In the definition ''Materials,'' remove '', as used in this clause,''.

132. Amend section 52.246–8 as follows:

a. In the clause heading, remove ''(Apr 1984)'' and add ''(Mar 2001)'' in its place;

b. In the heading of paragraph (a), add ''As used in this clause—'' after the word ''Definitions.'';

c. In the definition ''Contractor's managerial personnel,'' remove '', as used in this clause,'', and in paragraph (2) remove ''at which'' and add ''where'' in its place; and

d. In the definition ''Work,'' remove '', as used in this clause,''.

133. Amend section 52.246–17 by revising the introductory paragraph, the date of the clause, and paragraph (a) of the clause to read as follows:

52.246–17 Warranty of Supplies of a Noncomplex Nature.

As prescribed in 46.710(a)(1), insert a clause substantially as follows:

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (MAR 2001)

(a) *Definitions.* As used in this clause—

Acceptance means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. The word does not include ''data.''

* * * * *

134. Amend section 52.246–18 by revising the introductory paragraph, the date of the clause, and paragraph (a) of the clause to read as follows:

52.246–18 Warranty of Supplies of a Complex Nature.

As prescribed in 46.710(b)(1), insert a clause substantially as follows:

WARRANTY OF SUPPLIES OF A COMPLEX NATURE (MAR 2001)

(a) *Definitions.* As used in this clause—

Acceptance means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. The word does not include ''data.''

* * * * *

135. Amend section 52.246–19 by revising the introductory paragraph, the date of the clause, and paragraph (a) of the clause to read as follows:

52.246–19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

As prescribed in 46.710(c)(1), the contracting officer may insert a clause substantially as follows:

WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (MAR 2001)

(a) *Definitions.* As used in this clause—

Acceptance means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

Defect means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

Supplies means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also mean ''data.''

* * * * *

136. Amend section 52.246–20 by revising the introductory paragraph and the date of the clause; and in paragraph (a) of the clause by removing the paragraph heading ''Definitions'' and adding ''Definition'' in its place; and by removing the definition ''Correction''. The revised text reads as follows:

52.246–20 Warranty of Services.

As prescribed in 46.710(d), insert a clause substantially as follows:

WARRANTY OF SERVICES (MAR 2001)

* * * * *

[FR Doc. 01–11 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 97–22; FAR Case 2000–301; Item II]

RIN 9000–AI79

Federal Acquisition Regulation; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 and the Cost Accounting Standards (CAS) Board's final rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises CAS applicability requirements, dollar thresholds, and waiver requirements.

DATES: *Effective Date:* January 10, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–22, FAR case 2000–301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65)—

- Revised, at 41 U.S.C. 422(f)(2)(B), the categories of contracts and subcontracts that are exempt from all CAS requirements;
- Required the Administrator for Federal Procurement Policy to revise the rules and procedures issued under 41 U.S.C. 422(f) to increase the dollar threshold for full CAS coverage from $25 million to $50 million; and
- Revised 41 U.S.C. 422(f) to permit the head of an executive agency to waive the applicability of CAS under certain conditions.

In response to Public Law 106–65, the CAS Board in the Office of Federal Procurement Policy published an interim rule in the **Federal Register** on February 7, 2000 (65 FR 5990). The CAS Board rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage, amended the regulations at 48 CFR part 9903 to implement Section 802. After analysis of public comments, the CAS Board converted its interim rule to a final rule, with no change, and published the final rule in the **Federal Register** on June 9, 2000 (65 FR 36768).

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 65 FR 36028, June 6, 2000. One respondent submitted public comments on the interim rule. The Councils considered all comments before agreeing to convert the interim rule to a final rule without change.

This FAR rule—

- Amends the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding $1 million (''trigger contract'') to be subject to ''full CAS coverage,'' since the CAS Board removed this ''trigger contract'' amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201–3. The CAS Board added a new ''trigger contract'' dollar amount of $7.5 million at paragraph (b)(7) of 48 CFR 9903.201–1, CAS applicability, which is already referenced at FAR 30.201–1;
- Revises FAR 30.201–4(b)(1), Disclosure and consistency of cost accounting practices, and amends the provision at FAR 52.230–1 to reflect changes made by the CAS Board to

increase the dollar threshold for full CAS coverage from $25 million to $50 million; and

• Revises the CAS waiver procedures and conditions at FAR 30.201–5, as required by Section 802 of Pub. L. 106–65.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division

Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 30 and 52, which was published in the **Federal Register** at 65 FR 36028, June 6, 2000, as a final rule without change.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 01–12 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 97–22; FAR Case 1999–016; Item III]

RIN 9000–AI74

Federal Acquisition Regulation; Advance Payments for Non-Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to permit federally insured credit unions to participate in the maintenance of special accounts for advance payments.

DATE: Effective Date: March 12, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–4755. Please cite FAC 97–22, FAR case 1999–016.

SUPPLEMENTARY INFORMATION:

A. Background

Prior to publication of this final FAR rule, FAR Subpart 32.4, Advance Payments for Non-Commercial Items, required, unless exempted by FAR 32.409–3(e) or (f), that contractors deposit advance payments in special accounts separate from their general or other funds. FAR 32.411 and other FAR text excluded credit unions from participating in the maintenance of these special accounts by requiring that contractors establish these special accounts only at banks that are members of the Federal Reserve System (FRS) or insured by the Federal Deposit Insurance Corporation (FDIC). However, many credit unions are federally insured through the National Credit Union Administration (NCUA). Therefore, these credit unions also are able to provide the Government a measure of security for Federal funds advanced to contractors.

This final rule amends FAR Subpart 32.4 and FAR 52.232–12 to change certain terminology (*e.g.,* change the word ''bank'' to ''financial institution'') to provide contractors an additional option of depositing advance payments in special accounts maintained by credit unions that are federally insured by NCUA. This revision will foster competition among financial institutions that are in the business of providing special accounts for advance payment funds, without increasing the risk to the Government.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 25614, May 2, 2000. Two respondents submitted public comments on the proposed rule. The Councils considered all comments before agreeing to convert the proposed rule to a final rule without change.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to the very limited number of contractors that receive advance payments and deposit these payments in special accounts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Revise paragraph (a)(1) of section 32.407 to read as follows:

32.407 Interest.

(a) * * *

(1) The published prime rate of the financial institution (depository) in which the special account (see 32.409–3) is established; or

* * * * *

32.408 [Amended]

3. Amend paragraph (b)(4) of section 32.408 by removing ''bank'' both times it appears and adding ''financial institution'' in its place.

4. Amend section 32.409–3 as follows:

a. In paragraph (a) remove ''bank'' and add ''special'' in its place;

b. In paragraphs (b)(2), (c)(2), and (e) remove ''bank''.

c. Revise paragraph (f)(1); and

d. In paragraph (g) remove ''bank'' both times it appears.

The revised text reads as follows:

32.409–3 Security, supervision, and covenants.

* * * * *

(f) * * *

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor's account at a financial institution (without the contractor acquiring title to the funds); and

* * * * *

5. In section 32.410, revise the second sentence in paragraph (a)(4) of the ''Findings, Determination, and Authorization for Advance Payments Findings'' to read as follows:

32.410 Findings, determination, and authorization.

* * * * *

(a) * * *

(4) * * * The clause requires that all payments will be deposited in a special account at the Contractor's financial institution and that the Government will have a paramount lien on (i) the credit balance in the special account, (ii) any supplies contracted for, and (iii) any material or other property acquired for performance of the contract. * * *

* * * * *

6. Revise 32.411 to read as follows:

32.411 Agreement for special account at a financial institution.

The contracting officer must use substantially the following form of agreement for a special account for advance payments:

Agreement for Special Account

This agreement is entered into this ____ day of ____, 20____, between the United States of America (the Government), represented by the Contracting Officer executing this agreement, _____ [*Insert the name of the Contractor*], a _____ [*Insert the name of the State of incorporation*] corporation (the Contractor), and _____, a financial institution operating under the laws of _____, located at _____ (the financial institution).

Recitals

(a) Under date of _____, 20_____, the Government and the Contractor entered into Contract No. ____, or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Account at a member bank of the Federal Reserve System, any ''insured'' bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated ''_____ [*Insert the Contractor's name*], _____ [*Insert the name of the Government agency*] Special Account.''

Covenants

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account. The financial institution shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The financial institution is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the financial institution through the Contracting Officer on _____ [*Insert the name of the agency*] stationery and purporting to be signed by, or by the direction of _____ or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the financial institution are concerned, considered as being properly issued and filed with the financial institution by the _____ [*Insert the name of the agency*].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution shall preserve the books and records for a period of 6 years after the closing of this Special Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Account, the financial institution will promptly notify _____ [*Insert the name of the administering office*].

(e) While this Special Account exists, the financial institution shall inform the Government each month of the financial institution's published prime interest rate and changes to the rate during the month. The financial institution shall give this information to the Contracting Officer on the last business day of the month. [*This covenant will not be included in the Special Account Agreements covering interest-free advance payments.*]

Each of the parties to this agreement has executed the agreement on _____, 20____.

_____

_____

[*Signatures and Official Titles*]

32.412 [Amended]

7. Amend paragraph (f) of section 32.412 by removing ''bank''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.232–12 as follows:

a. Revise the date of the clause;

b. Revise paragraph (b);

c. Remove ''bank'' from paragraphs (c) and (d);

d. Revise paragraph (f)(3);

e. Revise paragraph (g);

f. Remove ''bank'' from paragraphs (h), (k)(1) introductory text, (k)(1)(iv), (k)(2)(i), and (m)(1) each time it appears;

g. Revise paragraph (p)(11);

h. Amend Alternate II by revising the date to read ''(Mar 2001) ''; and removing ''bank'' from paragraph (c); and

i. Amend Alternate V by revising the date to read ''(Mar 2001)''; removing from the introductory paragraph ''bank''; and revising the heading of the clause and paragraph (m)(11) of Alternate V to read as follows:

52.232–12 Advance Payments.

* * * * *

Advance Payments (Mar 2001)

* * * * *

(b) *Special account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor's

special account with the _____ [*insert the name of the financial institution*]. None of the funds in the special account shall be mingled with other funds of the Contractor. Withdrawals from the special account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

* * * * *

(f) * * *

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92–41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

* * * * *

(g) *Financial institution agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor shall select a financial institution that is a member bank of the Federal Reserve System, an ''insured'' bank within the meaning of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration.

* * * * *

(p) * * *

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

* * * * *

Advance Payments Without Special Account (Mar 2001)

* * * * *

(m) * * *

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

* * * * *

[FR Doc. 01–13 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 97–22; FAR Case 1999–021; Item IV]

RIN 9000–AJ05

Federal Acquisition Regulation; Part 12 and Assignment of Claims

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add, in the contract clause addressing terms and conditions for commercial items, the prohibition for a contractor to assign its rights to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) when a third party makes payment under the contract (*e.g.,* use of the Governmentwide commercial purchase card). This prohibition is currently in the contract clause addressing terms and conditions required to implement statutes or Executive orders for commercial items.

DATES: *Effective Date:* March 12, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–22, FAR case 1999–021.

SUPPLEMENTARY INFORMATION:

A. Background

Paragraph (e) of the clause at FAR 52.232–36, Payment by Third Party, states that a contractor may not assign its rights to receive payment under the assignment of claims terms of the contract if payment is made by a third party (*e.g.,* use of the Governmentwide commercial purchase card). This clause is included in paragraph (b)(25) of the clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

Paragraph (b) of the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items, states that a contractor may assign its rights to receive payments due as a result of performance of the contract, but paragraph (b) does not include the prohibition against the assignment of claims if payment is made by a third party (*e.g.,* use of the Governmentwide commercial purchase card). FAR 12.302(b) further states that the contracting officer shall not tailor FAR 52.212–4(b).

The purpose of this rule is to correct the inconsistency between FAR 52.212–4(b) and FAR 52.212–5(b)(25). The rule revises FAR 52.212–4(b) to add the prohibition against the assignment of claims when payment is made by a third party.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–22, FAR case 1999–021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR part 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.212–4 by revising the date of the clause and paragraph (b) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Mar 2001)

* * * * *

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.,* use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

* * * * *

[FR Doc. 01–14 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 97–22; FAR Case 1996–023; Item V]

RIN 9000–AJ06

Federal Acquisition Regulation; Clause Flowdown-Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify requirements for the inclusion of FAR clauses in subcontracts for commercial items awarded under contracts for other than commercial items.

DATES: *Effective Date:* March 12, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–22, FAR case 1996–023.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the clause at FAR 52.244–6, Subcontracts for Commercial Items, to revise the list of clauses the contractor must flow down to subcontractors and to clarify that contractors may flow down a minimal number of other clauses.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 62 FR 49903, September 23, 1997. Four sources submitted comments in response to the proposed rule. The Councils considered all comments in the development of the final rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing requirements regarding the inclusion of clauses in subcontracts for commercial items awarded under contracts for other than commercial items.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.213–4 [Amended]

2. Amend section 52.213–4 by removing from the clause heading ''(July 2000)'' and adding ''(Mar 2001)'' in its place; and be removing ''(Oct 1998)'' from paragraph (a)(2)(vi) of the clause and adding ''Mar 2001'' in its place.

3. Amend section 52.244–6 by revising the section heading, the introductory text of paragraph (a), and the clause heading; removing '', as used in this clause,'' from the definitions ''Commercial item'' and ''Subcontract''; and by revising paragraph (c) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Mar 2001)

(a) Definitions. As used in this clause—

* * * * *

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219–8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

* * * * *

[FR Doc. 01–15 Filed 1–9–01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 19, 22, 42, 52, and 53

[FAC 97–22; Item VI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition

Regulation in order to update references and make editorial changes.

DATES: *Effective Date:* January 10, 2001.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR parts 1, 19, 22, 42, 52, and 53

Government procurement.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 19, 22, 42, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 19, 22, 42, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory paragraph at entry 52.215–19 by removing the OMB Control Number ''9000–0015'' and adding ''9000–0115'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

3. Amend section 19.812 by revising paragraph (a) to read as follows:

19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the 8(a) contractor (see Federal Directory of Contract Administration Services Components (available via the Internet at *http://www.dcma.mil/casbook/casbook.htm)).*

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

4. Amend section 22.403–4 as follows:

a. Redesignate paragraphs ''(a)'', ''(b)'', ''(c)'', ''(d)'', and ''(e)'' as ''(b)(1)'', ''(b)(2)'', ''(b)(3)'', ''(b)(4)'', and ''(b)(5)'', respectively;

b. Designate the introductory paragraph as paragraph (a), and amend it by removing ''The Department of Labor regulations include—'';

c. Add paragraph (b) introductory text;

d. In newly designated paragraph (b)(5), remove the last sentence; and

e. Add a new paragraph (c) to read as follows:

22.403–4 Department of Labor regulations.

* * * * *

(b) The Department of Labor regulations include—

* * * * *

(c) Refer all questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the Administrator, Wage and Hour Division.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

5. Amend section 42.201 by revising paragraph (b) to read as follows:

42.201 Contract administration responsibilities.

* * * * *

(b) The Defense Contract Management Agency and other agencies offer a wide variety of contract administration and support services.

6. Revise section 42.203 to read as follows:

42.203 Contract administration services directory.

The Defense Contract Management Agency (DCMA) maintains and distributes the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMA and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may obtain a free copy of the directory on disk by writing to—Defense Contract Management Agency, ATTN: DCMA–FBP, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221, or access it on the Internet at *http://www.dcma.mil/casbook/casbook.htm.*

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.247–51 [Amended]

7. Amend section 52.247–51 in the provision heading by removing ''(FEB 1995)'' and adding ''(JAN 2001)'' in its place; in the first sentence of paragraph (c)(1) by removing ''F.o.b. port of loading with inspection and acceptance at origin.''; and in the third column of the table following paragraph (d), add a comma after ''i.e.''.

PART 53—FORMS

53.215–1 [Amended]

8. Amend section 53.215–1 by removing from paragraph (a) ''15.509(b)'' and adding ''15.509'' in its place; and by removing from paragraphs (e) and (f) ''15.509(a)'' and adding ''15.509'' in their place.

[FR Doc. 01–16 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–22 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–22 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–22

Item	Subject	FAR Case	Analyst
I	Definitions	1999–403	Linfield.
II	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage.	2000–301	Nelson.
III	Advance Payments for Non-Commercial Items.	1999–016	Olson.
IV	Part 12 and Assignment of Claims	1999–021	Moss.
V	Clause Flowdown—Commercial Items	1996–023	Moss.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–22 amends the FAR as specified below:

Item I—Definitions (FAR Case 1999–403)

This final rule clarifies the applicability of definitions used in the FAR, eliminates redundant or conflicting definitions, and makes definitions easier to find. The rule—

- Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- Relocates other definitions of terms to the ''Definitions'' section of the highest level FAR division (part, subpart, or section) where the term as defined is used. For example, if a term was defined in a FAR section, but the term is used as defined in another section of that subpart, then the definition was moved to the ''Definitions'' section of that subpart;
- Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or unless another FAR part, subpart, or section provides a different definition for that particular part, subpart, or section;
- Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the FAR; and
- Makes technical corrections throughout the FAR.

Item II—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000–301)

The interim rule published as Item VIII of FAC 97–18 (65 FR 36028, June 6, 2000) is converted to a final rule without change. This rule amends FAR Subpart 30.2, CAS Program Requirements, and the FAR clause at 52.230–1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the Cost Accounting Standards (CAS) Board's final rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with CAS by—

- Removing the requirement at FAR 52.230–1, Cost Accounting Standards Notices and Certification, that a contractor or subcontractor must have received at least one CAS-covered contract exceeding $1 million (''trigger contract'') to be subject to ''full CAS coverage.'' The CAS Board added a new ''trigger contract'' dollar amount of $7.5 million at paragraph (b)(7) of 48 CFR 9903.201–1, CAS applicability, which is already referenced at FAR 30.201–1;
- Revising FAR 30.201–4(b), Disclosure and consistency of cost accounting practices, and FAR 52.230–1 to increase the dollar threshold for full CAS coverage from $25 million to $50 million; and
- Revising the CAS waiver procedures and conditions at FAR 30.201–5.

Item III—Advance Payments for Non-Commercial Items (FAR Case 99–016)

This final rule amends the FAR to permit federally insured credit unions, in addition to banks, to participate in the maintenance of special accounts for advance payments. The rule will only affect contracting officers that provide contract financing using advance payments for non-commercial items.

Item IV—Part 12 and Assignment of Claims (FAR Case 1999–021)

This final rule amends the FAR to correct an inconsistency between two clauses related to the assignment of claims. FAR 52.232–36, Payment by Third Party, prohibits a contractor from assigning its rights to receive payment under the contract if payment is made by a third party, such as when a Governmentwide commercial purchase card is used. This clause is cited in the contract clause at FAR 52.212–5 that addresses terms and conditions required to implement statutes or Executive orders for commercial items.

FAR 52.212–4, Contract Terms and Conditions—Commercial Items, addresses assignment of claims but does not include the third party prohibition. This rule revises FAR 52.212–4(b) to add the prohibition.

Item V—Clause Flowdown—Commercial Items (FAR Case 1996–023)

This final rule amends the clause at FAR 52.244–6, Subcontracts for Commercial Items, to revise the listing of clauses the contractor must flow down to subcontractors. The rule revises the listing to add the clause at FAR 52.219–8, Utilization of Small Business Concerns, when specified circumstances have been met. In addition, the rule adds language to inform contractors that they may flow down a minimal number of additional clauses to subcontractors to satisfy their contractual obligations.

Dated: December 22, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 01–17 Filed 1–9–01; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Wednesday,
January 10, 2001

Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Parts 53, 301 and 602

Excise Taxes on Excess Benefit Transactions; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53, 301, and 602

[TD 8920]

RIN 1545–AY64

Excise Taxes on Excess Benefit Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code, as well as certain amendments and additions to existing Income Tax Regulations affected by section 4958. Section 4958 was enacted in section 1311 of the Taxpayer Bill of Rights 2. Section 4958 imposes excise taxes on transactions that provide excess economic benefits to disqualified persons of public charities and social welfare organizations (referred to as applicable tax-exempt organizations). Disqualified persons who benefit from an excess benefit transaction with an applicable tax-exempt organization are liable for a tax of 25 percent of the excess benefit. Such persons are also liable for a tax of 200 percent of the excess benefit if the excess benefit is not corrected by a certain date. Additionally, organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause, are liable for a tax of 10 percent of the excess benefit. The tax for which participating organization managers are liable cannot exceed $10,000 for any one excess benefit transaction.

DATES: *Effective Date:* These regulations are effective January 10, 2001.

Applicability Date: These regulations apply as of January 10, 2001 and will cease to apply January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these temporary regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1623, in conjunction with the notice of proposed rulemaking published August 4, 1998, 63 FR 41486, REG–246256–96, Failure by Certain Charitable Organizations to Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 4958 was added to the Code by the Taxpayer Bill of Rights 2, Public Law 104–168 (110 Stat. 1452), enacted July 30, 1996. The section 4958 excise taxes generally apply to excess benefit transactions occurring on or after September 14, 1995. The IRS notified the general public of the new section 4958 excise taxes in Notice 96–46 (1996–2 C.B. 112), which also solicited comments on the new law.

On August 4, 1998, a notice of proposed rulemaking (REG–246256–96) clarifying certain definitions and rules contained in section 4958 was published in the **Federal Register** (63 FR 41486). The IRS received numerous written comments responding to this notice, including a comment from the public on the collections of information estimates contained therein.

That commentator expressed concern that the purchase of independent compensation surveys is required to certify the reasonableness of certain outside and personnel contracts; and that the proposed regulations place a burden on governing bodies of applicable tax-exempt organizations, increasing the personal risk of members of those governing bodies. The collections of information in the proposed regulations are voluntary on the part of the governing bodies of applicable tax-exempt organizations. Although the collections of information allow the organization to rely on a presumption that a transaction is reasonable or at fair market value, the failure to obtain the collections of information in no way implies that a transaction is unreasonable.

Further, as discussed under Explanation of Provisions of this preamble (under the heading *Rebuttable presumption that a transaction is not an excess benefit transaction*), the IRS and the Treasury Department believe that any applicable tax-exempt organization may compile its own comparability data rather than obtain an independent survey to satisfy the requirement to obtain appropriate data as to comparability. Therefore, although the comment on Paperwork Reduction Act requirements was considered in the new estimates of the annual burden per recordkeeper and per respondent, these temporary regulations continue to conclude that the estimated annual burden per recordkeeper varies from 3 hours to 308 hours, depending on individual circumstances, with an estimated weighted average of 6 hours, 3 minutes.

A public hearing was held on March 16 and 17, 1999. After consideration of all the comments, the proposed regulations under section 4958 were revised as follows. The major areas of the comments and revisions are discussed below.

Explanation of Provisions

Additional Taxes on Disqualified Person

A disqualified person benefitting from an excess benefit transaction must correct the excess benefit within the taxable period to avoid liability for the 200-percent tax under section 4958(b). The taxable period is defined by section 4958 as the period beginning on the date the transaction occurred and ending on the earlier of the date of mailing a notice of deficiency, or the date on which the 25-percent tax is assessed.

A commentator questioned whether the disqualified person would receive any notice that the IRS was examining a possible excess benefit transaction before either of the events ending the taxable period occur. In fact, a disqualified person would be notified if an examination of that person were opened pursuant to an examination of an applicable tax-exempt organization. The IRS has an obligation under Internal Revenue Code (Code) section 7602(c) to notify taxpayers at the beginning of the examination and collection process that the IRS might contact third parties (such as the organization) about the taxpayer's tax liabilities. Additionally, the IRS follows the procedure of issuing a ''first letter of proposed deficiency'' allowing the taxpayer an opportunity for administrative review in the IRS Office of Appeals. This first letter is issued 30 days before the notice of deficiency is issued. Consequently, a disqualified person would be aware of any examination of a potential excess benefit transaction before the end of the taxable period.

Although it is also IRS practice to issue a single notice of deficiency for both the 25-percent and 200-percent

section 4958 taxes for which the disqualified person is liable, the abatement rules under section 4961 provide that the 200-percent tax under section 4958(b) is not to be assessed (and if assessed, is to be abated) if the excess benefit is corrected within 90 days after the mailing of the notice of deficiency for that tax.

Correction

Section 4958(f)(6) defines *correction* as ''undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.'' The proposed regulations provide a short, general description of correction, referring to the statutory language. The proposed regulations define correction as repaying an amount of money equal to the excess benefit, plus ''any additional amount needed to compensate the organization for the loss of the use of the money or other property'' from the date of the excess benefit transaction to the date the excess benefit is corrected. The proposed regulations further allow correction ''in certain circumstances'' by permitting the disqualified person to return property to the organization and ''taking any additional steps necessary to make the organization whole.'' Where there is an ongoing contract for services, the proposed regulations provide that the parties need not terminate the contract in order to correct, but the contract ''may need to be modified'' to avoid future excess benefit transactions.

The IRS received numerous comments and requests for additional guidance relating to correction as defined in the proposed regulations. A number of commentators requested that final regulations state explicitly that correction requires a disqualified person to pay interest on the excess benefit amount, and to specify the rate of interest.

The temporary regulations state that the disqualified person must pay the applicable tax-exempt organization a correction amount in order to correct an excess benefit transaction and prevent imposition of the 200-percent tax. The correction amount equals the sum of the excess benefit and interest on the excess benefit. The amount of the interest charge is determined by multiplying the excess benefit by an interest rate, compounded annually, for the period from the date the excess benefit transaction occurred to the date of correction. The interest rate used for this purpose must be a rate that equals or exceeds the applicable Federal rate (AFR), compounded annually, for the month in which the transaction occurred. The period from the date the excess benefit transaction occurred to the date of correction is used to determine whether the appropriate AFR is the Federal short-term rate, the Federal mid-term rate, or the Federal long-term rate.

Commentators requested that an applicable tax-exempt organization have discretion to determine the appropriate form of correction; for example, payment of money, return of property, or some combination. Alternatively, one commentator requested an explicit rule that monetary payment is always sufficient and that a buy-back or return of property is not required. Another requested clarification that rescission could constitute an appropriate form of correction.

The temporary regulations provide, in general, that a disqualified person corrects an excess benefit only by making a payment in cash or cash equivalents to the applicable tax-exempt organization equal to the correction amount. The disqualified person may, however, with the agreement of the applicable tax-exempt organization, make a payment by returning specific property previously transferred in the excess benefit transaction. In the latter case, the amount of the payment equals the lesser of the fair market value of the property determined on the date the property is returned to the organization, or the fair market value of the property on the date the excess benefit transaction occurred.

Under the temporary regulations, if the payment made by returning the property is less than the correction amount, the disqualified person must make an additional cash payment to the organization of the difference. Conversely, if the payment made by returning the property exceeds the correction amount, the organization may make a cash payment to the disqualified person of the difference. The disqualified person who engaged in the excess benefit transaction with the applicable tax-exempt organization may not participate in the applicable tax-exempt organization's decision whether to accept as a correction payment the return of specific property previously transferred in the excess benefit transaction. An organization may always refuse the return of that property as payment, and require instead that the disqualified person make a payment in cash (or cash equivalents) of the full correction amount.

The temporary regulations provide a special rule relating to the correction of an excess benefit transaction resulting from the vesting of benefits provided under a nonqualified deferred compensation plan. To the extent that such benefits have not been distributed to the disqualified person, the disqualified person may correct the portion of the excess benefit attributable to such undistributed deferred compensation by relinquishing any right to receive such benefits (including any earnings thereon).

The temporary regulations provide five new examples that illustrate acceptable forms of correction. The temporary regulations also clarify that, if the disqualified person makes a payment of less than the full correction amount, the 200-percent tax is imposed only on the unpaid portion of the correction amount.

Another commentator suggested that where an organization failed to establish its intent to treat an economic benefit as consideration for the performance of services, amending an information return, rather than requiring the disqualified person to repay the benefit, should be sufficient to correct the excess benefit transaction, assuming that the total amount of compensation was reasonable. In this regard, the proposed regulations specifically allow the reporting of an economic benefit by an organization on an original or amended Federal tax information return to establish that a benefit was intended as compensation. The proposed regulations and these temporary regulations permit an organization to establish its intent by amending an information return at any time prior to when the IRS commences an examination. Additionally, the temporary regulations explicitly allow the disqualified person to amend the person's Federal tax return to report a benefit as income at any time prior to when the IRS commences an examination of the disqualified person or the applicable tax-exempt organization for the taxable year in which the transaction occurs.

In addition, under the proposed regulations and these temporary regulations, if an organization can show reasonable cause (using existing standards under section 6724) for failing to report an economic benefit as compensation as required under the Code or regulations, then the organization will be treated as clearly indicating its intent to provide an economic benefit as compensation for services. The section 6724 standards include acting in a responsible manner before and after the failure to report occurred, along with either significant

mitigating factors or events beyond the organization's control.

Where the applicable tax-exempt organization provides taxable benefits to a disqualified person, section 4958(c)(1) requires a clear indication that the organization intended to provide the benefits as consideration for the performance of services. Where there is no such clear indication, the value of those benefits generally is an excess benefit, regardless of any claim of reasonableness of the total compensation package. In this case, the regular correction rules apply.

The temporary regulations provide that failure of the organization or the disqualified person to report nontaxable economic benefits (or otherwise document a clear intent) does not result automatically in an excess benefit transaction. This rule is consistent with the legislative history. (H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 57, note 8). These nontaxable benefits must still be taken into account (unless specifically excluded elsewhere in the regulations) when determining whether the total amount of compensation paid to a disqualified person is reasonable. Therefore, only to the extent that total compensation exceeds what is reasonable could a section 4958 excise tax be imposed and correction be required with respect to nontaxable economic benefits.

The temporary regulations provide additional guidance regarding correction where an applicable tax-exempt organization has ceased to exist or is no longer tax-exempt under section 501(a) as an organization described in section 501(c)(3) or (4). The temporary regulations make clear that a disqualified person must correct the excess benefit transaction in either event. In the case of section 501(c)(3) organizations, the disqualified person must pay the correction amount to another organization described in section 501(c)(3) in accordance with the dissolution clause of the applicable tax-exempt organization involved in the excess benefit transaction, provided the other organization is not related to the disqualified person. In the case of section 501(c)(4) organizations, the disqualified person must pay the correction amount to the successor section 501(c)(4) organization or, if there is no tax-exempt successor, to any section 501(c)(3) or section 501(c)(4) organization not related to the disqualified person.

Several commentators requested clarification that a disqualified person is allowed to deduct the payment of a correction amount as a business expense. The issue is beyond the scope of these regulations. The provisions of Subtitle A of the Code govern the deductibility of any part of a correction payment.

Tax Paid by Organization Managers: Reliance on Advice of Counsel

The proposed regulations provide a safe harbor under which a manager's participation in a transaction will ordinarily not be subject to tax under section 4958(a)(2), even though the transaction is subsequently held to be an excess benefit transaction, if the manager fully discloses the factual situation to legal counsel, then relies on the advice of such counsel expressed in a reasoned written legal opinion that a transaction is not an excess benefit transaction. This safe harbor parallels the rules for foundation manager taxes contained in the regulations under section 4941 (taxes on self-dealing) and section 4945 (taxes on taxable expenditures).

A number of commentators suggested that the final regulations expand the advice-of-counsel safe harbor to allow reliance on the advice of other professionals. Specifically mentioned were section 7525 practitioners (Federally authorized tax practitioners), professional tax advisors, and compensation consultants and appraisers with respect to valuation issues. Commentators likewise suggested that parallel revisions should be made to the section 4941 and 4945 regulations.

The temporary regulations expand the safe harbor contained in the proposed regulations. The temporary regulations provide that an organization manager's participation in an excess benefit transaction will ordinarily not be considered knowing to the extent that, after full disclosure of the factual situation to an appropriate professional, the organization manager relies on a reasoned written opinion of that professional with respect to elements of the transaction within the professional's expertise. For this purpose, appropriate professionals are legal counsel (including in-house counsel), certified public accountants or accounting firms with expertise regarding the relevant tax law matters, and independent valuation experts who meet specified requirements. The requirements for appropriate valuation experts are modeled after the section 170 regulations that define *qualified appraisers* for charitable deduction purposes. Under the section 4958 temporary regulations, the valuation experts must hold themselves out to the public as appraisers or compensation consultants; perform the relevant valuations on a regular basis; be qualified to make valuations of the type of property or services being valued; and include in the written opinion a certification that they meet the preceding requirements. This section 4958 regulations project did not undertake any revisions to the advice-of-counsel safe harbor or the definition of *knowing* in the section 4941 and 4945 regulations.

The temporary regulations contain an additional safe harbor, providing that an organization manager's participation in a transaction will ordinarily not be considered knowing if the manager relies on the fact that the requirements giving rise to the rebuttable presumption of reasonableness are satisfied with respect to the transaction (for the requirements, see discussion under the heading *Rebuttable presumption that a transaction is not an excess benefit transaction* of this preamble).

Date of Occurrence

Section 4958 does not specify when an excess benefit transaction occurs. The proposed regulations provide that an excess benefit transaction occurs on the date on which the disqualified person receives the economic benefit from the applicable tax-exempt organization for Federal income tax purposes. The proposed regulations also provide that a transaction consisting of the payment of deferred compensation occurs on the date the deferred compensation is earned and vested. Several comments were received requesting additional guidance about the timing of an excess benefit transaction. Specifically, one commentator requested clarification in the case of multiple payments.

The temporary regulations continue to provide as a general rule that an excess benefit transaction occurs on the date the disqualified person receives the economic benefit for Federal income tax purposes. The temporary regulations contain additional rules for a series of compensation payments or other payments arising pursuant to a single contractual arrangement provided to a disqualified person over the course of the disqualified person's taxable year (or part of a taxable year). In such a case, any excess benefit transaction with respect to these aggregate payments is deemed to occur on the last day of the taxable year (or, if the payments continue for part of the year, the date of the last payment in the series).

The temporary regulations also contain special rules for deferred, contingent, and certain noncash compensation. The temporary

regulations state that in the case of benefits provided pursuant to a qualified pension, profit-sharing, or stock bonus plan, the transaction occurs on the date the benefit is vested. In the case of a transfer of property that is subject to a substantial risk of forfeiture, or in the case of rights to future compensation or property (including benefits under a nonqualified deferred compensation plan), the transaction occurs on the date the property, or the rights to future compensation or property, is not subject to a substantial risk of forfeiture. However, where the disqualified person elects to include an amount in gross income in the taxable year of transfer pursuant to section 83(b), the general rule applies, such that the transaction occurs on the date the disqualified person receives the economic benefit from the applicable tax-exempt organization for Federal income tax purposes. Any excess benefit transaction with respect to benefits under a deferred compensation plan which vest during any taxable year of the disqualified person is deemed to occur on the last day of the disqualified person's taxable year.

The temporary regulations continue to reference the relevant Code sections for statute of limitations rules as they apply to section 4958 excise taxes. Generally, the statute of limitations for section 4958 taxes begins with the filing of the applicable tax-exempt organization's return for the year in which the excess benefit transaction occurred. If the organization discloses an item on its return or on an attached schedule or statement in a manner sufficient to apprise the IRS of the existence and nature of an excess benefit transaction, the three-year limitation on assessment and collection applies. If the transaction is not so disclosed, a six-year limitation on assessment and collection applies, unless an exception listed in section 6501(c) applies.

Definition of Applicable Tax-Exempt Organization

Section 4958(e) defines an *applicable tax-exempt organization* as ''any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a) * * *'' (except private foundations). An applicable tax-exempt organization also includes any organization that was described in section 501(c)(3) or (4) and exempt from tax under section 501(a) at any time during a five-year period ending on the date of an excess benefit transaction (the *lookback period*).

The temporary regulations revise the section defining applicable tax-exempt organizations to clarify that an organization is not described in section 501(c)(3) or (4) for purposes of section 4958 during any period covered by a final determination or adjudication that the organization is not exempt from tax under section 501(a) as an organization described in section 501(c)(3) or (4), so long as that determination or adjudication is not based upon participation in inurement or one or more excess benefit transactions.

A number of commentators requested that the final regulations clarify the status of section 115 governmental entities that voluntarily applied for a determination of their section 501(c)(3) status. Others requested that those governmental entities that applied for section 501(c)(3) exemption before the enactment of section 4958 be exempt from section 4958. In response to these comments, the temporary regulations provide that any governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a) is not an applicable tax-exempt organization for purposes of section 4958.

Definition of Disqualified Person

Section 4958(f)(1) defines a disqualified person with respect to any transaction as ''any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization * * *'' (and several other categories of related persons). The proposed regulations list the statutory categories of related persons (*i.e.*, certain family members and 35-percent controlled entities) that are treated as disqualified persons for section 4958 purposes. The proposed regulations also list several categories of persons who are treated as disqualified persons by virtue of the functions they perform for, or the interests they hold in, the organization. The proposed regulations further provide that other persons may be treated as disqualified persons depending on all relevant facts and circumstances and list some of the factors to be considered.

Some commentators questioned certain categories of persons who are deemed to have substantial influence under the proposed regulations (*e.g.*, presidents, chief executive officers, treasurers), arguing that these *per se* categories conflict with a statement in the legislative history that ''[a] person having the title of 'officer, director, or trustee' does not automatically have the status of a disqualified person.'' These commentators requested that final regulations adopt an alternative approach of listing these categories as facts and circumstances tending to show that a person has substantial influence over the affairs of an organization. In response to these comments, the temporary regulations clarify that the per se categories of persons who are in a position to exercise substantial influence for section 4958 purposes are defined by reference to the actual powers and responsibilities held by the person and not merely by the person's title or formal position. Thus, for example, it is possible that a person with the mere title of ''president'' could be treated as not having substantial influence if it is demonstrated that the person, in fact, does not have ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization.

A number of commentators objected to a provision in the proposed regulations under which a person who has or shares authority to sign drafts or to authorize electronic transfer of the organization's funds is treated as a treasurer or chief financial officer who is in a position to exercise substantial influence over the affairs of the organization. Other commentators requested that the final regulations recognize that a person who may authorize transfer of only minimal amounts of the organization's funds should not be treated as a disqualified person solely by reason of that authority.

The temporary regulations clarify that a person who has the powers and responsibilities of a treasurer or chief financial officer is in a position to exercise substantial influence, provided that the person has ultimate responsibility for managing the finances of the organization. As requested by commentators, the temporary regulations delete the provision from the proposed regulations that refers to having, or sharing, authority to sign drafts or to authorize electronic transfer of funds.

The IRS and the Treasury Department considered, but declined to adopt at present, a special rule with respect to so-called ''donor advised funds'' maintained by an applicable tax-exempt organization. Unlike other segments of an applicable tax-exempt organization, such as an operating department (or division) of the organization, a donor advised fund consists of a segregated fund maintained for the specific purpose of allowing certain persons to provide ongoing advice regarding the

organization's use of amounts contributed by a particular donor (or donors). Although these persons cannot properly have legal control over the segregated fund, they nonetheless are in a position to exercise substantial influence over the amount, timing, or recipients of distributions from the fund. Accordingly, the IRS and the Treasury Department request comments regarding potential issues raised by applying the fair market value standard of section 4958 to distributions from a donor advised fund to (or for the use of) the donor or advisor.

The proposed regulations deem certain persons not to have substantial influence, including any applicable tax-exempt organization described in section 501(c)(3) (*i.e.,* public charities subject to section 4958). Various commentators requested that section 501(c)(4) applicable tax-exempt organizations, section 115 governmental entities, corporations or associations organized as non-profits under the laws of any State, or entities 100-percent controlled by and for the benefit of section 501(c)(3) applicable tax-exempt organizations, be deemed not to exercise substantial influence over the affairs of applicable tax-exempt organizations.

The temporary regulations provide that any organization described in section 501(c)(3) and exempt from tax under section 501(a) (including a private foundation), is not a disqualified person. The temporary regulations do not specifically exclude from disqualified person status section 115 and section 501(c)(4) organizations generally, as requested in comments. However, the temporary regulations state that an organization described in section 501(c)(4) is deemed not to have substantial influence with respect to another applicable tax-exempt organization described in section 501(c)(4). Additionally, the temporary regulations provide that the transfer of economic benefits to a government entity for exclusively public purposes is disregarded for purposes of section 4958.

A number of comments were received on the section of the proposed regulations providing that facts and circumstances govern in all cases where disqualified person status is not explicitly described. Commentators variously requested revision or deletion of the statement that a person with managerial control over a discrete segment of an organization could be in a position to exercise substantial influence over the affairs of the entire organization. Instead of considering this factor in an overall evaluation of the facts and circumstances, the temporary regulations provide that the fact that a ''person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization'' is a separate factor tending to show substantial influence. The IRS and the Treasury Department believe that, in some circumstances, a person managing a discrete segment or activity of an organization is, in fact, in a position to exercise substantial influence over the organization as a whole.

With respect to the factor that a person is a *substantial contributor* within the meaning of section 507(d)(2), requests were made to define a *substantial contributor* as a person contributing more than two percent of the organization's total support; to use a higher threshold, such as the greater of $50,000 or 10 percent of total contributions received; to limit the treatment of substantial contributor status as a factor to a reasonable time (*e.g.*, four years); and to tie substantial contributor status to persons required to be disclosed as such on Form 990 or Schedule A of that form. Additionally, a request was made to specify how the five-year lookback period applies to substantial contributors.

The temporary regulations continue to include as a factor tending to show substantial influence the fact that a person is a substantial contributor, generally as defined in section 507(d)(2)(A). However, the temporary regulations clarify that, to determine whether a person is a substantial contributor for section 4958 purposes, only contributions received by the organization during its current taxable year and the four preceding taxable years are taken into account.

With respect to the factor that a person's compensation is based on revenues derived from activities of the organization that the person controls, a number of commentators requested that a determination of disqualified person status not be based solely on this factor. Several commentators specifically requested clarification of this factor with respect to physicians in particular, and others requested that the factor be deleted altogether. Other commentators requested that the factor be narrowed to situations where the person's compensation is based on revenues from activities that provide over half of the organization's annual revenue, or that the factor be modified to apply only if a person's compensation is based to a significant extent on revenues derived from activities of the organization that the person controls. In response to these comments, the temporary regulations modify the factor to require that the person's compensation is primarily based on revenues derived from activities of the organization that the person controls.

A number of commentators argued that it is inappropriate to include all persons with managerial authority, or persons serving as key advisors to a person with managerial authority, as potential disqualified persons. Additional comments on this issue requested that the final regulations clarify the meaning of *managerial authority* or delete that factor from the regulations. Others suggested that the term *key advisor* be limited to those with real, substantial authority, or deleted altogether and replaced by a standard that a person can have managerial authority by virtue of his or her actual impact on the organization's affairs without regard to title or position. In response to these comments, the temporary regulations delete as a factor tending to show substantial influence the fact that a person serves as a key advisor to a manager. Moreover, with respect to managerial authority, the temporary regulations list revised factors tending to show substantial influence, including whether: (1) The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees; and (2) the person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole.

With respect to factors tending to show that a person does not have substantial influence, one commentator requested that the fact that the person has had no prior involvement or relationship with the organization be added as a factor. Another commentator requested that the independent contractor factor be modified so that all ''outside, independent professionals performing services on a strictly fee-for-service arrangement'' are presumed not to be disqualified persons. Other commentators requested that additional factors tending to show no substantial influence be added for employees. In this regard, suggested factors included that the person reports to a disqualified person, does not participate in major policy or financial decisions affecting the organization as a whole, or holds a position three or more levels below the governing body. In response to these comments, the temporary regulations provide as a factor tending to show no substantial influence the fact that a

person is an independent contractor (such as an attorney, accountant, or investment manager or advisor) whose sole relationship to the organization is providing professional advice, but who does not have decision-making authority, with respect to transactions from which the independent contractor will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered). In addition, the temporary regulations add as factors tending to show no substantial influence the fact that the direct supervisor of the individual is not a disqualified person, and that the person does not participate in any management decisions affecting the organization as a whole or a substantial, discrete segment or activity of the organization. The temporary regulations also address the issue of persons with no prior involvement with the organization by providing a special exception for initial contracts (see the discussion under the heading *Initial Contract Exception* in this preamble).

Definition of Excess Benefit Transaction

Section 4958(c)(1) defines the phrase *excess benefit transaction* as ''any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.'' The excess benefit is the amount by which the value of the economic benefits provided to (or for the use of) the disqualified person exceeds the value of the consideration received. The proposed regulations further define certain terms in the statutory definition of *excess benefit transaction* and delineate specific items that either are disregarded or must be taken into account in determining the value of a compensation package. The proposed regulations also prescribe standards for determining fair market value for section 4958 purposes. In response to comments received on these topics, the temporary regulations make numerous changes to the provisions of the proposed regulations that define the phrase *excess benefit transaction* (as summarized under the next six topic headings).

The IRS and the Treasury Department considered whether embezzled amounts should be viewed as provided by the organization for section 4958 purposes. In this regard, the IRS and the Treasury Department believe that any economic benefit received by a disqualified person (who by definition has substantial influence) from the assets of the organization is provided by the organization even if the transfer of the benefit was not authorized under the regular procedures of the organization.

Economic Benefit Provided Directly or Indirectly

Section 4958(c)(1)(A) provides that an excess benefit transaction may arise when economic benefits are provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person. In this regard, the proposed regulations provide that ''[a] benefit may be provided indirectly through the use of one or more entities controlled by or affiliated with the applicable tax-exempt organization. For example, if an applicable tax-exempt organization causes its taxable subsidiary to pay excessive compensation to, or engage in a transaction at other than fair market value with, a disqualified person of the parent organization, the payment of the compensation or the transfer of property is an excess benefit transaction.'' This example is based on similar language contained in the legislative history to section 4958 (See H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 56, note 3).

A number of commentators requested further clarification of the definition of *indirect excess benefit transactions.* Some commentators requested that the final regulations clarify that any compensation disqualified persons receive from unrelated third parties through the acquiescence of the employing applicable tax-exempt organization not be considered in determining reasonable compensation. Another commentator suggested that, as a general rule, an excess benefit may be found to be provided indirectly through an entity controlled by an applicable tax-exempt organization only when the funds or other benefits at issue can clearly be traced to the parent organization. Additionally, a request was received to specify that payment by a subsidiary of excessive compensation does not, by itself, justify the conclusion that the parent organization caused the subsidiary to engage in an excess benefit transaction. Other requests were made to clarify that services received by the applicable tax-exempt organization may include services provided by the disqualified person to one or more other entities controlled by or affiliated with the organization.

Commentators also suggested several clarifications to the phrase ''controlled by or affiliated with'' for purposes of determining whether an indirect excess benefit transaction has occurred. One commentator suggested that control or affiliation must exist at the time the benefit is authorized or approved, rather than when the benefit is received by the disqualified person. Others suggested that the definition of ''controlled by or affiliated with'' follow more closely the definition of control under the section 4941 self-dealing regulations or under section 512(b)(13) (including constructive ownership rules contained in section 318). Another commentator suggested defining the term *affiliated* to mean that organizations share a majority of governing body members or principal officers. Other commentators requested that the final regulations state that approval of a benefit by a board independent of the applicable tax-exempt organization would prevent finding that the organization indirectly provided an excess benefit to a disqualified person. Commentators also requested that the final regulations include examples demonstrating that the mere existence of a relationship between two entities, including a control relationship, is insufficient to justify a conclusion that a benefit has been indirectly provided to a disqualified person unless a purposeful avoidance of section 4958 by conducting a transaction indirectly is shown.

In response to these comments, the temporary regulations clarify that an applicable tax-exempt organization may provide an economic benefit indirectly to a disqualified person either through a controlled entity or through an intermediary. In this regard, the temporary regulations parallel the section 4941 self-dealing regulations, except that the temporary regulations generally adopt the section 512(b)(13) standard for control. (The section 512(b)(13) standard for control considers only the tax-exempt organization's interest in the controlled entity, or the tax-exempt organization's control of a nonstock corporation's directors or trustees. In contrast, the section 4941 regulations' definition of control also considers interests held individually by the directors or trustees of the foundation). The temporary regulations provide that all consideration and benefits exchanged between a disqualified person and an applicable tax-exempt organization, and all entities the organization controls, are taken into account to determine whether there has been an excess benefit transaction.

The temporary regulations provide that an applicable tax-exempt organization provides an economic

benefit indirectly through an intermediary when: (1) An applicable tax-exempt organization provides an economic benefit to a third party (the intermediary); (2) the intermediary provides economic benefits to a disqualified person of the applicable tax-exempt organization; and (3) either (a) there is evidence of an oral or written agreement or understanding that the intermediary will transfer property to a disqualified person; or (b) the intermediary lacks a significant business purpose or exempt purpose of its own for engaging in such a transfer. The temporary regulations also include four new examples illustrating different fact patterns under which economic benefits are provided indirectly to a disqualified person through a controlled entity or through an intermediary.

Initial Contract Exception

The proposed regulations do not provide any special rules for transactions conducted pursuant to the first contract that a previously unrelated person enters into with the applicable tax-exempt organization. Several comments received during the regular comment period requested that a person having no prior relationship with an organization not be considered a disqualified person with respect to the first contractual arrangement with the organization.

After the close of the written comment period for the proposed regulations (November 2, 1998), but before the public hearing (March 16 and 17, 1999), the United States Court of Appeals for the Seventh Circuit issued its decision in *United Cancer Council, Inc.* v. *Commissioner of Internal Revenue,* 165 F.3d 1173 (7th Cir. 1999), *rev'ing and remanding* 109 T.C. 326 (1997). In this case, the Seventh Circuit reversed the Tax Court's finding that a contract between a charity and a previously unrelated fundraising company resulted in private inurement in violation of the charity's tax-exempt status. The Seventh Circuit remanded the case back to the Tax Court to address the question whether the fundraising contract resulted in private benefit in violation of section 501(c)(3).

In *United Cancer Council,* the Seventh Circuit concluded that prohibited inurement under section 501(c)(3) cannot result from a contractual relationship negotiated at arm's length with a party having no prior relationship with the organization, regardless of the relative bargaining strength of the parties or resultant control over the tax-exempt organization created by the terms of the contract. The transactions at issue in *United Cancer Council* were conducted prior to the effective date of section 4958. Consequently, *United Cancer Council* involved interpretations of the general requirements for tax-exempt status under section 501(c)(3), and not questions of disqualified person status or the existence of an excess benefit transaction under section 4958. Nevertheless, at the public hearing and in supplemental comments received after the hearing, commentators referenced the Seventh Circuit decision and requested that the proposed regulations be modified so that section 4958 excise taxes will not be imposed on the first transaction or contract between an applicable tax-exempt organization and a previously unrelated person.

The temporary regulations address the issue raised by *United Cancer Council* by providing that section 4958 does not apply to any fixed payment made to a person pursuant to an initial contract, regardless of whether the payment would otherwise constitute an excess benefit transaction. For this purpose, an initial contract is defined as a binding written contract between an applicable tax-exempt organization and a person who was not a disqualified person immediately prior to entering into the contract. A *fixed payment* means an amount of cash or other property specified in the contract, or determined by a fixed formula specified in the contract, which is paid or transferred in exchange for the provision of specified services or property. A fixed formula may incorporate an amount that depends upon future specified events or contingencies (*e.g.,* revenues generated by activities of the organization), provided that no person exercises discretion when calculating the amount of a payment or deciding whether to make a payment. As suggested by some commentators, however, the initial contract rule does not apply if the contract is materially modified or if a person fails to substantially perform his or her obligations under the contract.

Thus, under the temporary regulations, to the extent that an applicable tax-exempt organization and a person who is not yet a disqualified person conduct negotiations and specify the amounts to be paid to the person (or specify an objective formula for paying that person), then these fixed payments are not subject to scrutiny under section 4958, even if paid after the person becomes a disqualified person. An initial contract may provide for both fixed and non-fixed (*i.e.,* discretionary) payments. In this case, the fixed payments are not subject to section 4958, while the non-fixed payments will be subject to scrutiny under section 4958 (taking into account all consideration exchanged between the parties). In effect, the initial contract rule contained in the temporary regulations protects from section 4958 liability those payments made pursuant to fixed, objective terms specified in a contract entered into before the person was in a position to exercise substantial influence, yet allows for scrutiny under section 4958 to the extent the contract allows for subsequent discretion to be exercised (which may be subject to influence by the disqualified person) when calculating the amount of a payment or deciding whether to make a payment. The temporary regulations include eleven examples to illustrate the application of the initial contract rule.

Certain Economic Benefits Disregarded for Purposes of Section 4958

For ease of administration, the proposed regulations list several economic benefits that are disregarded for purposes of section 4958. These disregarded items include reimbursements for reasonable expenses of attending meetings of the governing body (but not luxury or spousal travel); certain economic benefits provided to a disqualified person solely as a member of, or volunteer for, the organization; and economic benefits provided to a disqualified person solely as a member of a charitable class. A number of comments recommended modifying these provisions.

With respect to reimbursements for expenses of attending meetings of the governing body (but not luxury travel or spousal travel), suggestions were made to clarify or delete these terms; to provide as an alternative that all travel expenses that are not lavish or extravagant within the meaning of section 162 may be disregarded; to disregard spousal travel expenses in circumstances where the spousal attendance furthers the exempt purposes of the organization or meets the section 274 bona fide business purpose test; and to address the issue of travel expenses by generally disregarding working condition fringe benefits and de minimis fringe benefits described in sections 132(d) and (e). Other commentators requested that any benefits received by a disqualified person should be disregarded if incidental to the organization's achievement of its exempt purposes, such as when disqualified persons attend fundraising dinners or conferences on behalf of the organization.

In response to these comments, the temporary regulations delete the

separate provision that provides that reasonable expenses of attending meetings of the governing body may be disregarded. In place of this provision, the temporary regulations substitute a more general rule providing that all fringe benefits excluded from income under section 132 (except for certain liability insurance premiums, payments or reimbursements, discussed below) are disregarded for section 4958 purposes. This change addresses comments received on the limitation in the proposed regulations with respect to luxury and spousal travel. By referring to fringe benefits excluded from income under section 132, the temporary regulations adopt existing standards under section 162 and section 274 (which are incorporated into section 132) to determine whether payments or reimbursements of travel expenses of an employee or— any other expenses— should be disregarded for section 4958 purposes or, instead, treated as part of the disqualified person's compensation.

With respect to economic benefits provided to a disqualified person solely as a member of, or volunteer for, the organization, the proposed regulations disregard such benefits for section 4958 purposes only if the organization provides the same benefits to members of the general public in exchange for a membership fee of $75 or less per year. Commentators suggested that this provision be expanded in the final regulations to apply to any benefit (without a dollar limitation) provided to a disqualified person solely by virtue of that person being a donor, volunteer, or member, provided that any member of the general public making a comparable contribution receives a similar benefit. Another commentator requested a similar modification, with the additional requirement that a significant number of non-disqualified persons (*e.g.,* 10 or more) actually make a comparable payment to the organization and are given the option of receiving substantially the same benefit.

The temporary regulations continue to disregard for section 4958 purposes economic benefits provided to a volunteer (who is also a disqualified person) if that benefit is provided by the organization to the general public in exchange for a membership fee or contribution of $75 or less per year. In contrast, economic benefits provided to a disqualified person as a member of, or a donor to, an applicable tax-exempt organization are no longer limited by a specific dollar cap. The temporary regulations disregard economic benefits provided to a member of an organization solely on account of the payment of a membership fee, or to a donor solely on account of a contribution deductible under section 170 if: (1) Any non-disqualified person paying a membership fee or making a contribution above a specified amount to the organization is given the option of receiving substantially the same economic benefit; and (2) the disqualified person and a significant number of non-disqualified persons in fact make a payment or contribution of at least the specified amount.

The temporary regulations clarify that section 162 standards apply in determining reasonableness of compensation for section 4958 purposes, taking into account all benefits provided to a person (other than benefits that are specifically disregarded for section 4958 purposes) and the rate at which any deferred compensation accrues. The temporary regulations also provide that the fact that a bonus or revenue-sharing arrangement is subject to a cap is a relevant factor in determining the reasonableness of compensation.

Insurance or Indemnification of Excise Taxes

The legislative history to section 4958 indicates that reimbursements of excise tax liability, or payment of premiums for liability insurance for excess benefit taxes, by an applicable tax-exempt organization constitute an excess benefit unless they are included in the disqualified person's compensation during the year paid and the total compensation package for that person is reasonable. See H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 58. Following this legislative history, the proposed regulations specifically provide that payment of a premium for insurance for section 4958 taxes or indemnification of a disqualified person for these taxes is not an excess benefit transaction if the premium or the indemnification is treated as compensation to the disqualified person when paid, and the total compensation paid to the person is reasonable. However, some commentators read the special rule in conjunction with another section of the proposed regulations— which listed ''[t]he amount of premiums paid for liability or any other insurance coverage, as well as any payment or reimbursement by the organization of charges, expenses, fees, or taxes not covered ultimately by the insurance coverage'' as an item included in compensation for purposes of section 4958—as potentially mandating that such insurance premium or indemnification payments be treated as taxable income to the disqualified person in order to avoid being characterized as an excess benefit transaction.

Several commentators requested that premiums for liability insurance be disregarded entirely for section 4958 purposes, along with non-compensatory indemnification of members of the governing body and officers against liability in civil proceedings (as described in the private foundation self-dealing regulations under section 4941), or that de minimis costs (*e.g.*, $200) associated with such insurance coverage be disregarded.

Other commentators suggested that a portion of the premium payment be allocated to section 4958 tax coverage, and that only that portion be included in compensation of the disqualified person. Others requested that the portion of a premium allocable to liability insurance coverage for an organization manager who is also a disqualified person to cover the person's potential liability for the manager-level tax under section 4958(a)(2) be considered a working condition fringe under section 132(d). Others requested that benefits under indemnification plans be taken into account for section 4958 purposes only if and when paid.

To clarify the treatment of insurance premiums and reimbursements of excise tax liability, the temporary regulations include a special rule, which includes in a disqualified person's compensation for section 4958 purposes the payment of liability insurance premiums for, or the payment or reimbursement by the organization of: (1) Any penalty, tax, or expense of correction owed under section 4958; (2) any expense not reasonably incurred by the person in connection with a civil judicial or civil administrative proceeding arising out of the person's performance of services on behalf of the applicable tax-exempt organization; and (3) any expense resulting from an act or failure to act with respect to which the person has acted willfully and without reasonable cause. This rule parallels the section 4941 regulations governing the treatment of directors and officers liability insurance and indemnification. As under the section 4941 regulations, however, the temporary regulations provide that insurance premiums and reimbursements may be disregarded if they qualify as de minimis fringe benefits excludable from income under section 132(a)(4).

In addition, the temporary regulations clarify that the inclusion of an item in compensation for section 4958 purposes does not govern its income tax treatment. Thus, the mere fact that a premium or reimbursement payment, or any other benefit, provided to a

disqualified person must be taken into account in determining the reasonableness of that person's total compensation package for section 4958 purposes is not determinative of whether or not that benefit is included in the disqualified person's gross income for income tax purposes.

Timing Rules for Determining Reasonableness

Section 4958(c)(1) defines an excess benefit transaction as a transaction in which the value of an economic benefit provided to a disqualified person exceeds the value of the consideration received (including the performance of services), but the statutory provisions do not directly address the issue of when to value the benefits and consideration exchanged. In this regard, the proposed regulations provide that whether compensation is reasonable is generally determined when the parties enter into the contract for services. The proposed regulations further provide, however, that ''where reasonableness of compensation cannot be determined based on circumstances existing at the date when the contract for services was made, then that determination is made based on all facts and circumstances, up to and including circumstances as of the date of payment.'' Many commentators objected to the uncertainty created by this additional sentence.

To clarify the issue of the timing of the reasonableness determination, the temporary regulations provide that reasonableness is determined with respect to any *fixed payment* (as defined for purposes of the initial contract rule discussed above) at the time the parties enter into the contract. However, the temporary regulations provide that the reasonableness of any amounts not fixed in the contract itself or paid pursuant to an objective formula is determined based on all facts and circumstances, up to and including circumstances as of the date of the payment at issue, because determining the amount of such a payment (or whether a payment is made) requires the exercise of discretion after the contract is entered into.

Establishing Intent To Treat Economic Benefit as Consideration for the Performance of Services

The second sentence of section 4958(c)(1)(A) defining *excess benefit transaction* states that an economic benefit will not be treated as consideration for the performance of services unless the applicable tax-exempt organization clearly indicated its intent to so treat the benefit. The proposed regulations generally require the organization to provide clear and convincing evidence of its intent to treat the benefit as compensation for services when the benefit is paid. Under the proposed regulations, this requirement is satisfied if the organization reports the economic benefit on a federal tax information return filed before the commencement of an IRS examination in which the reporting of the benefit is questioned, or if the recipient disqualified person reports the benefit as income on the person's Form 1040 for the year in which the benefit is received. In addition, an organization is deemed to satisfy the clear and convincing evidence requirement if the organization's failure to report a payment is due to reasonable cause as defined in the section 6724 regulations. The proposed regulations also provide that an organization may use other methods to provide clear and convincing evidence of its intent. The preamble of the proposed regulations explicitly solicited comments on appropriate ways of applying this rule that would not create an unnecessary burden on affected organizations.

A number of comments were received with regard to establishing an organization's intent to treat a benefit as compensation for services. Several commentators suggested that the clear and convincing standard is higher than appropriate. Others requested that organizations not be required to demonstrate intent with respect to specific benefits, such as: reimbursement arrangements that are clearly part of the employment arrangement; de minimis amounts (for example, taxable benefits of up to $500 per year provided to a disqualified person); and certain nontaxable benefits. Other commentators requested that final regulations clarify the appropriate method for substantiating an organization's intent in the case of certain nontaxable benefits and transfers of property subject to section 83. Others requested guidance on how to report compensation paid to a disqualified person on Form 990 if that person is not an officer or director or one of the five highest paid employees. Some commentators suggested that the final regulations allow other methods to establish an intention to treat benefits as compensation, such as a written contract of employment. Commentators also suggested that an organization's reasonable belief that a benefit is nontaxable should constitute reasonable cause for failure to report, or that the reasonable cause standard be expanded to ordinary business care and prudence.

In response to these comments, the temporary regulations modify the requirement that an organization provide clear and convincing evidence of its intent to treat benefits provided to a disqualified person as compensation for services. Consistent with the legislative history, the temporary regulations provide instead that an organization must provide ''written substantiation that is contemporaneous with the transfer of benefits at issue.'' H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 57, note 8.

The temporary regulations also provide a safe harbor for nontaxable benefits. Under this safe harbor, an applicable tax-exempt organization is not required to indicate its intent to provide an economic benefit as compensation for services if the economic benefit is excluded from the disqualified person's gross income for income tax purposes under chapter 1 of the Internal Revenue Code. Examples of such benefits include: employer-provided health benefits, contributions to a qualified pension, profit-sharing, or stock bonus plan under Internal Revenue Code section 401(a), and benefits described in sections 127 (educational assistance programs) and 137 (adoption assistance programs). The safe harbor is consistent with the legislative history, which indicates that Congress intended to except nontaxable benefits from this contemporaneous substantiation requirement. H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 57, note 8. However, the benefits must still be taken into account (unless specifically disregarded under the regulations) in determining the reasonableness of the disqualified person's compensation for purposes of section 4958.

Consistent with the legislative history, the temporary regulations also clarify that, if a benefit is not reported on a return filed with the IRS, other written contemporaneous evidence (such as an approved written employment contract executed on or before the date of the transfer) may be used to demonstrate that the appropriate decision-making body or an authorized officer approved a transfer as compensation for services in accordance with established procedures.

Transaction in Which the Amount of the Economic Benefit Is Determined in Whole or in Part by the Revenues of One or More Activities of the Organization

Section 4958(c)(2) describes a second type of excess benefit transaction: ''any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization * * *'', if the transaction

results in inurement under section 501(c)(3) or (4). However, a revenue-sharing transaction is treated as an excess benefit transaction under this special statutory rule only ''[t]o the extent provided in regulations prescribed by the Secretary * * *.''

The proposed regulations provide that whether a revenue-sharing transaction results in inurement, and therefore constitutes an excess benefit transaction, depends upon all relevant facts and circumstances. The proposed regulations provide that, in general, a revenue-sharing transaction may constitute an excess benefit transaction regardless of whether the economic benefit provided to the disqualified person exceeds the fair market value of services (or other consideration) rendered, if a disqualified person is permitted to receive additional compensation without providing proportional benefits that contribute to the organization's accomplishment of its exempt purpose.

The proposed regulations consider an improper revenue-sharing transaction, in its entirety, to be an excess benefit subject to section 4958. Special rules governing revenue-sharing transactions, however, will be effective only for transactions occurring on or after the date of publication of final regulations containing such rules. Until special rules for revenue-sharing transactions are adopted in final regulations, these transactions are potentially subject to section 4958 liability under the general rules governing excess benefit transactions, but only to the extent that the value of the economic benefits provided to the disqualified person is shown to exceed the value of the services (or other consideration) received in return.

Numerous comments were received with respect to revenue-sharing transactions. Some commentators did not believe a different standard from that applied to all other transactions (fair market value) should apply, and that the value of consideration provided by a disqualified person in a revenue-sharing transaction should be taken into account in determining the excess benefit in these transactions.

Others objected to the revenue-sharing transaction standard of the proposed regulations, and requested that it be replaced by a standard based on approaches the IRS has taken in prior unpublished rulings. Some commentators requested guidance as to the meaning of *proportional benefits* or other concepts incorporated in the proposed regulations standard. Others requested that existing contractual arrangements not be subject to this section of the final regulations, or that the effect of the final rules for existing arrangements be phased in. In addition, several commentators requested that the final regulations clarify whether the rebuttable presumption of reasonableness is available for revenue-sharing transactions. In sum, commentators offered multiple, often conflicting, suggestions and recommendations to address the many issues raised with respect to revenue-sharing transactions.

The temporary regulations reserve the separate section governing revenue-sharing transactions. Accordingly, the IRS and the Treasury Department will continue to consider the many comments received on this issue. Any revised regulations that may, in the future, be issued governing revenue-sharing transactions in particular will be issued in proposed form. This will provide an additional opportunity for public comment, and any special rules governing revenue-sharing transactions will become effective only after being published in final form. In the meantime, revenue sharing transactions will be evaluated under the general rules (contained in § 53.4958–4T of the temporary regulations) defining excess benefit transactions, which apply to all transactions with disqualified persons regardless of whether the person's compensation is computed by reference to revenues of the organization.

Rebuttable Presumption That a Transaction is not an Excess Benefit Transaction

Although the statute is silent on this point, the legislative history accompanying section 4958 indicated Congress' intent that the parties to a transaction are entitled to rely on a rebuttable presumption of reasonableness with respect to any transaction with a disqualified person that is approved by a board of directors or trustees (or committee thereof) that: (1) Is composed entirely of individuals unrelated to and not subject to the control of the disqualified person(s) involved in the transaction; (2) obtained and relied upon appropriate data as to comparability; and (3) adequately documented the basis for its determination. If these three requirements are satisfied, the IRS can impose section 4958 taxes only if it develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction. H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 56–7.

The proposed regulations incorporate this rebuttable presumption and provide guidance regarding the three requirements for invoking the rebuttable presumption. The proposed regulations provide that the presumption established by satisfying the three requirements may be rebutted by additional information showing that the compensation was not reasonable or that the transfer was not at fair market value. Additionally, the proposed regulations provide that, if the reasonableness of compensation cannot be determined based on circumstances existing at the date when a contract for services was made, then the presumption cannot arise until reasonableness of compensation can be determined and the three requirements subsequently are satisfied.

Comments were received on various aspects of the rebuttable presumption of reasonableness. With regard to the requirement that the compensation arrangement or property transfer must be approved by a governing body (or committee) composed entirely of individuals who do not have a conflict of interest with respect to the transaction, one commentator suggested that the final regulations adopt standards consistent with the model conflicts of interest policy published by the IRS. The IRS and the Treasury Department believe that the standards contained in the proposed regulations for determining the absence of a conflict of interest are consistent with the legislative history of section 4958, which requires that the governing body (or committee) be composed entirely of individuals who are free of any conflict of interest, and not merely that its members disclose the existence of any conflict of interest. Accordingly, the temporary regulations retain these standards.

With regard to the requirement that the governing body (or a committee thereof) obtain appropriate data as to comparability, numerous commentators requested that the final regulations expand the acceptable types of comparability data and authorize additional methods for determining fair market value or reasonable compensation. For example, some commentators requested clarification that an organization need not obtain an independent, customized survey, but may rely on an independent salary survey prepared for general publication if that survey contains information specific enough to provide meaningful data for comparison purposes. Other commentators requested that the governing body (or committee) be permitted to rely on compensation surveys compiled by staff members (other than disqualified persons) under the supervision of an independent

director or committee member, rather than incurring the additional cost of obtaining compensation surveys compiled by independent firms. Some commentators requested that the final regulations provide that comparability data is viable for some period of time (*e.g.*, three years).

The temporary regulations continue to require only that the authorized body have sufficient information to determine whether, consistent with the valuation standards in other sections of the regulations, the compensation arrangement is reasonable, or the property transfer is at fair market value. The temporary regulations clarify that a compensation arrangement in its entirety must be evaluated and also provide examples of relevant comparability data. In the case of a compensation arrangement, the temporary regulations provide that relevant information may include a current compensation survey compiled by an independent firm. As in the proposed regulations, this list of relevant comparability data is not exclusive, and the authorized body may rely on other appropriate data. For clarity, the temporary regulations list separately examples of the types of relevant information for compensation arrangements and property transfers. The temporary regulations add competitive bids received from unrelated third parties as another example of relevant information in the case of a property transfer. In response to comments, the temporary regulations revise examples from the proposed regulations and add several examples illustrating appropriate comparability data.

Comments were also received regarding the special rule for compensation paid by small organizations. The proposed regulations allow small organizations (those with annual gross receipts of less than $1 million) to satisfy the requirement of appropriate data as to comparability by obtaining data on compensation paid by five comparable organizations in the same or similar communities for similar services. Some commentators indicated that the $1 million threshold is too low, because organizations having gross receipts above that amount may lack the resources to hire an independent compensation firm. These commentators requested that the ceiling for small organizations be increased from $1 million to $5 million in gross receipts. Others suggested allowing small organizations to obtain data from fewer than five comparable organizations.

The IRS and the Treasury Department believe the general rule regarding appropriate comparability data is flexible enough to permit any organization (not just small organizations) to compile its own comparability data. Therefore, the IRS and the Treasury Department did not believe it was necessary to extend the special safe-harbor rule to organizations with annual gross receipts over $1 million. As requested by commentators, however, the temporary regulations reduce the number of comparables small organizations must obtain for that safe harbor from five to three.

Certain commentators requested that the final regulations provide a mechanism for an applicable tax-exempt organization to satisfy the requirements of the rebuttable presumption of reasonableness with respect to large groups of employees, such as mid-level managers, rather than requiring the governing body to approve the compensation paid to each individual. The IRS and the Treasury Department believe that changes to the definition of *disqualified person* in the temporary regulations, including eliminating as a factor tending to show substantial influence the fact that a person has any managerial authority, or serves as a key advisor to a manager, reduce the potential burden on the governing body. Moreover, the temporary regulations continue to allow the governing body to delegate responsibility for approving compensation arrangements and property transfers, to the extent permitted under State law. Consistent with the legislative history, the temporary regulations continue to require that the rebuttable presumption requirements be satisfied on an individual basis.

With respect to the requirement that the governing body (or committee) adequately document the basis for its determination, comments were received requesting that the final regulations allow additional time for records to be prepared. In response to these comments, the temporary regulations provide that the records must be prepared by the later of the next meeting of the authorized body or 60 days after final approval of the particular arrangement or transfer. Although one commentator objected to the requirement in the proposed regulations that the governing body (or committee) review and approve the records within a reasonable period of time thereafter, the temporary regulations retain this requirement in order to ensure that the records are accurate and complete.

Several commentators requested that the final regulations permit organizations to establish a rebuttable presumption of reasonableness with respect to deferred or contingent compensation arrangements when the contract for services is entered into if the terms of the arrangement are sufficiently certain (even if the exact dollar amounts are not known) and the governing body (or committee) obtains appropriate data as to comparability. Other commentators simply requested that the final regulations indicate when the board should take the necessary steps to put the presumption in place in the event that reasonableness cannot be determined as of the date the contract is entered into. Consistent with the general rule contained in the temporary regulations regarding the timing of the reasonableness determination, the temporary regulations provide that, with respect to fixed payments (including payments made pursuant to a fixed formula, although the exact dollar amount is not known at the time the contract is entered into), the rebuttable presumption can arise at the time the parties enter into the contract giving rise to the payments. Under a special rule in the temporary regulations, payments pursuant to a qualified pension, profit-sharing, or stock bonus plan under section 401(a) are treated as fixed payments for purposes of section 4958, even if the employer exercises discretion with respect to the plan or program. Therefore, a rebuttable presumption can arise with respect to such payments at the time the parties enter into the contract for services.

In contrast, the temporary regulations provide that the rebuttable presumption generally can arise with respect to a payment that is not a fixed payment (as defined for purposes of the initial contract exception) only after discretion is exercised, the exact amount of the payment is determined (or a fixed formula for calculating the payment is specified), and the three requirements for the presumption subsequently are satisfied. The temporary regulations contain a limited exception to this general rule for certain non-fixed payments which are subject to a cap. Under this exception, an applicable tax-exempt organization may establish the rebuttable presumption, even with respect to non-fixed payments, at the time the contract is entered into if: (1) Prior to approving the contract, the governing body (or committee) obtains appropriate comparability data indicating that a fixed payment of up to a certain amount to a particular disqualified person would represent reasonable compensation; (2) the maximum amount payable under the

contract (including both fixed and non-fixed payment amounts) does not exceed the reasonable compensation figure; and (3) the other requirements for establishing the rebuttable presumption are satisfied. However, the general rules for the timing of the reasonableness determination apply, such that the IRS may rebut the presumption of reasonableness with respect to a non-fixed payment subject to a cap based on all facts and circumstances, up to and including circumstances as of the date of payment.

Some commentators suggested that the final regulations provide specific standards the IRS must meet in order to rebut any presumption established by satisfying the three requirements described above. For example, one commentator suggested that the IRS should be allowed to overcome the presumption only if it is able to produce clear and convincing evidence that the transaction was, in fact, an excess benefit transaction. Another commentator suggested that the IRS should be required to establish that one of the requirements for invoking the presumption has not been met in order to rebut the presumption. Consistent with the legislative history, the temporary regulations provide that, if the rebuttable presumption of reasonableness is established, the IRS may rebut the presumption only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body.

Finally, some commentators requested clarification whether entities controlled by or affiliated with an applicable tax-exempt organization that provide economic benefits to a disqualified person can establish the presumption, even if those entities are not themselves applicable tax-exempt organizations. Consistent with the rules relating to indirect excess benefit transactions, the temporary regulations clarify that an authorized body of an entity controlled by an applicable tax-exempt organization (as defined for purposes of describing indirect transfers of economic benefits) may establish the rebuttable presumption.

Special Rules

The proposed regulations provided several special rules, one of which stated that the procedures of section 7611 will be used in initiating and conducting any inquiry or examination into whether an excess benefit transaction has occurred between a church and a disqualified person. Several comments were received on this rule, including one stating that there is no statutory authority to extend section 7611 protection to churches for section 4958 tax inquiries. Other comments requested that final regulations specify when information from an informant alone is sufficient to form the basis for a reasonable belief on the part of the IRS for purposes of applying this rule, and clarify how section 4958 interacts with the section 7611 exception for records related to the income tax of an individual employed by the church. The temporary regulations do not modify the special rules for churches.

Additional Issues

Section 4958 does not contain provisions governing the relationship of the taxes imposed under that section to revocation of the organization's tax-exempt status under sections 501(c)(3) and (4). With respect to this issue, the legislative history to section 4958 indicates as follows: ''In general, the intermediate sanctions are the sole sanction imposed in those cases in which the excess benefit does not rise to a level where it calls into question whether, on the whole, the organization functions as a charitable or other tax-exempt organization. In practice, revocation of tax-exempt status, with or without the imposition of excise taxes, would occur only when the organization no longer operates as a charitable organization.'' H. REP. NO. 506, 104th Congress, 2d SESS. (1996), 53, 59, note 15. However, the same legislative history also indicates that ''[t]he intermediate sanctions for 'excess benefit transactions' may be imposed by the IRS in lieu of (*or in addition to*) revocation of the organization's tax-exempt status.'' *Id.* at 59 (emphasis added)

In the Comments and Requests for a Public Hearing section of the preamble of the proposed regulations, the IRS and the Treasury Department specifically requested comments concerning the relationship between revocation of tax-exempt status and imposition of section 4958 taxes. Additionally, the preamble of the proposed regulations lists four factors that the IRS will consider in determining whether to revoke an applicable tax-exempt organization's status: (1) Whether the organization has been involved in repeated excess benefit transactions; (2) the size and scope of the excess benefit transaction; (3) whether, after concluding that it has been party to an excess benefit transaction, the organization has implemented safeguards to prevent future recurrences; and (4) whether there was compliance with other applicable laws. The preamble also states that the IRS intends to publish the factors that it will consider in exercising its administrative discretion in guidance issued in conjunction with the issuance of final regulations under section 4958.

A number of commentators requested that the final regulations expressly provide that section 4958 taxes are the principal sanction with respect to excess benefit transactions, in lieu of revocation of the organization's tax-exempt status. Other commentators suggested that the final regulations incorporate factors to be considered by the IRS in deciding whether to impose section 4958 excise taxes or revoke tax-exempt status, or both.

The temporary regulations do not foreclose revocation of tax-exempt status in appropriate cases. The IRS and the Treasury Department believe that to do so would effectively change the substantive standard for tax-exempt status under sections 501(c)(3) and (4). Accordingly, the IRS intends to exercise its administrative discretion in enforcing the requirements of sections 4958, 501(c)(3) and 501(c)(4) in accordance with the direction given in the legislative history. The IRS will publish guidance concerning the factors that it will consider in exercising its discretion as it gains more experience administering the section 4958 regime.

The temporary regulations reiterate that section 4958 does not affect the substantive standards for tax exemption under section 501(c)(3) or (4), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its earnings inure to the benefit of any private shareholder or individual. Thus, regardless of whether a particular transaction is subject to excise taxes under section 4958, existing principles and rules may be implicated, such as the limitation on private benefit. For example, transactions that are not subject to section 4958 because of the initial contract exception may, under certain circumstances, jeopardize an organizations's tax-exempt status.

Some comments regarding revenue-sharing transactions included requests to address gainsharing arrangements in the final regulations; or to provide that certain transactions are not revenue-sharing arrangements because they do not involve a payment that is contingent on the revenues of (but rather the cost savings to) the organization. As noted earlier, these temporary regulations reserve the separate section governing revenue-sharing transactions. However, because the Office of Inspector General, Department of Health and Human Services, believes the methodology involved in calculating payments under gainsharing arrangements may violate

sections 1128A(b)(1) and (2) of the Social Security Act in situations where patient care may be affected by the cost savings, the IRS will not issue private letter rulings under section 4958 on these arrangements. The Office of Inspector General issued a Special Advisory Bulletin on July 8, 1999, addressing the application of sections 1128A(b)(1) and (2) of the Social Security Act to gainsharing arrangements, entitled ''Gainsharing Arrangements and CMPs [Civil Money Penalties] for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries''.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because no preceding notice of proposed rulemaking is required for this temporary regulation, the provisions of the Regulatory Flexibility Act do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on business.

Drafting Information

The principal author of these regulations is Phyllis D. Haney, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and The Treasury Department participated in their development.

List of Subjects

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements, Trusts and trustees.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements

Amendments to the Regulations

Accordingly, 26 CFR parts 53, 301, and 602 are amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Sections 53.4958–0T through 53.4958–8T are added to read as follows:

§ 53.4958–0T Table of contents (temporary).

This section lists the major captions contained in §§ 53.4958–1T through 53.4958–8T.

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(i) In general.
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§ 53.4958–2T Definition of applicable tax-exempt organization (temporary).

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§ 53.4958–3T Definition of disqualified person (temporary).

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(b) Statutory categories of disqualified persons.
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(3) Treasurers and chief financial officers.
(4) Persons with a material financial interest in a provider-sponsored organization.
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§ 53.4958–4T Excess benefit transaction (temporary).

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(a) Substantive requirements for exemption still apply.
(b) Interaction between section 4958 and section 7611 rules for church tax inquiries and examinations.
(c) Three year duration of these temporary regulations.

§ 53.4958–1T Taxes on excess benefit transactions (temporary).

(a) *In general.* Section 4958 imposes excise taxes on each excess benefit transaction (as defined in section 4958(c) and § 53.4958–4T) between an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958–2T) and a disqualified person (as defined in section 4958(f)(1) and § 53.4958–3T). A disqualified person who receives an excess benefit from an excess benefit transaction is liable for payment of a section 4958(a)(1) excise tax equal to 25 percent of the excess benefit. If an initial tax is imposed by section 4958(a)(1) on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958–7T) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section), then any disqualified person who received an excess benefit from the excess benefit transaction on which the initial tax was imposed is liable for an additional tax of 200 percent of the excess benefit. An organization manager (as defined in section 4958(f)(2) and paragraph (d) of this section) who participates in an excess benefit transaction, knowing that it was such a transaction, is liable for payment of a section 4958(a)(2) excise tax equal to 10 percent of the excess benefit, unless the participation was not willful and was due to reasonable cause. If an organization manager also receives an excess benefit from an excess benefit transaction, the manager may be liable for both taxes imposed by section 4958(a).

(b) *Excess benefit defined.* An excess benefit is the amount by which the value of the economic benefit provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person exceeds the value of the consideration (including the performance of services) received for providing such benefit.

(c) *Taxes paid by disqualified person*—(1) *Initial tax.* Section 4958(a)(1) imposes a tax equal to 25 percent of the excess benefit on each excess benefit transaction. The section 4958(a)(1) tax shall be paid by any disqualified person who received an excess benefit from that excess benefit transaction. With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(a)(1), all such persons are jointly and severally liable for that tax.

(2) *Additional tax on disqualified person*—(i) *In general.* Section 4958(b) imposes a tax equal to 200 percent of the excess benefit in any case in which section 4958(a)(1) imposes a 25-percent tax on an excess benefit transaction and the transaction is not corrected (as defined in section 4958(f)(6) and § 53.4958–7T) within the taxable period (as defined in section 4958(f)(5) and paragraph (c)(2)(ii) of this section). If a disqualified person makes a payment of less than the full correction amount under the rules of § 53.4958–7T, the 200-percent tax is imposed only on the unpaid portion of the correction amount (as described in § 53.4958–7T(c)). The tax imposed by section 4958(b) is payable by any disqualified person who

received an excess benefit from the excess benefit transaction on which the initial tax was imposed by section 4958(a)(1). With respect to any excess benefit transaction, if more than one disqualified person is liable for the tax imposed by section 4958(b), all such persons are jointly and severally liable for that tax.

(ii) *Taxable period. Taxable period* means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earlier of—

(A) The date of mailing a notice of deficiency under section 6212 with respect to the section 4958(a)(1) tax; or

(B) The date on which the tax imposed by section 4958(a)(1) is assessed.

(iii) *Abatement if correction during the correction period.* For rules relating to abatement of taxes on excess benefit transactions that are corrected within the correction period, as defined in section 4963(e), see sections 4961(a), 4962(a), and the regulations thereunder. The abatement rules of section 4961 specifically provide for a 90-day correction period after the date of mailing a notice of deficiency under section 6212 with respect to the section 4958(b) 200-percent tax. If the excess benefit is corrected during that correction period, the 200-percent tax imposed shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment. For special rules relating to abatement of the 25-percent tax, see section 4962.

(d) *Tax paid by organization managers*—(1) *In general.* In any case in which section 4958(a)(1) imposes a tax, section 4958(a)(2) imposes a tax equal to 10 percent of the excess benefit on the participation of any organization manager who knowingly participated in the excess benefit transaction, unless such participation was not willful and was due to reasonable cause. Any organization manager who so participated in the excess benefit transaction must pay the tax.

(2) *Organization manager defined*—(i) *In general.* An organization manager is, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization, or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization, regardless of title. A person is an officer of an organization if that person—

(A) Is specifically so designated under the certificate of incorporation, by-laws, or other constitutive documents of the organization; or

(B) Regularly exercises general authority to make administrative or policy decisions on behalf of the organization. An independent contractor who acts solely in a capacity as an attorney, accountant, or investment manager or advisor, is not an officer. For purposes of this paragraph (d)(2)(i)(B), any person who has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior, is not an officer.

(ii) *Special rule for certain committee members.* An individual who is not an officer, director, or trustee, yet serves on a committee of the governing body of an applicable tax-exempt organization (or as a designee of the governing body described in § 53.4958–6T(c)(1)) that is attempting to invoke the rebuttable presumption of reasonableness described in § 53.4958–6T based on the committee's (or designee's) actions, is an organization manager for purposes of the tax imposed by section 4958(a)(2).

(3) *Participation.* For purposes of section 4958(a)(2) and paragraph (d) of this section, participation includes silence or inaction on the part of an organization manager where the manager is under a duty to speak or act, as well as any affirmative action by such manager. An organization manager is not considered to have participated in an excess benefit transaction, however, where the manager has opposed the transaction in a manner consistent with the fulfillment of the manager's responsibilities to the applicable tax-exempt organization.

(4) *Knowing*—(i) *In general.* For purposes of section 4958(a)(2) and paragraph (d) of this section, a manager participates in a transaction knowingly only if the person—

(A) Has actual knowledge of sufficient facts so that, based solely upon those facts, such transaction would be an excess benefit transaction;

(B) Is aware that such a transaction under these circumstances may violate the provisions of federal tax law governing excess benefit transactions; and

(C) Negligently fails to make reasonable attempts to ascertain whether the transaction is an excess benefit transaction, or the manager is in fact aware that it is such a transaction.

(ii) *Amplification of general rule. Knowing* does not mean having reason to know. However, evidence tending to show that a manager has reason to know of a particular fact or particular rule is relevant in determining whether the manager had actual knowledge of such a fact or rule. Thus, for example, evidence tending to show that a manager has reason to know of sufficient facts so that, based solely upon such facts, a transaction would be an excess benefit transaction is relevant in determining whether the manager has actual knowledge of such facts.

(iii) *Reliance on professional advice.* An organization manager's participation in a transaction is ordinarily not considered knowing within the meaning of section 4958(a)(2), even though the transaction is subsequently held to be an excess benefit transaction to the extent that, after full disclosure of the factual situation to an appropriate professional, the organization manager relies on a reasoned written opinion of that professional with respect to elements of the transaction within the professional's expertise. For purposes of section 4958(a)(2) and this paragraph (d), a written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion. The absence of a written opinion of an appropriate professional with respect to a transaction shall not, by itself, however, give rise to any inference that an organization manager participated in the transaction knowingly. For purposes of this paragraph, appropriate professionals on whose written opinion an organization manager may rely, are limited to—

(A) Legal counsel, including in-house counsel;

(B) Certified public accountants or accounting firms with expertise regarding the relevant tax law matters; and

(C) Independent valuation experts who—

(*1*) Hold themselves out to the public as appraisers or compensation consultants;

(*2*) Perform the relevant valuations on a regular basis;

(*3*) Are qualified to make valuations of the type of property or services involved; and

(*4*) Include in the written opinion a certification that the requirements of paragraphs (d)(4)(iii)(C)(*1*) through (*3*) of this section are met.

(iv) *Reliance on rebuttable presumption of reasonableness.* An organization manager's participation in a transaction is ordinarily not considered knowing within the meaning of section 4958(a)(2), even though the transaction is subsequently held to be an excess benefit transaction, if the organization manager relies on the fact

that the requirements of § 53.4958–6T(a) are satisfied with respect to the transaction.

(5) *Willful.* For purposes of section 4958(a)(2) and this paragraph (d), participation by an organization manager is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make the participation willful. However, participation by an organization manager is not willful if the manager does not know that the transaction in which the manager is participating is an excess benefit transaction.

(6) *Due to reasonable cause.* An organization manager's participation is due to reasonable cause if the manager has exercised responsibility on behalf of the organization with ordinary business care and prudence.

(7) *Limits on liability for management.* The maximum aggregate amount of tax collectible under section 4958(a)(2) and this paragraph (d) from organization managers with respect to any one excess benefit transaction is $10,000.

(8) *Joint and several liability.* In any case where more than one person is liable for a tax imposed by section 4958(a)(2), all such persons shall be jointly and severally liable for the taxes imposed under section 4958(a)(2) with respect to that excess benefit transaction.

(9) *Burden of proof.* For provisions relating to the burden of proof in cases involving the issue of whether an organization manager has knowingly participated in an excess benefit transaction, see section 7454(b) and § 301.7454–2. In these cases, the Commissioner bears the burden of proof.

(e) *Date of occurrence*—(1) *In general.* Except as otherwise provided, an excess benefit transaction occurs on the date on which the disqualified person receives the economic benefit for Federal income tax purposes. When a single contractual arrangement provides for a series of compensation or other payments to (or for the use of) a disqualified person over the course of the disqualified person's taxable year (or part of a taxable year), any excess benefit transaction with respect to these aggregate payments is deemed to occur on the last day of the taxable year (or if the payments continue for part of the year, the date of the last payment in the series).

(2) *Special rules.* In the case of benefits provided pursuant to a qualified pension, profit-sharing, or stock bonus plan, the transaction occurs on the date the benefit is vested. In the case of a transfer of property that is subject to a substantial risk of forfeiture or in the case of rights to future compensation or property (including benefits under a nonqualified deferred compensation plan), the transaction occurs on the date the property, or the rights to future compensation or property, is not subject to a substantial risk of forfeiture. However, where the disqualified person elects to include an amount in gross income in the taxable year of transfer pursuant to section 83(b), the general rule of paragraph (e)(1) of this section applies to the property with respect to which the section 83(b) election is made. Any excess benefit transaction with respect to benefits under a deferred compensation plan which vest during any taxable year of the disqualified person is deemed to occur on the last day of such taxable year. For the rules governing the timing of the reasonableness determination for deferred, contingent, and certain other noncash compensation, see § 53.4958–4T(b)(2).

(3) *Statute of limitations rules.* See sections 6501(e)(3) and 6501(l) and the regulations thereunder for statute of limitations rules as they apply to section 4958 excise taxes.

(f) *Effective date for imposition of taxes*—(1) *In general.* The section 4958 taxes imposed on excess benefit transactions or on participation in excess benefit transactions apply to transactions occurring on or after September 14, 1995.

(2) *Existing binding contracts.* The section 4958 taxes do not apply to any transaction occurring pursuant to a written contract that was binding on September 13, 1995, and at all times thereafter before the transaction occurs. A written binding contract that is terminable or subject to cancellation by the applicable tax-exempt organization without the disqualified person's consent (including as the result of a breach of contract by the disqualified person) and without substantial penalty to the organization, is no longer treated as a binding contract as of the earliest date that any such termination or cancellation, if made, would be effective. If a binding written contract is materially changed, it is treated as a new contract entered into as of the date the material change is effective. A material change includes an extension or renewal of the contract (other than an extension or renewal that results from the person contracting with the applicable tax-exempt organization unilaterally exercising an option expressly granted by the contract), or a more than incidental change to any payment under the contract.

§ 53.4958–2T Definition of applicable tax-exempt organization (temporary).

(a) *Organizations described in section 501(c)(3) or (4) and exempt from tax under section 501(a)*—(1) *In general.* An applicable tax-exempt organization is any organization that, without regard to any excess benefit, would be described in section 501(c)(3) or (4) and exempt from tax under section 501(a). An applicable tax-exempt organization also includes any organization that was described in section 501(c)(3) or (4) and was exempt from tax under section 501(a) at any time during a five-year period ending on the date of an excess benefit transaction (the lookback period). A private foundation as defined in section 509(a) is not an applicable tax-exempt organization for section 4958 purposes. A governmental entity that is exempt from (or not subject to) taxation without regard to section 501(a) is not an applicable tax-exempt organization for section 4958 purposes.

(2) *Organizations described in section 501(c)(3).* An organization is described in section 501(c)(3) for purposes of section 4958 only if the organization provides the notice described in section 508, unless the organization otherwise is described in section 501(c)(3) and specifically is excluded from the requirements of section 508 by that section.

(3) *Organizations described in section 501(c)(4).* An organization is described in section 501(c)(4) for purposes of section 4958 if the organization—

(i) Has applied for and received recognition from the Internal Revenue Service as an organization described in section 501(c)(4); or

(ii) Has filed an application for recognition under section 501(c)(4) with the Internal Revenue Service, has filed an annual information return as a section 501(c)(4) organization under the Internal Revenue Code or regulations promulgated thereunder, or has otherwise held itself out as being described in section 501(c)(4) and exempt from tax under section 501(a).

(4) *Effect of non-recognition or revocation of exempt status.* An organization is not described in paragraph (a)(2) or (a)(3) of this section during any period covered by a final determination or adjudication that the organization is not exempt from tax under section 501(a) as an organization described in section 501(c)(3) or (4), so long as that determination or adjudication is not based upon participation in inurement or one or more excess benefit transactions. However, the organization may be an applicable tax-exempt organization for that period as a result of the five-year

lookback rule described in paragraph (a)(1) of this section.

(b) *Special rules*—(1) *Transition rule for lookback period.* In the case of any excess benefit transaction occurring before September 14, 2000, the lookback period described in paragraph (a)(1) of this section begins on September 14, 1995, and ends on the date of the transaction.

(2) *Certain foreign organizations.* A foreign organization, recognized by the Internal Revenue Service or by treaty, that receives substantially all of its support (other than gross investment income) from sources outside of the United States is not an organization described in section 501(c)(3) or (4) for purposes of section 4958.

§ 53.4958–3T Definition of disqualified person (temporary).

(a) *In general*—(1) *Scope of definition.* Section 4958(f)(1) defines *disqualified person,* with respect to any transaction, as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any time during the five-year period ending on the date of the transaction (the lookback period). Paragraph (b) of this section describes persons who are defined to be disqualified persons under the statute, including certain family members of an individual in a position to exercise substantial influence, and certain 35-percent controlled entities. Paragraph (c) of this section describes persons in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization by virtue of their powers and responsibilities or certain interests they hold. Paragraph (d) of this section describes persons deemed not to be in a position to exercise substantial influence. Whether any person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person with respect to a transaction for purposes of section 4958 is based on all relevant facts and circumstances, as described in paragraph (e) of this section. Paragraph (f) of this section describes special rules for affiliated organizations. Examples in paragraph (g) of this section illustrate these categories of persons.

(2) *Transition rule for lookback period.* In the case of any excess benefit transaction occurring before September 14, 2000, the lookback period described in paragraph (a)(1) of this section begins on September 14, 1995, and ends on the date of the transaction.

(b) *Statutory categories of disqualified persons*—(1) *Family members.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a member of the family of a person who is a disqualified person described in paragraph (a) of this section (other than as a result of this paragraph) with respect to any transaction with the same organization. For purposes of the following sentence, a legally adopted child of an individual is treated as a child of such individual by blood. A person's family is limited to—

(i) Spouse;

(ii) Brothers or sisters (by whole or half blood);

(iii) Spouses of brothers or sisters (by whole or half blood);

(iv) Ancestors;

(v) Children;

(vi) Grandchildren;

(vii) Great grandchildren; and

(viii) Spouses of children, grandchildren, and great grandchildren.

(2) *Thirty-five percent controlled entities*—(i) *In general.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a 35-percent controlled entity. A 35-percent controlled entity is—

(A) A corporation in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the combined voting power;

(B) A partnership in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the profits interest; or

(C) A trust or estate in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the beneficial interest.

(ii) *Combined voting power.* For purposes of this paragraph (b)(2), combined voting power includes voting power represented by holdings of voting stock, direct or indirect, but does not include voting rights held only as a director, trustee, or other fiduciary.

(iii) *Constructive ownership rules*—(A) *Stockholdings.* For purposes of section 4958(f)(3) and this paragraph (b)(2), indirect stockholdings are taken into account as under section 267(c), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(B) *Profits or beneficial interest.* For purposes of section 4958(f)(3) and this paragraph (b)(2), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than section 267(c)(3)), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(c) *Persons having substantial influence.* A person who holds any of the following powers, responsibilities, or interests is in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization:

(1) *Voting members of the governing body.* This category includes any individual serving on the governing body of the organization who is entitled to vote on any matter over which the governing body has authority.

(2) *Presidents, chief executive officers, or chief operating officers.* This category includes any person who, regardless of title, has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization. A person who serves as president, chief executive officer, or chief operating officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals (*e.g.,* co-presidents), who may exercise such responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(3) *Treasurers and chief financial officers.* This category includes any person who, regardless of title, has ultimate responsibility for managing the finances of the organization. A person who serves as treasurer or chief financial officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals who may exercise the responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(4) *Persons with a material financial interest in a provider-sponsored organization.* For purposes of section 4958, if a hospital that participates in a provider-sponsored organization (as defined in section 1855(e) of the Social Security Act, 42 U.S.C. 1395w–25) is an applicable tax-exempt organization, then any person with a material financial interest (within the meaning of section 501(o)) in the provider-sponsored organization has substantial influence with respect to the hospital.

(d) *Persons deemed not to have substantial influence.* A person is deemed not to be in a position to exercise substantial influence over the

affairs of an applicable tax-exempt organization if that person is described in one of the following categories:

(1) *Tax-exempt organizations described in section 501(c)(3).* This category includes any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(2) *Certain section 501(c)(4) organizations.* Only with respect to an applicable tax-exempt organization described in section 501(c)(4) and § 53.4958–2T(a)(3), this category includes any other organization so described.

(3) *Employees receiving economic benefits of less than a specified amount in a taxable year.* This category includes, for the taxable year in which benefits are provided, any full-or part-time employee of the applicable tax-exempt organization who—

(i) Receives economic benefits, directly or indirectly from the organization, of less than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i);

(ii) Is not described in § 53.4958–3T(b) or (c) with respect to the organization; and

(iii) Is not a substantial contributor to the organization within the meaning of section 507(d)(2)(A), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years.

(e) *Facts and circumstances govern in all other cases*—(1) *In general.* Whether a person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person depends upon all relevant facts and circumstances.

(2) *Facts and circumstances tending to show substantial influence.* Facts and circumstances tending to show that a person has substantial influence over the affairs of an organization include, but are not limited to, the following—

(i) The person founded the organization;

(ii) The person is a substantial contributor to the organization (within the meaning of section 507(d)(2)(A)), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years;

(iii) The person's compensation is primarily based on revenues derived from activities of the organization that the person controls;

(iv) The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees;

(v) The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole;

(vi) The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust that is a disqualified person; or

(vii) The person is a non-stock organization controlled, directly or indirectly, by one or more disqualified persons.

(3) *Facts and circumstances tending to show no substantial influence.* Facts and circumstances tending to show that a person does not have substantial influence over the affairs of an organization include, but are not limited to, the following—

(i) The person has taken a bona fide vow of poverty as an employee, agent, or on behalf, of a religious organization;

(ii) The person is an independent contractor (such as an attorney, accountant, or investment manager or advisor) whose sole relationship to the organization is providing professional advice (without having decision-making authority) with respect to transactions from which the independent contractor will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered);

(iii) The direct supervisor of the individual is not a disqualified person;

(iv) The person does not participate in any management decisions affecting the organization as a whole or a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or

(v) Any preferential treatment a person receives based on the size of that person's donation is also offered to all other donors making a comparable contribution as part of a solicitation intended to attract a substantial number of contributions.

(f) *Affiliated organizations.* In the case of multiple organizations affiliated by common control or governing documents, the determination of whether a person does or does not have substantial influence shall be made separately for each applicable tax-exempt organization. A person may be a disqualified person with respect to transactions with more than one applicable tax-exempt organization.

(g) *Examples.* The following examples illustrate the principles of this section. Finding a person to be a disqualified person in the following examples does not indicate that an excess benefit transaction has occurred. If a person is a disqualified person, the rules of section 4958(c) and § 53.4958–4T apply to determine whether an excess benefit transaction has occurred. The examples are as follows:

Example 1. N, an artist by profession, works part-time at R, a local museum. In the first taxable year in which R employs N, R pays N a salary and provides no additional benefits to N except for free admission to the museum, a benefit R provides to all of its employees and volunteers. The total economic benefits N receives from R during the taxable year are less than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i). The part-time job constitutes N's only relationship with R. N is not related to any other disqualified person with respect to R. N is deemed not to be in a position to exercise substantial influence over the affairs of R. Therefore, N is not a disqualified person with respect to R in that year.

Example 2. The facts are the same as in *Example 1,* except that in addition to the salary that R pays N for N's services during the taxable year, R also purchases one of N's paintings for $*x*. The total of N's salary plus $*x* exceeds the amount referenced for highly compensated employees in section 414(q)(1)(B)(i). Consequently, whether N is in a position to exercise substantial influence over the affairs of R for that taxable year depends upon all of the relevant facts and circumstances.

Example 3: Q is a member of K, a section 501(c)(3) organization with a broad-based public membership. Members of K are entitled to vote only with respect to the annual election of directors and the approval of major organizational transactions such as a merger or dissolution. Q is not related to any other disqualified person of K. Q has no other relationship to K besides being a member of K and occasionally making modest donations to K. Whether Q is a disqualified person is determined by all relevant facts and circumstances. Q's voting rights, which are the same as granted to all members of K, do not place Q in a position to exercise substantial influence over K. Under these facts and circumstances, Q is not a disqualified person with respect K.

Example 4. E is the headmaster of Z, a school that is an applicable tax-exempt organization for purposes of section 4958. E reports to Z's board of trustees and has ultimate responsibility for supervising Z's day-to-day operations. For example, E can hire faculty members and staff, make changes to the school's curriculum and discipline students without specific board approval. Because E has ultimate responsibility for supervising the operation of Z, E is in a position to exercise substantial influence over the affairs of Z. Therefore, E is a disqualified person with respect to Z.

Example 5. Y is an applicable tax-exempt organization for purposes of section 4958 that decides to use bingo games as a method of generating revenue. Y enters into a contract with B, a company that operates bingo games. Under the contract, B manages the promotion and operation of the bingo activity, provides

all necessary staff, equipment, and services, and pays Y *q* percent of the revenue from this activity. B retains the balance of the proceeds. Y provides no goods or services in connection with the bingo operation other than the use of its hall for the bingo games. The annual gross revenue earned from the bingo games represents more than half of Y's total annual revenue. B's compensation is primarily based on revenues from an activity B controls. B also manages a discrete activity of Y that represents a substantial portion of Y's income compared to the organization as a whole. Under these facts and circumstances, B is in a position to exercise substantial influence over the affairs of Y. Therefore, B is a disqualified person with respect to Y.

Example 6. The facts are the same as in *Example 5,* with the additional fact that P owns a majority of the stock of B and is actively involved in managing B. Because P owns a controlling interest (measured by either vote or value) in and actively manages B, P is also in a position to exercise substantial influence over the affairs of Y. Therefore, under these facts and circumstances, P is a disqualified person with respect to Y.

Example 7. A, an applicable tax-exempt organization for purposes of section 4958, owns and operates one acute care hospital. B, a for-profit corporation, owns and operates a number of hospitals. A and B form C, a limited liability company. In exchange for proportional ownership interests, A contributes its hospital, and B contributes other assets, to C. All of A's assets then consist of its membership interest in C. A continues to be operated for exempt purposes based almost exclusively on the activities it conducts through C. C enters into a management agreement with a management company, M, to provide day to day management services to C. M is generally subject to supervision by C's board, but M is given broad discretion to manage C's day to day operation. Under these facts and circumstances, M is in a position to exercise substantial influence over the affairs of A because it has day to day control over the hospital operated by C, A's ownership interest in C is its primary asset, and C's activities form the basis for A's continued exemption as an organization described in section 501(c)(3). Therefore, M is a disqualified person with respect to A.

Example 8. T is a large university and an applicable tax-exempt organization for purposes of section 4958. L is the dean of the College of Law of T, a substantial source of revenue for T, including contributions from alumni and foundations. L is not related to any other disqualified person of T. L does not serve on T's governing body or have ultimate responsibility for managing the university as whole. However, as dean of the College of Law, L plays a key role in faculty hiring and determines a substantial portion of the capital expenditures and operating budget of the College of Law. L's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. L's management of a discrete segment of T that represents a substantial portion of the income of T (as compared to T as a whole) places L in a position to exercise substantial influence over the affairs of T. Under these facts and circumstances L is a disqualified person with respect to T.

Example 9. S chairs a small academic department in the College of Arts and Sciences of the same university T described in *Example 8.* S is not related to any other disqualified person of T. S does not serve on T's governing body or as an officer of T. As department chair, S supervises faculty in the department, approves the course curriculum, and oversees the operating budget for the department. S's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. Even though S manages the department, that department does not represent a substantial portion of T's activities, assets, income, expenses, or operating budget. Therefore, S does not participate in any management decisions affecting either T as a whole, or a discrete segment or activity of T that represents a substantial portion of its activities, assets, income, or expenses. Under these facts and circumstances, S does not have substantial influence over the affairs of T, and therefore S is not a disqualified person with respect to T.

Example 10. U is a large acute-care hospital that is an applicable tax-exempt organization for purposes of section 4958. U employs X as a radiologist. X gives instructions to staff with respect to the radiology work X conducts, but X does not supervise other U employees or manage any substantial part of U's operations. X's compensation is primarily in the form of a fixed salary. In addition, X is eligible to receive an incentive award based on revenues of the radiology department. X's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. X is not related to any other disqualified person of U. X does not serve on U's governing body or as an officer of U. Although U participates in a provider-sponsored organization (as defined in section 1855(e) of the Social Security Act), X does not have a material financial interest in that organization. X does not receive compensation primarily based on revenues derived from activities of U that X controls. X does not participate in any management decisions affecting either U as a whole or a discrete segment of U that represents a substantial portion of its activities, assets, income, or expenses. Under these facts and circumstances, X does not have substantial influence over the affairs of U, and therefore X is not a disqualified person with respect to U.

Example 11. W is a cardiologist and head of the cardiology department of the same hospital U described in *Example 10.* The cardiology department is a major source of patients admitted to U and consequently represents a substantial portion of U's income, as compared to U as a whole. W does not serve on U's governing board or as an officer of U. W does not have a material financial interest in the provider-sponsored organization (as defined in section 1855(e) of the Social Security Act) in which U participates. W receives a salary and retirement and welfare benefits fixed by a three-year renewable employment contract with U. W's compensation is greater than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i) in the year benefits are provided. As department head, W manages the cardiology department and has authority to allocate the budget for that department, which includes authority to distribute incentive bonuses among cardiologists according to criteria that W has authority to set. W's management of a discrete segment of U that represents a substantial portion of its income and activities (as compared to U as a whole) places W in a position to exercise substantial influence over the affairs of U. Under these facts and circumstances, W is a disqualified person with respect to U.

Example 12. M is a museum that is an applicable tax-exempt organization for purposes of section 4958. D provides accounting services and tax advice to M as an independent contractor in return for a fee. D has no other relationship with M and is not related to any disqualified person of M. D does not provide professional advice with respect to any transaction from which D might economically benefit either directly or indirectly (aside from fees received for the professional advice rendered). Because D's sole relationship to M is providing professional advice (without having decision-making authority) with respect to transactions from which D will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered), under these facts and circumstances, D is not a disqualified person with respect to M.

Example 13. F is a repertory theater company that is an applicable tax-exempt organization for purposes of section 4958. F holds a fund-raising campaign to pay for the construction of a new theater. J is a regular subscriber to F's productions who has made modest gifts to F in the past. J has no relationship to F other than as a subscriber and contributor. F solicits contributions as part of a broad public campaign intended to attract a large number of donors, including a substantial number of donors making large gifts. In its solicitations for contributions, F promises to invite all contributors giving $*z* or more to a special opening production and party held at the new theater. These contributors are also given a special number to call in F's office to reserve tickets for performances, make ticket exchanges, and make other special arrangements for their convenience. J makes a contribution of $*z* to F, which makes J a substantial contributor within the meaning of section 507(d)(2)(A), taking into account only contributions received by F during its current and the four preceding taxable years. J receives the benefits described in F's solicitation. Because F offers the same benefit to all donors of $*z* or more, the preferential treatment that J receives does not indicate that J is in a position to exercise substantial influence over the affairs of the organization. Therefore,

under these facts and circumstances, J is not a disqualified person with respect to F.

§ 53.4958–4T Excess benefit transaction (temporary).

(a) *Definition of excess benefit transaction*—(1) *In general.* An excess *benefit transaction* means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person, and the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. Subject to the limitations of paragraph (c) of this section (relating to the treatment of economic benefits as compensation for the performance of services), to determine whether an excess benefit transaction has occurred, all consideration and benefits (except disregarded benefits described in paragraph (a)(4) of this section) exchanged between a disqualified person and the applicable tax-exempt organization and all entities the organization controls (within the meaning of paragraph (a)(2)(ii)(B) of this section) are taken into account. For example, in determining the reasonableness of compensation that is paid (or vests, or is no longer subject to a substantial risk of forfeiture) in one year, services performed in prior years may be taken into account. For rules regarding valuation standards, see paragraph (b) of this section. For the requirement that an applicable tax-exempt organization clearly indicate its intent to treat a benefit as compensation for services when paid, see paragraph (c) of this section.

(2) *Economic benefit provided indirectly*—(i) *In general.* A transaction that would be an excess benefit transaction if the applicable tax-exempt organization engaged in it directly with a disqualified person is likewise an excess benefit transaction when it is accomplished indirectly. An applicable tax-exempt organization may provide an excess benefit indirectly to a disqualified person through a controlled entity or through an intermediary, as described in paragraphs (a)(2)(ii) and (iii) of this section, respectively.

(ii) *Through a controlled entity*—(A) *In general.* An applicable tax-exempt organization may provide an excess benefit indirectly through the use of one or more entities it controls. For purposes of section 4958, economic benefits provided by a controlled entity will be treated as provided by the applicable tax-exempt organization.

(B) *Definition of control*—(1) *In general.* For purposes of this paragraph, control by an applicable tax-exempt organization means—

(i) In the case of a stock corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation;

(*ii*) In the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in the partnership;

(*iii*) In the case of a nonstock organization (*i.e.,* an entity in which no person holds a proprietary interest), that at least 50 percent of the directors or trustees of the organization are either representatives (including trustees, directors, agents, or employees) of, or directly or indirectly controlled by, an applicable tax-exempt organization; or

(*iv*) In the case of any other entity, ownership of more than 50 percent of the beneficial interest in the entity.

(2) *Constructive ownership.* Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

(iii) *Through an intermediary.* An applicable tax-exempt organization may provide an excess benefit indirectly through an intermediary. An intermediary is any person (including an individual or a taxable or tax-exempt entity) who participates in a transaction with one or more disqualified persons of an applicable tax-exempt organization. For purposes of section 4958, economic benefits provided by an intermediary will be treated as provided by the applicable tax-exempt organization when—

(A) An applicable tax-exempt organization provides an economic benefit to an intermediary; and

(B) In connection with the receipt of the benefit by the intermediary—

(*1*) There is evidence of an oral or written agreement or understanding that the intermediary will provide economic benefits to or for the use of a disqualified person; or

(*2*) The intermediary provides economic benefits to or for the use of a disqualified person without a significant business purpose or exempt purpose of its own.

(iv) *Examples.* The following examples illustrate when economic benefits are provided indirectly under the rules of paragraph (a)(2) of this section:

Example 1. K is an applicable tax-exempt organization for purposes of section 4958. L is an entity controlled by K within the meaning of paragraph (a)(2)(ii)(B) of this section. J is employed by K, and is a disqualified person with respect to K. K pays J an annual salary of $*12m*, and reports that amount as compensation during calendar year 2001. Although J only performed services for K for nine months of 2001, J performed equivalent services for L during the remaining three months of 2001. Taking into account all of the economic benefits K provided to J, and all of the services J performed for K and L, $*12m* does not exceed the fair market value of the services J performed for K and L during 2001. Therefore, under these facts, K does not provide an excess benefit to J directly or indirectly.

Example 2. F is an applicable tax-exempt organization for purposes of section 4958. D is an entity controlled by F within the meaning of paragraph (a)(2)(ii)(B) of this section. T is the chief executive officer (CEO) of F. As CEO, T is responsible for overseeing the activities of F. T's duties as CEO make him a disqualified person with respect to F. T's compensation package with F represents the maximum reasonable compensation for T's services as CEO. Thus, any additional economic benefits that F provides to T without T providing additional consideration constitute an excess benefit. D contracts with T to provide enumerated ''consulting services'' to D. However, the contract does not require T to perform any additional services for D that T is not already obligated to perform as F's chief executive officer. Therefore, any payment to T pursuant to the consulting contract with D represents an indirect excess benefit that F provides through a controlled entity, even if F, D, or T treats the additional payment to T as compensation.

Example 3. P is an applicable tax-exempt organization for purposes of section 4958. S is a taxable entity controlled by P within the meaning of paragraph (a)(2)(ii)(B) of this section. V is the chief executive officer of S, for which S pays V $*w* in salary and benefits. V also serves as a voting member of P's governing body. Consequently, V is a disqualified person with respect to P. P provides V with $*x* representing compensation for the services V provides P as a member of its governing body. Although $*x* represents reasonable compensation for the services V provides directly to P as a member of its governing body, the total compensation of $*w* + $*x* exceeds reasonable compensation for the services V provides to P and S collectively. Therefore, the portion of total compensation that exceeds reasonable compensation is an excess benefit provided to V.

Example 4. G is an applicable tax-exempt organization for section 4958 purposes. F is a disqualified person who was last employed by G in a position of substantial influence three years ago. H is an entity engaged in scientific research and is unrelated to either F or G. G makes a grant to H to fund a research position. H subsequently advertises for qualified candidates for the research position. F is among several highly qualified candidates who apply for the research position. H hires F. There was no evidence

of an oral or written agreement or understanding with G that H will use G's grant to provide economic benefits to or for the use of F. Although G provided economic benefits to H, and in connection with the receipt of such benefits, H will provide economic benefits to or for the use of F, H acted with a significant business purpose or exempt purpose of its own. Under these facts, G did not provide an economic benefit to F indirectly through the use of an intermediary.

(3) *Exception for fixed payments made pursuant to an initial contract*—(i) *In general.* Except as provided in paragraph (iv), section 4958 does not apply to any fixed payment made to a person pursuant to an initial contract.

(ii) *Fixed payment*—(A) *In general.* For purposes of paragraph (a)(3)(i) of this section, *fixed payment* means an amount of cash or other property specified in the contract, or determined by a fixed formula specified in the contract, which is to be paid or transferred in exchange for the provision of specified services or property. A fixed formula may incorporate an amount that depends upon future specified events or contingencies, provided that no person exercises discretion when calculating the amount of a payment or deciding whether to make a payment (such as a bonus). A specified event or contingency may include the amount of revenues generated by (or other objective measure of) one or more activities of the applicable tax-exempt organization. A fixed payment does not include any amount paid to a person under a reimbursement (or similar) arrangement where discretion is exercised by any person with respect to the amount of expenses incurred or reimbursed.

(B) *Special rules.* Amounts payable pursuant to a qualified pension, profit-sharing, or stock bonus plan under Internal Revenue Code section 401(a), or pursuant to an employee benefit program that is subject to and satisfies coverage and nondiscrimination rules under the Code (*e.g.,* sections 127 and 137), other than nondiscrimination rules under section 9802, are treated as fixed payments for purposes of this section, regardless of the applicable tax-exempt organization's discretion with respect to the plan or program. The fact that a person contracting with an applicable tax-exempt organization is expressly granted the choice whether to accept or reject any economic benefit is disregarded in determining whether the benefit constitutes a fixed payment for purposes of this paragraph.

(iii) *Initial contract.* For purposes of paragraph (a)(3)(i) of this section, *initial contract* means a binding written contract between an applicable tax-exempt organization and a person who was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3T immediately prior to entering into the contract.

(iv) *Substantial performance required.* Paragraph (a)(3)(i) of this section does not apply to any fixed payment made pursuant to the *initial contract* during any taxable year of the person contracting with the applicable tax-exempt organization if the person fails to perform substantially the person's obligations under the initial contract during that year.

(v) *Treatment as a new contract.* A written binding contract that provides that the contract is terminable or subject to cancellation by the applicable tax-exempt organization (other than as a result of a lack of substantial performance by the disqualified person, as described in paragraph (a)(3)(iv) of this section) without the other party's consent and without substantial penalty to the organization is treated as a new contract as of the earliest date that any such termination or cancellation, if made, would be effective. Additionally, if the parties make a material change to a contract, it is treated as a new contract as of the date the material change is effective. A material change includes an extension or renewal of the contract (other than an extension or renewal that results from the person contracting with the applicable tax-exempt organization unilaterally exercising an option expressly granted by the contract), or a more than incidental change to any amount payable under the contract. The new contract is tested under paragraph (a)(3)(iii) of this section to determine whether it is an initial contract for purposes of this section.

(vi) *Evaluation of non-fixed payments.* Any payment that is not a fixed payment (within the meaning of paragraph (a)(3)(ii) of this section) is evaluated to determine whether it constitutes an excess benefit transaction under section 4958. In making this determination, all payments and consideration exchanged between the parties are taken into account, including any fixed payments made pursuant to an initial contract with respect to which section 4958 does not apply.

(vii) *Examples.* The following examples illustrate the rules governing fixed payments made pursuant to an initial contract. Unless otherwise stated, assume that the person contracting with the applicable tax-exempt organization has performed substantially the person's obligations under the contract with respect to the payment.

The examples are as follows:

Example 1. T is an applicable tax-exempt organization for purposes of section 4958. On January 1, 2000, T hires S as its chief financial officer by entering into a five-year written employment contract with S. S was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3T immediately prior to entering into the January 1, 2000, contract (initial contract). S's duties and responsibilities under the contract make S a disqualified person with respect to T (see § 53.4958–3T(a)). Under the initial contract, T agrees to pay S an annual salary of $200,000, payable in monthly installments. The contract provides that, beginning in 2001, S's annual salary will be adjusted by the increase in the Consumer Price Index (CPI) for the prior year. Section 4958 does not apply because S's compensation under the contract is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. Thus, for section 4958 purposes, it is unnecessary to evaluate whether any portion of the compensation paid to S pursuant to the initial contract is an excess benefit transaction.

Example 2. The facts are the same as in *Example 1,* except that the initial contract provides that, in addition to a base salary of $200,000, T may pay S an annual performance-based bonus. The contract provides that T's governing body will determine the amount of the annual bonus as of the end of each year during the term of the contract, based on the board's evaluation of S's performance, but the bonus cannot exceed $100,000 per year. Unlike the base salary portion of S's compensation, the bonus portion of S's compensation is not a fixed payment pursuant to an initial contract, because the governing body has discretion over the amount, if any, of the bonus payment. Section 4958 does not apply to payment of the $200,000 base salary (as adjusted for inflation), because it is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. By contrast, the annual bonuses that may be paid to S under the initial contract are not protected by the initial contract exception. Therefore, each bonus payment will be evaluated under section 4958, taking into account all payments and consideration exchanged between the parties.

Example 3. The facts are the same as in *Example 1,* except that in 2001, T changes its payroll system, such that T makes biweekly, rather than monthly, salary payments to its employees. Beginning in 2001, T also grants its employees an additional two days of paid vacation each year. Neither change is a material change to S's initial contract within the meaning of paragraph (a)(3)(v) of this section. Therefore, section 4958 does not apply to the base salary payments to S due to the initial contract exception.

Example 4. The facts are the same as in *Example 1,* except that on January 1, 2001, S becomes the chief executive officer of T and a new chief financial officer is hired. At the same time, T's board of directors approves an increase in S's annual base salary from $200,000 to $240,000, effective on that day. These changes in S's employment relationship constitute material

changes of the initial contract within the meaning of paragraph (a)(3)(v) of this section. As a result, S is treated as entering into a new contract with T on January 1, 2001, at which time S is a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3T. T's payments to S made pursuant to the new contract will be evaluated under section 4958, taking into account all payments and consideration exchanged between the parties.

Example 5. J is a performing arts organization and an applicable tax-exempt organization for purposes of section 4958. J hires W to become the chief executive officer of J. W was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3T immediately prior to entering into the employment contract with J. As a result of this employment contract, W's duties and responsibilities make W a disqualified person with respect to J (see § 53.4958–3T(c)(2)). Under the contract, J will pay W $*x* (a specified amount) plus a bonus equal to 2 percent of the total season subscription sales that exceed $*100z*. The $*x* base salary is a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section. The bonus payment is also a fixed payment pursuant to an initial contract within the meaning of paragraph (a)(3) of this section, because no person exercises discretion when calculating the amount of the bonus payment or deciding whether the bonus will be paid. Therefore, section 4958 does not apply to any of J's payments to W pursuant to the employment contract due to the initial contract exception.

Example 6. Hospital B is an applicable tax-exempt organization for purposes of section 4958. Hospital B hires E as its chief operating officer. E was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3T immediately prior to entering into the employment contract with Hospital B. As a result of this employment contract, E's duties and responsibilities make E a disqualified person with respect to Hospital B (see § 53.4958–3T(c)(2)). E's initial employment contract provides that E will have authority to enter into hospital management arrangements on behalf of Hospital B. In E's personal capacity, E owns more than 35 percent of the combined voting power of Company X. Consequently, at the time E becomes a disqualified person with respect to B, Company X also becomes a disqualified person with respect to B (see § 53.4958–3T(b)(2)(A)). E, acting on behalf of Hospital B as chief operating officer, enters into a contract with Company X under which Company X will provide billing and collection services to Hospital B. The initial contract exception of paragraph (a)(3)(i) of this section does not apply to the billing and collection services contract, because at the time that this contractual arrangement was entered into, Company X was a disqualified person with respect to Hospital B. Although E's employment contract (which is an initial contract) authorizes E to enter into hospital management arrangements on behalf of Hospital B, the payments made to Company X are not made pursuant to E's employment contract, but rather are made by Hospital B pursuant to a separate contractual arrangement with Company X. Therefore, even if payments made to Company X under the billing and collection services contract are fixed payments (within the meaning of paragraph (a)(3)(ii) of this section), section 4958 nonetheless applies to payments made by Hospital B to Company X because the billing and collection services contract itself does not constitute an initial contract under paragraph (a)(3)(iii) of this section. Accordingly, all payments made to Company X under the billing and collection services contract will be evaluated under section 4958.

Example 7. Hospital C, an applicable tax-exempt organization, enters into a contract with Company Y, under which Company Y will provide a wide range of hospital management services to Hospital C. Upon entering into this contractual arrangement, Company Y becomes a disqualified person with respect to Hospital C. The contract provides that Hospital C will pay Company Y a management fee of *x* percent of adjusted gross revenue (*i.e.,* gross revenue increased by the cost of charity care provided to indigents) annually for a five-year period. The management services contract specifies the cost accounting system and the standards for *indigents* to be used in calculating the cost of charity care. The cost accounting system objectively defines the direct and indirect costs of all health care goods and services provided as charity care. Because Company Y was not a disqualified person with respect to Hospital C immediately before entering into the management services contract, that contract is an initial contract within the meaning of paragraph (a)(3)(iii) of this section. The annual management fee paid to Company Y is determined by a fixed formula specified in the contract, and is therefore a fixed payment within the meaning of paragraph (a)(3)(ii) of this section. Accordingly, section 4958 does not apply to the annual management fee due to the initial contract exception.

Example 8. The facts are the same as in *Example 7,* except that the management services contract also provides that Hospital C will reimburse Company Y on a monthly basis for certain expenses incurred by Company Y that are attributable to management services provided to Hospital C (*e.g.,* legal fees and travel expenses). These reimbursement payments that Hospital C makes to Company Y for the various expenses covered by the contract are not fixed payments within the meaning of paragraph (a)(3)(ii) of this section, because Company Y exercises discretion with respect to the amount of expenses incurred. Therefore, any reimbursement payments that Hospital C pays pursuant to the contract will be evaluated under section 4958.

Example 9. X, an applicable tax-exempt organization for purposes of section 4958, hires C to conduct scientific research. On January 1, 2000, C enters into a three-year written employment contract with X (''initial contract''). Under the terms of the contract, C is required to work full-time at X's laboratory for a fixed annual salary of $90,000. Immediately prior to entering into the employment contract, C was not a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3T, nor did C become a disqualified person pursuant to the initial contract. However, two years after joining X, C marries D, who is the child of X's president. As D's spouse, C is a disqualified person within the meaning of section 4958(f)(1) and § 53.4958–3T with respect to X. Nonetheless, section 4958 does not apply to X's salary payments to C due to the initial contract exception.

Example 10. The facts are the same as in *Example 9,* except that the initial contract included a below-market loan provision under which C has the unilateral right to borrow up to a specified dollar amount from X at a specified interest rate for a specified term. After C's marriage to D, C borrows money from X to purchase a home under the terms of the initial contract. Section 4958 does not apply to X's loan to C due to the initial contract exception.

Example 11. The facts are the same as in *Example 9,* except that after C's marriage to D, C works only sporadically at the laboratory, and performs no other services for X. Notwithstanding that C fails to perform substantially C's obligations under the initial contract, X does not exercise its right to terminate the initial contract for nonperformance and continues to pay full salary to C. Pursuant to paragraph (a)(3)(iv) of this section, the initial contract exception does not apply to any payments made pursuant to the initial contract during any taxable year of C in which C fails to perform substantially C's obligations under the initial contract.

(4) *Certain economic benefits disregarded for purposes of section 4958.* The following economic benefits are disregarded for purposes of section 4958:

(i) *Nontaxable fringe benefits.* An economic benefit that is excluded from income under section 132, except any liability insurance premium, payment, or reimbursement that must be taken into account under § 53.4958–4T(b)(1)(ii)(B)(*2*);

(ii) *Certain economic benefits provided to a volunteer for the organization.* An economic benefit provided to a volunteer for the organization if the benefit is provided to the general public in exchange for a membership fee or contribution of $75 or less per year;

(iii) *Certain economic benefits provided to a member of, or donor to, the organization.* An economic benefit provided to a member of an organization solely on account of the payment of a membership fee, or to a donor solely on account of a contribution deductible under section 170, if—

(A) Any non-disqualified person paying a membership fee or making a contribution above a specified amount to the organization is given the option of receiving substantially the same economic benefit; and

(B) The disqualified person and a significant number of non-disqualified

persons make a payment or contribution of at least the specified amount;

(iv) *Economic benefits provided to a charitable beneficiary.* An economic benefit provided to a person solely as a member of a charitable class that the applicable tax-exempt organization intends to benefit as part of the accomplishment of the organization's exempt purpose; and

(v) *Certain economic benefits provided to a governmental unit.* Any transfer of an economic benefit to or for the use of a governmental unit defined in section 170(c)(1), if the transfer is for exclusively public purposes.

(b) *Valuation standards*—(1) *In general.* This section provides rules for determining the value of economic benefits for purposes of section 4958.

(i) *Fair market value of property.* The value of property, including the right to use property, for purposes of section 4958 is the fair market value (*i.e.,* the price at which property or the right to use property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell or transfer property or the right to use property, and both having reasonable knowledge of relevant facts).

(ii) *Reasonable compensation*—(A) *In general.* The value of services is the amount that would ordinarily be paid for like services by like enterprises under like circumstances (*i.e.,* reasonable compensation). Section 162 standards apply in determining reasonableness of compensation, taking into account the aggregate benefits (other than any benefits specifically disregarded under paragraph (a)(4) of this section) provided to a person and the rate at which any deferred compensation accrues. The fact that a bonus or revenue-sharing arrangement is subject to a cap is a relevant factor in determining the reasonableness of compensation. The fact that a State or local legislative or agency body or court has authorized or approved a particular compensation package paid to a disqualified person is not determinative of the reasonableness of compensation for purposes of section 4958.

(B) *Items included in determining the value of compensation for purposes of determining reasonableness under section 4958.* Except for economic benefits that are disregarded for purposes of section 4958 under paragraph (a)(4) of this section, compensation for purposes of determining reasonableness under section 4958 includes all economic benefits provided by an applicable tax-exempt organization in exchange for the performance of services. These benefits include, but are not limited to—

(*1*) All forms of cash and noncash compensation, including salary, fees, bonuses, severance payments, and deferred and noncash compensation described in § 53.4958–1T(e)(2);

(*2*) Unless excludable from income as a de minimis fringe benefit pursuant to section 132(a)(4), the payment of liability insurance premiums for, or the payment or reimbursement by the organization of—

(*i*) Any penalty, tax, or expense of correction owed under section 4958;

(*ii*) Any expense not reasonably incurred by the person in connection with a civil judicial or civil administrative proceeding arising out of the person's performance of services on behalf of the applicable tax-exempt organization; or

(*iii*) Any expense resulting from an act or failure to act with respect to which the person has acted willfully and without reasonable cause; and

(*3*) All other compensatory benefits, whether or not included in gross income for income tax purposes, including payments to welfare benefit plans, such as plans providing medical, dental, life insurance, severance pay, and disability benefits, and both taxable and nontaxable fringe benefits (other than fringe benefits described in section 132), including expense allowances or reimbursements, and foregone interest on loans.

(C) *Inclusion in compensation for reasonableness determination does not govern income tax treatment.* The determination of whether any item listed in paragraph (b)(1)(ii)(B) of this section is included in the disqualified person's gross income for income tax purposes is made on the basis of the provisions of chapter 1 of Subtitle A of the Internal Revenue Code, without regard to whether the item is taken into account for purposes of determining reasonableness of compensation under section 4958.

(2) *Timing of reasonableness determination*—(i) *In general.* The facts and circumstances to be taken into consideration in determining reasonableness of a fixed payment (within the meaning of paragraph (a)(3)(ii) of this section) are those existing on the date the parties enter into the contract pursuant to which the payment is made. However, in the event of substantial non-performance, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. In the case of a payment that is not a fixed payment under a contract, reasonableness is determined based on all facts and circumstances, up to and including circumstances as of the date of payment. In no event shall circumstances existing at the date when the payment is questioned be considered in making a determination of the reasonableness of the payment.

(ii) *Treatment as a new contract.* For purposes of paragraph (b)(2)(i) of this section, a written binding contract that provides that the contract is terminable or subject to cancellation by the applicable tax-exempt organization without the other party's consent and without substantial penalty to the organization is treated as a new contract as of the earliest date that any such termination or cancellation, if made, would be effective. Additionally, if the parties make a material change to a contract (within the meaning of paragraph (a)(3)(v) of this section), it is treated as a new contract as of the date the material change is effective.

(iii) *Examples.* The following examples illustrate the timing of the reasonableness determination under the rules of this paragraph (b)(2):

Example 1. G is an applicable tax-exempt organization for purposes of section 4958. H is an employee of G and a disqualified person with respect to G. H's new multi-year employment contract provides for payment of a salary and provision of specific benefits pursuant to a qualified pension plan under Internal Revenue Code section 401(a) and an accident and health plan that meets the requirements of section 105(h)(2). The contract provides that H's salary will be adjusted by the increase in the Consumer Price Index (CPI) for the prior year. The contributions G makes to the qualified pension plan are equal to the maximum amount G is permitted to contribute under the rules applicable to qualified plans. Under these facts, all items comprising H's total compensation are treated as fixed payments within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of H's compensation is determined based on the circumstances existing at the time G and H enter into the employment contract.

Example 2. N is an applicable tax-exempt organization for purposes of section 4958. On January 2, N's governing body enters into a new one-year employment contract with K, its executive director, who is a disqualified person with respect to N. The contract provides that K will receive a specified amount of salary, contributions to a qualified pension plan under Internal Revenue Code section 401(a), and other benefits pursuant to a section 125 cafeteria plan. In addition, the contract provides that N's governing body may, in its discretion, declare a bonus to be paid to K at any time during the year covered by the contract. K's salary and other specified benefits constitute fixed payments within the meaning of paragraph (a)(3)(ii) of this section. Therefore, the reasonableness of those economic benefits is determined on the date when the contract was made. However, because the bonus payment is not a fixed

payment within the meaning of paragraph (a)(3)(ii) of this section, the determination of whether any bonus awarded to N is reasonable must be made based on all facts and circumstances (including all payments and consideration exchanged between the parties), up to and including circumstances as of the date of payment of the bonus.

(c) *Establishing intent to treat economic benefit as consideration for the performance of services*—(1) *In general.* An economic benefit is not treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid. Except as provided in paragraph (c)(2) of this section, an applicable tax-exempt organization (or entity controlled by an applicable tax-exempt organization, within the meaning of paragraph (a)(2)(ii)(B) of this section) is treated as clearly indicating its intent to provide an economic benefit as compensation for services only if the organization provides written substantiation that is contemporaneous with the transfer of the economic benefit at issue. If an organization fails to provide this contemporaneous substantiation, any services provided by the disqualified person will not be treated as provided in consideration for the economic benefit for purposes of determining the reasonableness of the transaction.

(2) *Nontaxable benefits.* For purposes of section 4958(c)(1)(A) and this section, an applicable tax-exempt organization is not required to indicate its intent to provide an economic benefit as compensation for services if the economic benefit is excluded from the disqualified person's gross income for income tax purposes on the basis of the provisions of chapter 1 of Subtitle A of the Internal Revenue Code. Examples of these benefits include, but are not limited to, employer-provided health benefits and contributions to a qualified pension, profit-sharing, or stock bonus plan under Internal Revenue Code section 401(a), and benefits described in sections 127 and 137. However, except for economic benefits that are disregarded for purposes of section 4958 under paragraph (a)(4) of this section, all compensatory benefits (regardless of the federal income tax treatment) provided by an organization in exchange for the performance of services are taken into account in determining the reasonableness of a person's compensation for purposes of section 4958.

(3) *Contemporaneous substantiation*—(i) *Reporting of benefit.* An applicable tax-exempt organization provides contemporaneous written substantiation of its intent to provide an economic benefit as compensation if—

(A) The organization reports the economic benefit as compensation on an original Federal tax information return with respect to the payment (*e.g.,* Form W–2 or 1099) or with respect to the organization (*e.g.,* Form 990), or on an amended Federal tax information return filed prior to the commencement of an Internal Revenue Service examination of the applicable tax-exempt organization or the disqualified person for the taxable year in which the transaction occurred (as determined under § 53.4958–1T(e)); or

(B) The recipient disqualified person reports the benefit as income on the person's original Federal tax return (*e.g.,* Form 1040), or on the person's amended Federal tax return filed prior to the commencement of an Internal Revenue Service examination described in paragraph (b)(3)(i)(A) of this section.

(ii) *Other evidence of contemporaneous substantiation.* In addition, other written contemporaneous evidence may be used to demonstrate that the appropriate decision-making body or an authorized officer approved a transfer as compensation for services in accordance with established procedures, including an approved written employment contract executed on or before the date of the transfer, or documentation satisfying the requirements of § 53.4958–6T(a)(3) indicating that an authorized body approved the transfer as compensation for services on or before the date of the transfer.

(iii) *Failure to report due to reasonable cause.* If an applicable tax-exempt organization's failure to report an economic benefit as required under the Internal Revenue Code is due to reasonable cause (within the meaning of § 301.6724–1 of this chapter), then the organization will be treated as having clearly indicated its intent to provide an economic benefit as compensation for services. To show that its failure to report an economic benefit that should have been reported on an information return was due to reasonable cause, an applicable tax-exempt organization must establish that there were significant mitigating factors with respect to its failure to report (as described in § 301.6724–1(b) of this chapter), or the failure arose from events beyond the organization's control (as described in § 301.6724–1(c) of this chapter), and that the organization acted in a responsible manner both before and after the failure occurred (as described in § 301.6724–1(d) of this chapter).

(4) *Examples.* The following examples illustrate the requirement that an organization contemporaneously substantiate its intent to provide an economic benefit as compensation for services, as defined in paragraph (c) of this section:

Example 1. G is an applicable tax-exempt organization for purposes of section 4958. G hires an individual contractor, P, who is also the child of a disqualified person of G, to design a computer program for it. G executes a contract with P for that purpose in accordance with G's established procedures, and pays P $1,000 during the year pursuant to the contract. Before January 31 of the next year, G reports the full amount paid to P under the contract on a Form 1099 filed with the Internal Revenue Service. G will be treated as providing contemporaneous written substantiation of its intent to provide the $1,000 paid to P as compensation for the services P performed under the contract by virtue of either the Form 1099 filed with the Internal Revenue Service reporting the amount, or by virtue of the written contract executed between G and P.

Example 2. G is an applicable tax-exempt organization for purposes of section 4958. D is the chief operating officer of G, and a disqualified person with respect to G. D receives a bonus at the end of the year. G's accounting department determines that the bonus is to be reported on D's Form W–2. Due to events beyond G's control, the bonus is not reflected on D's Form W–2. As a result, D fails to report the bonus on his individual income tax return. G acts to amend Forms W–2 affected as soon as G is made aware of the error during an Internal Revenue Service examination. G's failure to report the bonus on an information return issued to D arose from events beyond G's control, and G acted in a responsible manner both before and after the failure occurred. Thus, because G had reasonable cause (within the meaning of § 301.6724–1 of this chapter) for failing to report D's bonus, G will be treated as providing contemporaneous written substantiation of its intent to provide the bonus as compensation for services when paid.

§ 53.4958–5T Transaction in which the amount of the economic benefit is determined in whole or in part by the revenues of one or more activities of the organization (temporary). [Reserved]

§ 53.4958–6T Rebuttable presumption that a transaction is not an excess benefit transaction (temporary).

(a) *In general.* Payments under a compensation arrangement are presumed to be reasonable, and a transfer of property, or the right to use property, is presumed to be at fair market value, if the following conditions are satisfied—

(1) The compensation arrangement or the terms of the property transfer are Approved in advance by an authorized body of the applicable tax-exempt organization (or an entity controlled by

the organization with the meaning of § 53.4958–4T(a)(2)(ii)(B)) composed entirely of individuals who do not have a conflict of interest (within the meaning of paragraph (c)(1)(iii) of this section) with respect to the compensation arrangement or property transfer, as described in paragraph (c)(1) of this section;

(2) The authorized body obtained and relied upon appropriate data as to comparability prior to making its determination, as described in paragraph (c)(2) of this section; and

(3) The authorized body adequately documented the basis for its determination concurrently with making that determination, as described in paragraph (c)(3) of this section.

(b) *Rebutting the presumption.* If the three requirements of paragraph (a) of this section are satisfied, then the Internal Revenue Service may rebut the presumption that arises under paragraph (a) of this section only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body. With respect to any fixed payment (within the meaning of § 53.4958–4T(a)(3)(ii)), rebuttal evidence is limited to evidence relating to facts and circumstances existing on the date the parties enter into the contract pursuant to which the payment is made (except in the event of substantial nonperformance). With respect to all other payments (including non-fixed payments subject to a cap, as described in paragraph (d)(2) of this section), rebuttal evidence may include facts and circumstances up to and including the date of payment. See § 53.4958–4T(b)(2)(i).

(c) *Requirements for invoking rebuttable presumption*—(1) *Approval by an authorized body*—(i) *In general.* An authorized body means—

(A) The governing body (*i.e.,* the board of directors, board of trustees, or equivalent controlling body) of the organization;

(B) A committee of the governing body, which may be composed of any individuals permitted under State law to serve on such a committee, to the extent that the committee is permitted by State law to act on behalf of the governing body; or

(C) To the extent permitted under State law, other parties authorized by the governing body of the organization to act on its behalf by following procedures specified by the governing body in approving compensation arrangements or property transfers.

(ii) *Individuals not included on authorized body.* For purposes of determining whether the requirements of paragraph (a) of this section have been met with respect to a specific compensation arrangement or property transfer, an individual is not included on the authorized body when it is reviewing a transaction if that individual meets with other members only to answer questions, and otherwise recuses himself or herself from the meeting and is not present during debate and voting on the compensation arrangement or property transfer.

(iii) *Absence of conflict of interest.* A member of the authorized body does not have a conflict of interest with respect to a compensation arrangement or property transfer only if the member—

(A) Is not a disqualified person participating in or economically benefitting from the compensation arrangement or property transfer, and is not a member of the family of any such disqualified person, as described in section 4958(f)(4) or § 53.4958–3T(b)(1);

(B) Is not in an employment relationship subject to the direction or control of any disqualified person participating in or economically benefitting from the compensation arrangement or property transfer;

(C) Does not receive compensation or other payments subject to approval by any disqualified person participating in or economically benefitting from the compensation arrangement or property transfer;

(D) Has no material financial interest affected by the compensation arrangement or property transfer; and

(E) Does not approve a transaction providing economic benefits to any disqualified person participating in the compensation arrangement or property transfer, who in turn has approved or will approve a transaction providing economic benefits to the member.

(2) *Appropriate data as to comparability*—(i) *In general.* An authorized body has appropriate data as to comparability if, given the knowledge and expertise of its members, it has information sufficient to determine whether, under the standards set forth in § 53.4958–4T(b), the compensation arrangement in its entirety is reasonable or the property transfer is at fair market value. In the case of compensation, relevant information includes, but is not limited to, compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the availability of similar services in the geographic area of the applicable tax-exempt organization; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the disqualified person. In the case of property, relevant information includes, but is not limited to, current independent appraisals of the value of all property to be transferred; and offers received as part of an open and competitive bidding process.

(ii) *Special rule for compensation paid by small organizations.* For organizations with annual gross receipts (including contributions) of less than $1 million reviewing compensation arrangements, the authorized body will be considered to have appropriate data as to comparability if it has data on compensation paid by three comparable organizations in the same or similar communities for similar services. No inference is intended with respect to whether circumstances falling outside this safe harbor will meet the requirement with respect to the collection of appropriate data.

(iii) *Application of special rule for small organizations.* For purposes of determining whether the special rule for small organizations described in paragraph (c)(2)(ii) of this section applies, an organization may calculate its annual gross receipts based on an average of its gross receipts during the three prior taxable years. If any applicable tax-exempt organization is controlled by or controls another entity (as defined in § 53.4958–4T(a)(2)(ii)(B)), the annual gross receipts of such organizations must be aggregated to determine applicability of the special rule stated in paragraph (c)(2)(ii) of this section.

(iv) *Examples.* The following examples illustrate the rules for appropriate data as to comparability for purposes of invoking the rebuttable presumption of reasonableness described in this section. In all examples, compensation refers to the aggregate value of all benefits provided in exchange for services. The examples are as follows:

Example 1. Z is a university that is an applicable tax-exempt organization for purposes of section 4958. Z is negotiating a new contract with Q, its president, because the old contract will expire at the end of the year. In setting Q's compensation for its president at $*600x* per annum, the executive committee of the Board of Trustees relies solely on a national survey of compensation for university presidents that indicates university presidents receive annual compensation in the range of $*100x* to $*700x;* this survey does not divide its data by any criteria, such as the number of students served by the institution, annual revenues, academic ranking, or geographic location. Although many members of the executive committee have significant business experience, none of the members has any particular expertise in higher education compensation matters. Given the failure of

the survey to provide information specific to universities comparable to Z, and because no other information was presented, the executive committee's decision with respect to Q's compensation was not based upon appropriate data as to comparability.

Example 2. The facts are the same as *Example 1,* except that the national compensation survey divides the data regarding compensation for university presidents into categories based on various university-specific factors, including the size of the institution (in terms of the number of students it serves and the amount of its revenues) and geographic area. The survey data shows that university presidents at institutions comparable to and in the same geographic area as Z receive annual compensation in the range of $*200x* to $*300x.* The executive committee of the Board of Trustees of Z relies on the survey data and its evaluation of Q's many years of service as a tenured professor and high-ranking university official at Z in setting Q's compensation at $*275x* annually. The data relied upon by the executive committee constitutes appropriate data as to comparability.

Example 3. X is a tax-exempt hospital that is an applicable tax-exempt organization for purposes of section 4958. Before renewing the contracts of X's chief executive officer and chief financial officer, X's governing board commissioned a customized compensation survey from an independent firm that specializes in consulting on issues related to executive placement and compensation. The survey covered executives with comparable responsibilities at a significant number of taxable and tax-exempt hospitals. The survey data are sorted by a number of different variables, including the size of the hospitals and the nature of the services they provide, the level of experience and specific responsibilities of the executives, and the composition of the annual compensation packages. The board members were provided with the survey results, a detailed written analysis comparing the hospital's executives to those covered by the survey, and an opportunity to ask questions of a member of the firm that prepared the survey. The survey, as prepared and presented to X's board, constitutes appropriate data as to comparability.

Example 4. The facts are the same as *Example 3,* except that one year later, X is negotiating a new contract with its chief executive officer. The governing board of X has no information indicating that the relevant market conditions have changed or that the results of the prior year's survey are no longer valid. Therefore, X may continue to rely on the independent compensation survey prepared for the prior year in setting annual compensation under the new contract.

Example 5. W is a local repertory theater and an applicable tax-exempt organization for purposes of section 4958. W has had annual gross receipts ranging from $400,000 to $800,000 over its past three taxable years. In determining the next year's compensation for W's artistic director, the board of directors of W relies on data compiled from a telephone survey of three other unrelated repertory theaters of similar size in similar communities. A member of the board drafts a brief written summary of the annual compensation information obtained from this informal survey. The annual compensation information obtained in the telephone survey is appropriate data as to comparability.

(3) *Documentation*—(i) For a decision to be documented adequately, the written or electronic records of the authorized body must note—

(A) The terms of the transaction that was approved and the date it was approved;

(B) The members of the authorized body who were present during debate on the transaction that was approved and those who voted on it;

(C) The comparability data obtained and relied upon by the authorized body and how the data was obtained; and

(D) Any actions taken with respect to consideration of the transaction by anyone who is otherwise a member of the authorized body but who had a conflict of interest with respect to the transaction.

(ii) If the authorized body determines that reasonable compensation for a specific arrangement or fair market value in a specific property transfer is higher or lower than the range of comparability data obtained, the authorized body must record the basis for its determination. For a decision to be documented concurrently, records must be prepared before the later of the next meeting of the authorized body or 60 days after the final action or actions of the authorized body are taken. Records must be reviewed and approved by the authorized body as reasonable, accurate and complete within a reasonable time period thereafter.

(d) *No presumption with respect to non-fixed payments until amounts are determined*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, in the case of a payment that is not a fixed payment (within the meaning of § 53.4958–4T(a)(3)(ii)), the rebuttable presumption of this section arises only after the exact amount of the payment is determined, or a fixed formula for calculating the payment is specified, and the three requirements for the presumption under paragraph (a) of this section subsequently are satisfied. See § 53.4958–4T(b)(2)(i).

(2) *Special rule for certain non-fixed payments subject to a cap.* If the authorized body approves an employment contract with a disqualified person that includes a non-fixed payment (such as a discretionary bonus) subject to a specified cap, the authorized body may establish a rebuttable presumption with respect to the non-fixed payment at the time the employment contract is entered into if—

(i) Prior to approving the contract, the authorized body obtains appropriate comparability data indicating that a fixed payment of up to a certain amount to the particular disqualified person would represent reasonable compensation;

(ii) The maximum amount payable under the contract (taking into account both fixed and non-fixed payments) does not exceed the amount referred to in paragraph (d)(2)(i) of this section; and

(iii) The other requirements for the rebuttable presumption of reasonableness under paragraph (a) of this section are satisfied.

(e) *No inference from absence of presumption.* The fact that a transaction between an applicable tax-exempt organization and a disqualified person is not subject to the presumption described in this section neither creates any inference that the transaction is an excess benefit transaction, nor exempts or relieves any person from compliance with any federal or state law imposing any obligation, duty, responsibility, or other standard of conduct with respect to the operation or administration of any applicable tax-exempt organization.

(f) *Period of reliance on rebuttable presumption.* Except as provided in paragraph (d) of this section with respect to non-fixed payments, the rebuttable presumption applies to all payments made or transactions completed in accordance with a contract, provided that the provisions of paragraph (a) of this section were met at the time the parties entered into the contract.

§ 53.4958–7T Correction (temporary).

(a) *In general.* An excess benefit transaction is corrected by undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the applicable tax-exempt organization involved in the excess benefit transaction in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards. Paragraph (b) of this section describes the acceptable forms of correction. Paragraph (c) of this section defines the correction amount. Paragraph (d) of this section describes correction where a contract has been partially performed. Paragraph (e) of this section describes correction where the applicable tax-exempt organization involved in the transaction has ceased to exist or is no longer tax-exempt. Paragraph (f) of this section provides examples illustrating correction.

(b) *Form of correction*—(1) *Cash or cash equivalents.* Except as provided in paragraphs (b)(3) and (4) of this section, a disqualified person corrects an excess benefit only by making a payment in cash or cash equivalents, excluding payment by a promissory note, to the applicable tax-exempt organization equal to the correction amount, as defined in paragraph (c) of this section.

(2) *Anti-abuse rule.* A disqualified person will not satisfy the requirements of paragraph (b)(1) of this section if the Commissioner determines that the disqualified person engaged in one or more transactions with the applicable tax-exempt organization to circumvent the requirements of this correction section, and as a result, the disqualified person effectively transferred property other than cash or cash equivalents.

(3) *Special rule relating to nonqualified deferred compensation.* If an excess benefit transaction results, in whole or in part, from the vesting (as described in § 53.4958–1T(e)(2)) of benefits provided under a nonqualified deferred compensation plan, then, to the extent that such benefits have not yet been distributed to the disqualified person, the disqualified person may correct the portion of the excess benefit resulting from such undistributed deferred compensation by relinquishing any right to receive such benefits (including any earnings thereon).

(4) *Return of specific property*—(i) *In general.* A disqualified person may, with the agreement of the applicable tax-exempt organization, make a payment by returning specific property previously transferred in the excess benefit transaction. In this case, the disqualified person is treated as making a payment equal to the lesser of—

(A) The fair market value of the property determined on the date the property is returned to the organization; or

(B) The fair market value of the property on the date the excess benefit transaction occurred.

(ii) *Payment not equal to correction amount.* If the payment described in paragraph (b)(4)(i) of this section is less than the correction amount (as described in paragraph (c) of this section), the disqualified person must make an additional cash payment to the organization equal to the difference. Conversely, if the payment described in paragraph (b)(4)(i) of this section exceeds the correction amount (as described in paragraph (c) of this section), the organization may make a cash payment to the disqualified person equal to the difference.

(iii) *Disqualified person may not participate in decision.* Any disqualified person who received an excess benefit from the excess benefit transaction may not participate in the applicable tax-exempt organization's decision whether to accept the return of specific property under paragraph (b)(4)(i) of this section.

(c) *Correction amount.* The correction amount with respect to an excess benefit transaction equals the sum of the excess benefit (as defined in § 53.4958–1T(b)) and interest on the excess benefit. The amount of the interest charge for purposes of this section is determined by multiplying the excess benefit by an interest rate, compounded annually, for the period from the date the excess benefit transaction occurred (as defined in § 53.4958–1T(e)) to the date of correction. The interest rate used for this purpose must be a rate that equals or exceeds the applicable Federal rate (AFR), compounded annually, for the month in which the transaction occurred. The period from the date the excess benefit transaction occurred to the date of correction is used to determine whether the appropriate AFR is the Federal short-term rate, the Federal mid-term rate, or the Federal long-term rate. See section 1274(d)(1)(A).

(d) *Correction where contract has been partially performed.* If the excess benefit transaction arises under a contract that has been partially performed, termination of the contractual relationship between the organization and the disqualified person is not required in order to correct. However, the parties may need to modify the terms of any ongoing contract to avoid future excess benefit transactions.

(e) *Correction in the case of an applicable tax-exempt organization that has ceased to exist, or is no longer tax-exempt*—(1) *In general.* A disqualified person must correct an excess benefit transaction in accordance with this paragraph where the applicable tax-exempt organization that engaged in the transaction no longer exists or is no longer described in section 501(c)(3) or (4) and exempt from tax under section 501(a).

(2) *Section 501(c)(3) organizations.* In the case of an excess benefit transaction with a section 501(c)(3) applicable tax-exempt organization, the disqualified person must pay the correction amount, as defined in paragraph (c) of this section, to another organization described in section 501(c)(3) and exempt from tax under section 501(a) in accordance with the dissolution clause contained in the constitutive documents of the applicable tax-exempt organization involved in the excess benefit transaction, provided that the other organization is not related to the disqualified person.

(3) *Section 501(c)(4) organizations.* In the case of an excess benefit transaction with a section 501(c)(4) applicable tax-exempt organization, the disqualified person must pay the correction amount, as defined in paragraph (c) of this section, to a successor section 501(c)(4) organization or, if no tax-exempt successor, to any section 501(c)(3) or other section 501(c)(4) organization not related to the disqualified person.

(f) *Examples.* The following examples illustrate the principles of this section describing the requirements of correction:

Example 1. W is an applicable tax-exempt organization for purposes of section 4958. D is a disqualified person with respect to W. W employed D in 1999 and made payments totaling *$12t* to D as compensation throughout the taxable year. The fair market value of D's services in 1999 was *$7t.* Thus, D received excess compensation in the amount of *$5t,* the excess benefit for purposes of section 4958. In accordance with § 53.4958–1T(e)(1), the excess benefit transaction with respect to the series of compensatory payments during 1999 is deemed to occur on December 31, 1999, the last day of D's taxable year. In order to correct the excess benefit transaction on June 30, 2002, D must pay W, in cash or cash equivalents, excluding payment with a promissory note, *$5t* (the excess benefit) plus interest on *$5t* for the period from the date the excess benefit transaction occurred to the date of correction (*i.e.,* December 31, 1999, to June 30, 2002). Because this period is not more than three years, the interest rate D must use to determine the interest on the excess benefit must equal or exceed the short-term AFR, compounded annually, for December, 1999 (5.74%, compounded annually).

Example 2. X is an applicable tax-exempt organization for purposes of section 4958. B is a disqualified person with respect to X. On January 1, 2000, B paid X *$6v* for Property F. Property F had a fair market value of *$10v* on January 1, 2000. Thus, the sales transaction on that date provided an excess benefit to B in the amount of *$4v.* In order to correct the excess benefit on July 5, 2005, B pays X, in cash or cash equivalents, excluding payment with a promissory note, *$4v* (the excess benefit) plus interest on *$4v* for the period from the date the excess benefit transaction occurred to the date of correction (*i.e.,* January 1, 2000, to July 5, 2005). Because this period is over three but not over nine years, the interest rate B must use to determine the interest on the excess benefit must equal or exceed the mid-term AFR, compounded annually, for January, 2000 (6.21%, compounded annually).

Example 3. The facts are the same as in *Example 2,* except that B offers to return Property F. X agrees to accept the return of Property F, a decision in which B does not participate. Property F has declined in value since the date of the excess benefit transaction. On July 5, 2005, the property has

a fair market value of *$9v.* For purposes of correction, B's return of Property F to X is treated as a payment of *$9v,* the fair market value of the property determined on the date the property is returned to the organization. If *$9v* is greater than the correction amount (*$4v* plus interest on *$4v* at a rate that equals or exceeds 6.21%, compounded annually, for the period from January 1, 2000, to July 5, 2005), then X may make a cash payment to B equal to the difference.

Example 4. The facts are the same as in *Example 3,* except that Property F has increased in value since January 1, 2000, the date the excess benefit transaction occurred, and on July 5, 2005, has a fair market value of *$13v.* For purposes of correction, B's return of Property F to X is treated as a payment of *$10v,* the fair market value of the property on the date the excess benefit transaction occurred. If *$10v* is greater than the correction amount (*$4v* plus interest on *$4v* at a rate that equals or exceeds 6.21%, compounded annually, for the period from January 1, 2000, to July 5, 2005), then X may make a cash payment to B equal to the difference.

Example 5. The facts are the same as in *Example 2.* Assume that the correction amount B paid X in cash on July 5, 2005, was *$5.58v.* On July 4, 2005, X loaned *$5.58v* to B, in exchange for a promissory note signed by B in the amount of *$5.58v,* payable with interest at a future date. These facts indicate that B engaged in the loan transaction to circumvent the requirement of this section that (except as provided in paragraph (b)(3) or (4) of this section), the correction amount must be paid only in cash or cash equivalents. As a result, the Commissioner may determine that B effectively transferred property other than cash or cash equivalents, and therefore did not satisfy the correction requirements of this section.

§ 53.4958–8T Special rules (temporary).

(a) *Substantive requirements for exemption still apply.* Section 4958 does not affect the substantive standards for tax exemption under section 501(c)(3) or (4), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual. Thus, regardless of whether a particular transaction is subject to excise taxes under section 4958, existing principles and rules may be implicated, such as the limitation on private benefit. For example, transactions that are not subject to section 4958 because of the initial contract exception described in § 53.4958–4T(a)(3) may, under certain circumstances, jeopardize the organization's tax-exempt status.

(b) *Interaction between section 4958 and section 7611 rules for church tax inquiries and examinations.* The procedures of section 7611 will be used in initiating and conducting any inquiry or examination into whether an excess benefit transaction has occurred between a church and a disqualified person. For purposes of this rule, the reasonable belief required to initiate a church tax inquiry is satisfied if there is a reasonable belief that a section 4958 tax is due from a disqualified person with respect to a transaction involving a church. See § 301.7611–1 Q&A 19 of this chapter.

(c) *Three year duration of these temporary regulations.* Sections 53.4958–1T through 53.4958–8T will cease to apply on January 9, 2004.

§ 53.4963–1 [Amended]

Par. 3. In § 53.4963–1, paragraphs (a), (b), and (c) are amended by adding the reference ''4958,'' immediately after the reference ''4955,'' in each place it appears.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

§ 301.6213–1 [Amended]

Par. 5. In § 301.6213–1, paragraph (e) is amended by adding the reference ''4958,'' immediately after the reference ''4955,'' in the first sentence.

§ 301.6501(e)–1 [Amended]

Par. 6. Section 301.6501(e)–1 is amended as follows:

1. Paragraph (c)(3)(ii), first and second sentences are amended by removing the language ''or trust'' and adding ''trust, or other organization'' in its place.

2. Paragraph (c)(3)(ii), the first sentence is amended by removing the language ''and 4953'' and adding ''4953, and 4958'' in its place.

§ 301.6501(n)–1 [Amended]

Par. 7. Section 301.6501(n)-1 is amended as follows:

1. The paragraph heading for paragraph (a) is amended by removing the language ''or trust'' and adding ''trust, or other organization'' in its place.

2. Paragraph (a)(1), the first sentence is amended by removing the language ''or trust'' and adding ''trust, or other organization'' in its place.

3. Paragraph (b), the heading and the first sentence are amended by removing the language ''or trust'' and adding ''trust, or other organization'' in its place.

§ 301.7422–1 [Amended]

Par. 8. In § 301.7422–1, paragraph (a) introductory text, paragraph (c) introductory text and paragraph (d) are amended by adding the reference ''4958,'' immediately after the reference ''4955,''.

§ 301.7454–2 [Amended]

Par. 9. In § 301.7454–2, paragraph (a) is amended by adding the language ''or whether an organization manager (as defined in section 4958(f)(2) has ''knowingly'' participated in an excess benefit transaction (as defined in section 4958(c),'' immediately after ''4945''.

§ 301.7611–1 [Amended]

Par. 10. In § 301.7611–1, the Table of contents is amended by:

1. Adding ''Application to Section 4958. . . . . 19'' immediately after ''Effective Date. . . . . 18''.

2. Adding an undesignated centerheading and Q–19 and A–19 at the end of the section to read as follows:

§ 301.7611–1 Questions and answers relating to church tax inquiries and examinations.

* * * * *

Application to Section 4958

Q–19: When do the church tax inquiry and examination procedures described in section 7611 apply to a determination of whether there was an excess benefit transaction described in section 4958?

A–19: See § 53.4958–7(b) of this chapter for rules governing the interaction between section 4958 excise taxes on excess benefit transactions and section 7611 church tax inquiry and examination procedures.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
53.4958–6T	1545–1623
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 19, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 01–256 Filed 1–9–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53 and 301

[REG–246256–96]

RIN 1545–AY65

Excise Taxes on Excess Benefit Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code (Code), as well as certain amendments and additions to existing Income Tax Regulations affected by section 4958. Section 4958 was enacted in section 1311 of the Taxpayer Bill of Rights 2. Section 4958 generally is effective for transactions occurring on or after September 14, 1995.

Section 4958 imposes excise taxes on transactions that provide excess economic benefits to disqualified persons of public charities and social welfare organizations (referred to as applicable tax-exempt organizations). Disqualified persons who benefit from an excess benefit transaction with an applicable tax-exempt organization are liable for a tax of 25 percent of the excess benefit. Such persons are also liable for a tax of 200 percent of the excess benefit if the excess benefit is not corrected by a certain date. Additionally, organization managers who participate in an excess benefit transaction knowingly, willfully, and without reasonable cause, are liable for a tax of 10 percent of the excess benefit. The tax for which participating organization managers are liable cannot exceed $10,000 for any one excess benefit transaction.

DATES: Written comments and requests for a public hearing must be received by April 10, 2001. In addition to any comments addressing substantive issues of the proposed regulations, the IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–246256–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–246256–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/prod/tax_regs/comments.html.* A public hearing will be scheduled if requested.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Guy Traynor, (202) 622–7180; concerning the regulations, Phyllis D. Haney, (202) 622–4290 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these proposed regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1623, in conjunction with the notice of proposed rulemaking published August 4, 1998, 63 FR 41486, REG–246256–96, Failure by Certain Charitable Organizations to Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to the 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.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

An initial regulatory flexibility analysis was prepared as required for the collection of information under 5 U.S.C. 603 in the notice of proposed rulemaking, REG–246256–96, Failure by Certain Charitable Organizations to Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions, published August 4, 1998, at 63 FR 41486. The initial analysis was submitted to the Chief Counsel for Advocacy of the Small Business Administration pursuant to section 7805(f) of the Code for comment on its impact on business. The initial analysis continues to apply to this proposed rule. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Phyllis D. Haney, Office of Division Counsel/Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements, Trusts and trustees.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Accordingly, 26 CFR Parts 53 and 301 are proposed to be amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Sections 53.4958–0 through 53.4958–8 are added to read as follows: [The text of proposed §§ 53.4958–0 through 53.4958–8 is the same as the text of § 53.4958–0T through 53.4958–8T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–257 Filed 1–9–01; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Wednesday,
January 10, 2001

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 405 and 406
Civil Penalty Actions in Commercial Space Transportation; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 405 and 406

[Docket No. FAA–2001–8607; Amendment Nos. 405–2 406–2]

RIN 2120–AH18

Civil Penalty Actions in Commercial Space Transportation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: These rules amend the procedures for assessment and adjudication of civil penalties in space transportation. The current part 406 provides little guidance for respondents and the FAA in the prosecution of civil penalties. These new rules provide more detail on the procedures the FAA uses to assess civil penalties and on the respondents' rights to adjudication. These rules also provide more detailed procedures to be used in the adjudication. They are intended to provide more clarity and certainty to the civil penalty process.

DATES: These rules become effective February 9, 2001. Comments must be received on or before February 9, 2001.

ADDRESSES: Address your comments to the Docket Management System (DMS), U.S. Department of Transportation, Room Plaza Level 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number ''FAA–2001–8607'' at the beginning of your comments, and you must submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mardi Ruth Thompson, Office of the Chief Counsel (AGC–200A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3073, facsimile (202) 267–5106, or e-mail: mardi.thompson@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2001–8607.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9–AWA–SBREFA@faa.gov.

Background

The statute under which the Secretary of the Department of Transportation regulates commercial space transportation, 49 U.S.C. subtitle IX—ch. 701, sections 70101–70121, (the Act) provides for the Department to impose civil penalties if a person is found to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act. The person must have notice and an opportunity for a hearing on the record. 49 U.S.C. 70115(c). All authority under the Act has been delegated to the Administrator of the FAA, who has delegated the authority to the Associate Administrator for Commercial Space Transportation.

Currently 14 CFR 405.7 provides the procedures for the FAA to impose civil penalties. That section and 14 CFR part 406 provide summary procedures for hearings before an administrative law judge. These rules do not provide clear or detailed procedures as to how to proceed. They do not state, for instance, what opportunities the person who is charged with a violation (the respondent) has to respond to the charges before an order is issued, how or when the respondent must request a hearing, how discovery may be

conducted, or other procedures that assist the parties in presenting their positions. These new rules provide more clarity and detail to assist the parties.

Part Analysis

This rulemaking partly consolidates parts 405 and 406 into one part, part 406. To that end, § 405.7 is removed and new § 406.9 is added. Section 406.9 states in detail how civil penalties are imposed. In accordance with 49 U.S.C. 70115(c), it states that a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $100,000, as adjusted for inflation. A separate violation occurs for each day the violation continues. This section is modeled on three current aviation rules: 14 CFR 13.16, which the FAA uses to assess civil penalties in certain aviation cases; 14 CFR 13.19, which the FAA uses to suspend and revoke aviation certificates such as pilot and air carrier operating certificates; and 14 CFR 13.29, which provides for streamlined civil penalty procedures for certain security violations.

Section 406.9 provides for an agency attorney to issue a notice of proposed civil penalty to the respondent. The respondent has several options, including informal procedures in which the respondent provides information and views in writing or at an informal conference. If it appears that a civil penalty continues to be warranted after the informal procedures, the agency attorney issues a final notice of proposed civil penalty. This is the final opportunity for the respondent to request a hearing in front of an administrative law judge. If the respondent requests a hearing the adjudication is conducted under part 406 subpart B.

Section 406.9 also provides for a compromise order to be issued if agreed to by the agency attorney and the respondent. Under a compromise order the respondent agrees to pay a civil penalty and the agency agrees not to make a finding of violation.

If a final notice of proposed civil penalty is issued and the respondent does not timely appeal, the civil penalty becomes final and is imposed. If the respondent does not pay the imposed civil penalty the agency will refer it to the Department of Treasury or the Department of Justice for collection.

Part 406 Subpart B—Rules of Practice in FAA Space Transportation Adjudication's

This new subpart provides the procedures for a hearing before an administrative law judge. This subpart is based largely on 14 CFR part 13 subpart G, under which certain FAA aviation civil penalty cases are adjudicated. Decisions of the FAA decisionmaker in those cases may provide guidance as to the meaning of these new rules. This subpart is now written only for use in civil penalty actions, but the FAA may later expand these provisions to provide for adjudication of license determinations.

Under these rules the respondent may have a hearing before an administrative law judge. The rules provide for a complaint and answer, motions, and discovery. They provide time limits for various pleadings and state how filing and service of documents must be done. They state the powers and duties of the administrative law judge. *See* §§ 406.109, 406.113, 406.115, 406.127, 406.141, and 406.143.

Section 406.105 Separation of Functions for Prosecuting Civil Penalties and Advising the FAA Decisionmaker

Because the FAA decisionmaker is an FAA official, the FAA separates the functions of the personnel who investigate and prosecute the civil penalty and those who advise the FAA decisionmaker on appeal. *See* § 406.103 (definitions of agency attorney and complainant) and § 406.105 (separation of functions). Before a civil penalty action is initiated the Associate Administrator may receive investigation reports and advice from FAA staff, and may determine whether to initiate a civil penalty action. After the agency attorney initiates a civil penalty action by issuing a notice of proposed civil penalty, the Associate Administrator does not participate in the case unless and until the case is appealed to the FAA decisionmaker under § 406.173 or § 406.175. An administrative law judge at the Department of Transportation, who is independent from the FAA and the Associate Administrator, hears the case.

Either party may appeal from the administrative law judge's decision to the FAA decisionmaker, who is the Associate Administrator, or, for cases where the Associate Administrator is recused or for aviation issues, the FAA Administrator. The FAA decisionmaker bases its decision on appeal on the record, the briefs, and any oral argument. *See* § 406.175. Unless the decisionmaker's order is timely appealed, it becomes an order imposing civil penalty if the FAA decisionmaker finds that the alleged violation occurred and a civil penalty is warranted. *See* § 406.9(e)(1)(iv).

The FAA Chief Counsel, the Assistant Chief Counsel for Litigation, and attorneys on the staff of the Assistant Chief Counsel for Litigation advise the FAA decisionmaker. These advisors do not participate in the investigation or prosecution of civil penalties. *See* § 406.105.

Section 406.109 Administrative Law Judge—Powers and Limitations

The administrative law judge may make findings of fact and conclusions of law, and issue an initial decision. *See* § 406.109(a)(9). If the administrative law judge finds that a violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted, and if no one files a timely appeal, the initial decision becomes an order imposing civil penalty. *See* § 406.9(e)(1)(iii).

Section 406.113 Filing of Documents With the Docket Management System (DMS), and Sending Documents to the Administrative Law Judge and Assistant Chief Counsel for Litigation

Section 406.113 states how documents must be filed. It requires paper filing with the DOT Docket Management System (DMS), an electronic docket that handles many DOT adjudication and rulemaking dockets. Documents are scanned in to DMS and indexed so that both the index and scanned documents are available through the Internet. The parties must mail or personally deliver documents to DMS. Mailing includes U.S. mail and an express courier service. *See* § 406.103 (definition of mail).

The FAA contemplates that the parties will file paper documents, with original signatures, see § 406.111 and that these are then scanned into DMS. DMS does have the capability to accept documents filed by electronic submission as well, and does so for such matters as comments on FAA rulemaking. The instructions for using DMS may be found at http://dms.dot.gov. These rules do not however, provide for electronic filing of documents in space transportation adjudications. We request comments as to whether parties should be permitted to file documents electronically in space transportation adjudications, and if so, how the requirement for a signature found in § 406.111 should be handled.

Section 406.117 Confidential Information

Section 406.117 provides for non-disclosure of certain information. The Act prohibits public disclosure of information that qualifies for an exemption under 5 U.S.C. 552(b)(4) (trade secrets and commercial or financial information obtained from a person and privileged or confidential) or information that is designated as confidential by the person or head of the executive agency providing the information, unless the FAA decides that withholding the information is contrary to the public or national interest. 49 U.S.C. 70114. The rules for applying for a launch license, for instance, provide a method for applicants to claim confidentiality of information they submit. *See* § 413.9. New § 406.117 provides that a party may move for a protective order to prevent release of such information to the public. If both parties agree that the information must be protected under the Act, the administrative law judge must grant the motion to protect the information.

Delegations to the Chief Counsel and the Assistant Chief Counsel for Litigation

The Associate Administrator delegates to the Chief Counsel and the Assistant Chief Counsel for Litigation certain functions. The delegation is designed to eliminate the need for the Associate Administrator to review and consider minor, procedural or unopposed matters.

Under 49 U.S.C. 322(b) and 14 CFR 406.105, the Associate Administrator for Commercial Space Transportation hereby delegates to the Chief Counsel and the Assistant Chief Counsel for Litigation the authority of the FAA decisionmaker in all actions brought under 14 CFR 406.9 and part 406 subpart B as follows:

a. To grant or deny extensions of time to file briefs, petitions for reconsideration, motions, and replies to petitions for reconsideration and motions; to grant or deny motions to file additional briefs; and to approve or disapprove other deviations from, or requests for changes in, procedural requirements;

b. To correct typographical, grammatical and similar errors in the FAA decisionmaker's orders, and to make editorial changes in those orders that do not involve substantive matters;

c. To issue orders dismissing appeals from initial decisions upon request of the appellant, or due to the withdrawal of the complaint; to grant or deny motions to dismiss appeals from initial decisions, or to issue orders *sua sponte* for failure to file a timely appeal or failure to perfect an appeal;

d. To stay the effectiveness of decisions and orders pending reconsideration by the FAA decisionmaker;

e. To issue orders staying, pending judicial review, orders of the FAA decisionmaker;

f. To dismiss summarily petitions to reconsider or modify that are repetitious or frivolous;

g. To issue orders construing notices of appeal or other documents that meet the requirements for appeal briefs as appeal briefs, and to set a date for the filing of a reply brief.

The Chief Counsel or the Assistant Chief Counsel for Litigation may redelegate the authority set forth above to the Manager, Adjudications Branch.

Section 406.147: Notice of Hearing

It is possible for a single incident to involve alleged violations of both the commercial space transportation rules (14 CFR Ch. III, parts 400 through 1199) and the FAA's aviation rules (14 CFR Ch. I, parts 1 through 199). For instance, there may be a launch in violation of the commercial space transportation licensing requirements and in violation of air traffic control regulations. Hearings for civil penalty actions as to the former would be handled under part 406, and hearings for civil penalty actions as to the latter would be handled under 14 CFR part 13 subpart G. The same office of administrative law judges at the Department of Transportation hears the cases, however. In the interest of judicial economy, § 406.147(d) makes clear that with the consent of the administrative law judge, the parties may agree to hold the hearing, or parts of the hearing, together with a hearing under 14 CFR part 13 subpart G if the cases involve some common issues of fact. In such a case the agency attorney would request that the same administrative law judge be assigned to hear both the aviation and the space case. The judge would issue one decision, and there would be one appeal to the FAA decisionmaker. The Administrator would serve as the FAA decisionmaker, with advice from the Associate Administrator for Commercial Space Transportation. Judicial review would be separated, however. For commercial space cases, judicial review is with the United States district court. For aviation cases, judicial review is with the United States court of appeals. Consolidating the hearing phase and the FAA decisionmaker phase may be beneficial to the parties, the administrative law judge, and the FAA decisionmaker, and will reduce the chance that the same questions of fact will be decided differently.

Section 406.179: Judicial Review of a Final Decision and Order

A respondent may appeal the FAA decisionmaker's final decision and order to the United States district court under 5 U.S.C. chapter 7 and 28 U.S.C. 1331.

Justification for Adoption of Rule With No Prior Notice

These are purely procedural rules to govern the initiation of civil penalty actions and hearings on the record. As such, they are not required to be adopted with prior notice and comment. However, the FAA recognizes that public comments enhance the rulemaking process. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire, in accordance with the instructions above under ''Comments Invited.''

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these

analyses, the FAA has determined that this rule is not a ''significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. The FAA invites the public to provide comments, and supporting data, on the assumptions made in this evaluation. All comments received will be considered in determining whether to amend this regulatory evaluation.

A full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule that is presented in the following paragraphs.

This rulemaking provides more detailed guidance for the parties as to how civil penalties are imposed. The rules state the respondent's opportunities to respond informally to a notice of proposed civil penalty, the manner for conducting discovery, how relief may be sought by motions, how filing and service are done, and other details of imposing and adjudicating civil penalties.

Costs

There are no costs associated with this rulemaking. The changes do not impose any new economic requirements on the affected parties. The rules clarify the options for the respondent to respond to a proposed civil penalty. They also clarify the procedures used if an administrative law judge hears a matter. Respondents are not required to take any additional action based on these rules. Rather, these rules set out in detail their options, which they may choose to take advantage of or not.

Benefits

These rules will result in some unquantified cost savings to the agency and the respondents by making clear what procedures apply in civil penalty cases. The rules make clear that the respondent may respond informally before requesting a hearing, potentially increasing the opportunity to resolve the matter at lower cost to both parties. If the matter proceeds to adjudication before an administrative law judge, these rules govern such matters as the content of the complaint and answer, motions, discovery, and subpoenas. They will assist both parties in preparing the matter for hearing. Without these new rules the parties might spend additional time litigating such issues before the administrative law judge and the FAA decisionmaker. Having the new detailed rules, rather than the current summary rules, is likely to result in more certainty and less potential for litigation over how such matters should be handled.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determinations is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As discussed above, there are no costs imposed by this rulemaking. There are unquantified benefits associated with this rulemaking. For this reason, the FAA certifies that there is not a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will not impose any costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

These 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. Therefore, in accordance with Executive Order 12612, it is determined that this rulemaking will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the UMR Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMR Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMR Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMR Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rulemaking does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(i), regulatory documents which cover administrative or procedural requirements, as this rulemaking does, qualify for a categorical exclusion.

Energy Impact

The energy impact of this rulemaking has been assessed in accordance with section 6362 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6362 and FAA Order 1053.1. It has been determined that the EPCA does not apply to this rulemaking.

List of Subjects

14 CFR Part 405

Investigations, Penalties, Rockets, Space transportation and exploration.

14 CFR Part 406

Administrative practice and procedure, Confidential business information, Investigations, Penalties, Rockets, Space transportation and exploration.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 405 and 406 of chapter III, title 14, Code of Federal Regulations as follows:

PART 405—INVESTIGATIONS AND ENFORCEMENT

1. The authority citation for part 405 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

§ 405.7 [Removed]

2. Remove § 405.7.

3. Revise part 406 to read as follows:

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

Subpart A—Investigations and Enforcement

Sec.
406.1 Hearings in license and payload actions.
406.3 Submissions; oral presentation in license and payload actions.
406.5 Administrative law judge's recommended decision in license and payload actions.
406.7 [Reserved]
406.9 Civil Penalties.
406.10–406.100 [Reserved]

Subpart B—Rules of Practice in FAA Space Transportation Adjudications

406.101 Applicability.
406.103 Definitions that apply in part 406.
406.105 Separation of functions for prosecuting civil penalties and advising the FAA decisionmaker.
406.107 Appearances of parties, and attorneys and representatives.
406.109 Administrative law judges—powers and limitations.
406.111 Signing documents.
406.113 Filing of documents with the Docket Management System (DMS) and sending documents to the administrative law judge and Assistant Chief Counsel for Litigation.
406.115 Serving documents on other parties.
406.117 Confidential information.
406.119 Computation of time.
406.121 Extension of time.
406.123 Waivers.
406.127 Complaint and answer in civil penalty adjudications.
406.133 Amendment of pleadings.
406.135 Withdrawal of complaint or request for hearing.
406.137 Intervention.
406.139 Joint procedural or discovery schedule.
406.141 Motions.
406.143 Discovery.
406.147 Notice of hearing.
406.149 Evidence.
406.151 Standard of proof.
406.153 Burden of proof.
406.155 Offer of proof.
406.157 Expert or opinion witnesses.
406.159 Subpoenas.
406.161 Witness fees.
406.163 Record.
406.165 Argument before the administrative law judge.
406.167 Initial decision.
406.173 Interlocutory appeals.
406.175 Appeal from initial decision.
406.177 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.
406.179 Judicial review of a final decision and order.

Authority: 49 U.S.C. 70101–70121.

Subpart A—Investigations and Enforcement

§ 406.1 Hearings in license and payload actions.

(a) Pursuant to 49 U.S.C. 70110, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with 5 U.S.C. 554.

(1) An applicant for a license and a proposed transferee of a license regarding any decision to issue or transfer a license with conditions or to deny the issuance or transfer of such license;

(2) An owner or operator of a payload regarding any decision to prevent the launch or reentry of the payload; and

(3) A licensee regarding any decision to suspend, modify, or revoke a license or to terminate, prohibit, or suspend any licensed activity therefore.

(b) An administrative law judge will be designated to preside over any hearing held under this part.

§ 406.3 Submissions; oral presentation in license and payload actions.

(a) Determinations in license and payload actions under this subpart will be made on the basis of written submissions unless the administrative law judge, on petition or on his or her own initiative, determines that an oral presentation is required.

(b) Submissions shall include a detailed exposition of the evidence or arguments supporting the petition.

(c) Petitions shall be filed as soon as practicable, but in no event more than 30 days after issuance of decision or finding under § 406.1.

§ 406.5 Administrative law judge's recommended decision in license and payload actions.

(a) The Associate Administrator, who shall make the final decision on the matter at issue, shall review the recommended decision of the administrative law judge. The Associate Administrator shall make such final decision within thirty days of issuance of the recommended decision.

(b) The authority and responsibility to review and decide rests solely with the Associate Administrator and may not be delegated.

§ 406.7 [Reserved]

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 49 U.S.C. 70115(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $100,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

(b) *Delegations.* The authority to impose civil penalties is exercised by an agency attorney as described in § 406.105.

(c) *Notice of proposed civil penalty.* A civil penalty action is initiated when the agency attorney advises a person, referred to as the respondent, of the charges or other reasons upon which the FAA bases the proposed action and allows the respondent to answer the charges and to be heard as to why the

civil penalty should not be imposed. A notice of proposed civil penalty states the facts alleged; any requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act allegedly violated by the respondent; and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty the respondent may elect to proceed by one or more of the following:

(1) Pay the amount of the proposed civil penalty or an agreed upon amount, in which case the agency attorney will issue either an order imposing civil penalty or a compromise order in that amount.

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witnesses statements, demonstrating that a violation did not occur or that a penalty, or the amount of the proposed penalty, is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any document supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information.

(3) Request that a final notice of proposed civil penalty be issued so that the respondent may request a hearing in accordance with paragraph (g) of this section.

(d) *Final notice of proposed civil penalty*. A final notice of proposed civil penalty (final notice) provides the last opportunity for the respondent to request a hearing.

(1) The agency attorney issues a final notice if one of the following occurs:

(i) The respondent fails to respond to the notice of proposed civil penalty not later than 30 days after the date the respondent received the notice of proposed civil penalty.

(ii) The parties have not agreed to a resolution of the action after participating in informal procedures under paragraph (c)(2) of this section.

(iii) The respondent requests the issuance of a final notice in accordance with paragraph (c)(3) of this section.

(2) Not later than 15 days after the date the respondent received the final notice of proposed civil penalty, the respondent shall do one of the following:

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case the agency attorney issues either an order imposing civil penalty or a compromise order in that amount.

(ii) Request a hearing in accordance with paragraph (g) of this section.

(e) *Order imposing civil penalty*. An order imposing civil penalty is the final order of the Secretary imposing a civil penalty. An order imposing civil penalty is issued for a violation described in paragraph (a) of this section after notice and an opportunity for a hearing.

(1) The agency attorney either issues an order imposing civil penalty, or another document becomes an order imposing civil penalty, as described below.

(i) The agency attorney issues an order imposing civil penalty if, in response to a notice of proposed civil penalty or a final notice of proposed civil penalty, the respondent pays or agrees to pay a civil penalty in the amount proposed or an agreed upon amount (other than an agreement for a compromise order under paragraph (f) of this section).

(ii) Unless the respondent requests a hearing not later than 15 days after the date the respondent received a final notice of proposed civil penalty, the final notice of proposed civil penalty becomes an order imposing civil penalty.

(iii) Unless an appeal is filed with the FAA decisionmaker in accordance with § 406.175, if the administrative law judge finds that a violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted, an initial decision of an administrative law judge under subpart B of this part becomes an order imposing civil penalty.

(iv) Unless a complaint is filed with a United States district court in accordance with § 406.176, if the FAA decisionmaker finds that a violation occurred and determines that a civil penalty, in an amount found appropriate by the FAA decisionmaker, is warranted, a final decision and order of the FAA decisionmaker under subpart B of this part becomes an order imposing civil penalty. If a person seeks judicial review not later than 60 days after the final decision and order has been served on the respondent, the final decision and order is stayed.

(2) [Reserved]

(f) *Compromise order*. The agency attorney at any time may agree to compromise any civil penalty with no finding of violation. Under such agreement, the agency attorney issues a compromise order stating:

(1) The respondent agrees to pay a civil penalty.

(2) The FAA makes no finding of a violation.

(3) The compromise order may not be used as evidence of a prior violation in any subsequent civil penalty action or license action.

(g) *Request for hearing*. Any respondent who has been issued a final notice of proposed civil penalty may, not later than 15 days after the date the respondent received the final notice, request a hearing under subpart B of this part.

(1) The respondent must file a written request for hearing with the Docket Management System (Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001) and must serve a copy of the request on the agency attorney. Sections 406.113 and 406.115 state how filing and service must be done.

(2) The request for hearing must be dated and signed.

(h) *Method of payment*. A respondent must pay a civil penalty by check or money order, payable to the Federal Aviation Administration.

(i) *Collection of civil penalties*. If a respondent does not pay a civil penalty imposed by an order imposing civil penalty or a compromise order within 60 days after service of the final order, the FAA may refer the order to the United States Department of Treasury or Department of Justice to collect the civil penalty.

(j) *Exhaustion of administrative remedies*. A respondent may seek judicial review of a final decision and order of the FAA decisionmaker as provided in § 406.179. A respondent has not exhausted administrative remedies for purposes of judicial review if the final order is one of the following:

(1) An order imposing civil penalty issued by an agency attorney under paragraph (e)(1)(i) of this section.

(2) A final notice of proposed civil penalty that becomes an order imposing civil penalty under paragraph (e)(1)(ii) of this section.

(3) An initial decision of an administrative law judge that was not appealed to the FAA decisionmaker.

(4) A compromise order under paragraph (f) of this section.

(k) *Compromise*. The FAA may compromise or remit a civil penalty that has been proposed or imposed under this section.

§ 406.10–406.100 [Reserved]

Subpart B—Rules of Practice in FAA Space Transportation Adjudications

§ 406.101 Applicability.

(a) *Adjudications to which these rules apply.* These rules apply to the following adjudications:

(1) A civil penalty action in which the respondent has requested a hearing under § 406.9.

(2) [Reserved]

(b) [Reserved]

§ 406.103 Definitions that apply in 14 CFR part 406.

For the purpose of this part,

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Attorney means a person licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

Complainant in a civil penalty action means the proponent of the civil penalty in the FAA.

FAA decisionmaker means the Associate Administrator for Commercial Space Transportation, or the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal; or a person who has been delegated the authority to act for the FAA decisionmaker. As used in this part, the FAA decisionmaker is the official authorized to issue a final decision and order of the Secretary in an action.

Mail means U.S. first class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

Party means the respondent or the complainant.

Personal delivery includes hand-delivery or use of a same-day messenger service. ''Personal delivery'' does not include the use of Government interoffice mail service.

Properly addressed means using an address contained in agency records; a residential, business, or other address used by a person on any document submitted under this part; or any other address determined by other reasonable and available means.

Respondent means a person who has been charged with a violation.

§ 406.105 Separation of functions for prosecuting civil penalties and advising the FAA decisionmaker.

(a) *Agency attorney.* The authority to prosecute civil penalties within the FAA is exercised by an agency attorney in accordance with § 406.9.

(1) The following officials have the authority to act as the agency attorney under this part: The Deputy Chief Counsel; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel for Regulations; the Assistant Chief Counsel for Europe, Africa, and Middle East Area Office; each Regional Counsel; and each Center Counsel. This authority may be delegated further.

(2) An agency attorney may not include:

(i) The Chief Counsel or the Assistant Chief Counsel for Litigation;

(ii) Any attorney on the staff of the Assistant Chief Counsel for Litigation who advises the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker; or

(iii) Any attorney who is supervised in a civil penalty action by a person who provides such advice to the FAA decisionmaker in that action or a factually-related action.

(b) *Advisors to the FAA decisionmaker.*

(1) The Chief Counsel, the Assistant Chief Counsel for Litigation or an attorney on the staff of the Assistant Chief Counsel for Litigation, will advise the FAA decisionmaker regarding an initial decision or any appeal of an action to the FAA decisionmaker.

(2) An agency employee engaged in the performance of investigative or prosecutorial functions must not, in that case or a factually-related case, participate or give advice in a decision by the administrative law judge or by the FAA decisionmaker on appeal, except as counsel or a witness in the public proceedings.

§ 406.107 Appearances of parties, and attorneys and representatives.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party.

(1) An attorney or representative who represents a party must file a notice of appearance in the action with the Docket Management System and must serve a copy of the notice of appearance on each other party before participating in any proceeding governed by this subpart.

(2) The attorney or representative must include his or her name, address, and telephone number in the notice of appearance.

(3) That attorney or representative in any proceeding governed by this subpart may examine the party.

(4) Service of a document on the party's attorney or representative is considered to be service on the party.

(c) An agency attorney represents the complainant.

§ 406.109 Administrative law judges—powers and limitations.

(a) *Powers of an administrative law judge.* In accordance with the rules of this subpart, an administrative law judge may:

(1) Give notice of, and hold, prehearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law and requested by the parties;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

(9) Make findings of fact and conclusions of law, and issue an initial decision.

(b) *Duties to maintain the record.* (1) The administrative law judge must file with the DMS, or instruct the party to file with the DMS, a copy of each document that is submitted to the administrative law judge that has not been filed with DMS, except the portions of those documents that contain confidential information.

(2) The administrative law judge must file with the DMS a copy of each ruling and order issued by the administrative law judge, except those portions that contain confidential information.

(3) The administrative law judge must file with the DMS, or instruct the court reporter to file with the DMS, a copy of each transcript and exhibit, except those portions that contain confidential information.

(4) The administrative law judge must maintain any confidential information filed in accordance with § 406.117 and deliver it to the Assistant Chief Counsel for Litigation when the administrative law judge no longer needs it.

(c) *Limitations on the power of the administrative law judge.* The administrative law judge may not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant to § 406.173(c). This section does not preclude an administrative law judge from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(d) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion, pursuant to § 406.141(f)(8), requesting that an administrative law judge be disqualified from the proceedings.

§ 406.111 Signing documents.

(a) *Signature required.* The party, or the party's attorney or representative, must sign each document tendered for filing or served on each party.

(b) *Effect of signing a document.* By signing a document, the party, or the party's attorney or representative, certifies that he or she has read the document and, based on reasonable inquiry and to the best of that individual's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If an individual signs a document in violation of this section, the administrative law judge or the FAA decisionmaker must:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker.

§ 406.113 Filing documents with the Docket Management System (DMS) and sending documents to the administrative law judge and Assistant Chief Counsel for Litigation.

(a) *The Docket Management System (DMS).* (1) Documents filed in a civil penalty adjudication are kept in the Docket Management System (DMS), except for documents that contain confidential information in accordance with § 406.117. The DMS is an electronic docket. Documents that are filed are scanned into the electronic docket and an index is made of all documents that have been filed so that any person may view the index and documents as provided in paragraph (f) of this section.

(2) A party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and responses with the Docket Management System or submit them to administrative law judge, except as provided in § 406.143.

(b) *Method of filing.* A person filing a document must mail or personally deliver the signed original and one copy of each document to the DMS at Docket Management System, U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001. A person must serve a copy of each document on each party in accordance with § 406.115.

(c) *Date of filing.* The date of filing is the date of personal delivery; or if mailed, the mailing date shown on any certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark. The date shown in the DMS index is not necessarily the date of service. It is the date the DMS received the document.

(d) *Form.* DMS scans the documents into its electronic docket. To ensure that DMS can scan the document and correctly identify it in the index, each person filing a document must comply with the following:

(1) Each document must be legible. It may be handwritten, typewritten, or printed from a computer.

(2) Each document must have a caption on its first page, clearly visible, with the following information:

(i) ''FAA Space Adjudication.''

(ii) Case name, such as ''In the matter of X Corporation.''

(iii) FAA Case Number and DMS docket number, if assigned.

(iv) Name of the document being filed, including the party filing the document, such as ''Respondent's Motion to Dismiss.''

(v) ''Confidential information filed with administrative law judge'' or ''Confidential information filed with Assistant Chief Counsel for Litigation'' if the party is filing confidential information under § 406.117.

(3) The document must be capable of being scanned and be easy to read both in paper form and as scanned into the electronic docket. A document that meets the following specifications is capable of being scanned using automatic feeders and is easy to read both in paper form and as scanned into the electronic docket. Documents that do not meet these specifications may not be legible.

(i) On white paper.

(ii) On paper not larger than 8½ by 11 inches.

(iii) In black ink.

(iv) Text double-spaced. Footnotes and long quotes may be single spaced.

(v) At least 12 point type.

(vi) Margins at least 1 inch on each side.

(vii) The original not bound or hole-punched, only held together with removable metal clips or the like. The copy that is filed or sent to the administrative law judge or Assistant Chief Counsel for Litigation, and the copy served on another party, need not meet this specification.

(viii) The original has no tabs. The copy that is filed or sent to the administrative law judge or Assistant Chief Counsel for Litigation, and the copy served on another party, need not meet this specification.

(e) *Sending documents to the administrative law judge or Assistant Chief Counsel for Litigation.* Sending the document directly to the administrative law judge or to the Assistant Chief Counsel for Litigation is not a substitute for filing the original with the DMS, except for confidential information under § 406.117.

(f) *Viewing and copying the record.* Any person may view and copy the record, except for confidential information, as follows:

(1) During regular business hours at the Docket Management System, U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001.

(2) Through the Internet at http://dms.dot.gov..

(3) By requesting it from the Docket Management System and paying reasonable costs.

§ 406.115 Serving documents on other parties.

(a) *Service required.* A person must serve on each other party at the time of filing a copy of any document filed with the Docket Management System. Service on a party's attorney or representative of record is adequate service on the party.

(b) *Method of service.* A person must serve documents by personal delivery or by mail.

(c) *Certificate of service.* A person may attach a certificate of service to a document filed with the DMS. Any certificate of service must include a statement, dated and signed by the individual filing the document, that the document was served on each party, the

method of service, and the date of service.

(d) *Date of service.* The date of service is the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark. The date shown in the DMS index is not necessarily the date of service. It is the date the DMS received the document.

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a specified date after service by mail, 5 days is added to the prescribed period.

(f) *Service by the administrative law judge.* The administrative law judge must serve a copy of each document including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) *Service made.* A document is deemed served in accordance with this subpart if it was properly addressed; was sent in accordance with this subpart; and was returned, not claimed, or refused. Service is considered valid as of the date and the time that the document was mailed, or personal delivery of the document was refused.

(h) *Presumption of service.* There is a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

§ 406.117 Confidential information.

(a) *Filing confidential information.* If a party wants certain information that the party is filing not made available to the public, the party must do the following:

(1) Place the information in a separate sealed envelope and clearly mark the envelope ''CONFIDENTIAL.'' At least the first page of the document in the envelope also must be marked ''CONFIDENTIAL.''

(2) Attach to this envelope a cover document marked ''Confidential information filed with administrative law judge'' or ''Confidential information filed with Assistant Chief Counsel for Litigation.'' The cover document must include, at the least, a short statement of what is being filed, such as ''Respondent's motion for confidentiality order.''

(3) Unless such a motion has already been granted, enclose a motion for confidentiality order in accordance with paragraph (c) of this section. The motion must be in the sealed envelope if it contains confidential information; otherwise the motion must be outside of the sealed envelope.

(b) *Marked information not made public.* If a party files a document in a sealed envelope clearly marked ''CONFIDENTIAL'' the document may not be made available to the public unless and until the administrative law judge or the FAA decisionmaker decides it may be made available to the public in accordance with 49 U.S.C. 70114.

(c) *Motion for confidentiality order.* If a party is filing, is requested to provide in discovery, or intends to offer at the hearing, information that the party does not wish to be available to the public, the party must file a motion for a confidentiality order.

(1) The party must state the specific grounds for withholding the information from the public.

(2) If the party claims that the information is protected under 49 U.S.C. 70114, and if both the complainant and the respondent agree that the information is protected under that section, the administrative law judge must grant the motion. If one party does not agree that the information is protected under 49 U.S.C. 70114 the administrative law judge must decide. Either party may file an interlocutory appeal of right under § 406.173(c).

(3) If the party claims that the information should be protected on grounds other than those provided by 49 U.S.C. 70114 the administrative law judge must grant the motion if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

(4) If the administrative law judge determines that the information is not necessary to decide the case or would not otherwise lead to the discovery of relevant material, the administrative law judge must preclude any inquiry into the matter by any party.

(5) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(6) If the administrative law judge determines that the requested material is necessary to decide the case, or would otherwise lead to the discovery of relevant material, and that a confidentiality order is warranted, the administrative law judge must—

(i) Provide an opportunity for review of the document by the attorneys of record off the record.

(ii) Provide procedures for excluding the information from the record, or order that portion of the record that includes confidential information be closed.

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(7) If an administrative law judge orders a record closed, in whole or in part:

(i) The closed record is not available to the public.

(ii) The closed record is available to the parties' attorneys of record.

(iii) The administrative law judge may determine whether the closed record is available to the parties, the parties' representatives, or other persons such as witnesses for a party.

(iv) No party, attorney of record, representative of record, or person who receives information from such persons, may disclose information that has been protected under this section except to a person authorized by this section or the administrative law judge to receive it.

(v) If a person other than one authorized by this section desires to view or copy a closed record, the person must file a motion to open the record.

§ 406.119 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge or the FAA decisionmaker, or by any applicable statute.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or a legal holiday. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§ 406.121 Extension of time.

Before an appeal is filed with the FAA decisionmaker, the parties may seek an extension of time as follows:

(a) *Extension of time by agreement of the parties.* The parties may agree to extend for a reasonable period the time for filing a document under this subpart

with the agreement of the administrative law judge. The party seeking the extension of time must submit a draft order to the administrative law judge for signature, file it with the Docket Management System, and serve it on each party.

(b) *Motion for extension of time.* If the parties do not agree to an extension of time for filing a document, a party desiring an extension may file with the Docket Management System and serve a written motion for an extension of time not later than 7 days before the document is due unless good cause for the late filing is shown. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) *Failure to rule.* If the administrative law judge fails to rule on a written motion for an extension of time by the date the document is due, the motion for an extension of time is granted for no more than 20 days after the original date the document was to be filed.

§ 406.123 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 406.127 Complaint and answer in civil penalty adjudications.

(a) *Complaint.*

(1) *Filing.* The complainant must file the original and one copy of the complaint with the Docket Management System, or may file a written motion pursuant to § 406.141(f)(1) instead of filing a complaint, not later than 20 days after receipt by the complainant of a request for hearing. The complainant should suggest a location for the hearing when filing the complaint.

(2) *Service.* The complainant must personally deliver or mail a copy of the complaint to the respondent, or the respondent's attorney or representative who has filed a notice of appearance in accordance with § 406.107.

(3) *Contents of complaint.* The final notice of proposed civil penalty issued under § 406.9(d) may be filed as the complaint. A complaint must set forth the following in sufficient detail to provide notice:

(i) The facts alleged.

(ii) Any requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act allegedly violated by the respondent.

(iii) The proposed civil penalty.

(b) *Answer.*—(1) *Time for filing.* The respondent must file an answer to the complaint, or may file a written motion pursuant to § 406.141(f)(2) instead of filing an answer, not later than 30 days after service of the complaint.

(2) *Form.* The answer must be in writing. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. The answer must be legible, and may be handwritten, typed, or printed from a computer.

(3) *Filing and service.* A respondent must file the answer with the Docket Management System and serve a copy of the answer on the agency attorney who filed the complaint.

(4) *Contents of answer.*—(i) *Specific denial of allegations required.* The respondent must admit, deny, or state that the respondent is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer constitutes an admission of the truth of that allegation. An administrative law judge shall treat a general denial of the complaint as a failure to file an answer.

(ii) *Affirmative defenses.* The answer must specifically state any affirmative defense that the respondent asserts.

(iii) *Request for relief.* The answer may include a brief statement of any relief requested.

(iv) *Hearing location.* The respondent should suggest a location for the hearing when filing the answer.

(5) *Failure to file answer.* A respondent's failure to file an answer without good cause constitutes an admission of the truth of each allegation contained in the complaint.

§ 406.133 Amendment of pleadings.

(a) *Time.* A party must file with the Docket Management System and serve on each other party any amendment to a complaint or an answer as follows:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(b) *Responses.* The administrative law judge must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond to an amendment to a complaint or answer.

§ 406.135 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, the complainant may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If the complainant withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

§ 406.137 Intervention.

(a) A person may file with the Docket Management System and serve on each other party a motion for leave to intervene as a party in an adjudication. Except for good cause shown, a motion for leave to intervene must be filed not later than 10 days before the hearing.

(b) The administrative law judge may grant a motion for leave to intervene if the administrative law judge finds that—

(1) Intervention will not unduly broaden the issues or delay the proceedings, and

(2) The intervener will be bound by any order or decision entered in the action or the intervener has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

(c) The administrative law judge may determine the extent to which an intervener may participate in the proceedings.

§ 406.139 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions or for conducting discovery or both.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file with the Docket Management System and serve the joint schedule, setting forth the dates to which the parties have agreed. One of the parties must draft an order establishing a joint schedule for the administrative law judge.

(1) The joint schedule may include, but need not be limited to, times for requests for discovery, any objections to discovery requests, responses to discovery requests, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and lists of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time

before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The administrative law judge must approve the joint schedule filed by the parties by signing the joint schedule and filing it with the Docket Management System.

(e) *Disputes.* The administrative law judge must resolve any dispute regarding discovery or regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the order establishing a joint schedule, the administrative law judge may direct that party to comply with a motion to compel discovery; or, limited to the extent of the party's failure to comply with a motion or discovery request, the administrative law judge may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 406.141 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion for consideration by the administrative law judge or the FAA decisionmaker on appeal.

(b) *Contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any evidence, including affidavits, to the motion.

(c) *Form and time.* Except for oral motions heard on the record, a motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion with the Docket Management System and serve each other party not later than 30 days before the hearing.

(d) *Answers to motions.* Any party may file and serve an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge must rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The administrative law judge must resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.*—(1) *Complainant's motion to dismiss a request for a hearing as prematurely filed.* The complainant may file a motion to dismiss a request for a hearing as prematurely filed instead of filing a complaint. If the motion is not granted, the complainant must file the complaint and must serve a copy of the complaint on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal in accordance with § 406.175. If required by the decision on appeal, the complainant must file a complaint and must serve a copy of the complaint on each party not later than 10 days after service of the decision on appeal.

(2) *Respondent's motions instead of an answer.* A respondent may file one or more of the following motions instead of filing an answer. If the administrative law judge denies the motion, the respondent must file an answer not later than 10 days after service of the denial of the motion.

(i) *Respondent's motion to dismiss complaint for failure to state a claim for which a civil penalty may be imposed.* A respondent may file a motion to dismiss the complaint for failure to state a claim for which a civil penalty may be imposed instead of filing an answer. The motion must show that the complaint fails to state a violation of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act.

(ii) *Respondent's motion to dismiss allegations or complaint for staleness.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint that alleges a violation that occurred more than 5 years before an agency attorney issued a notice of proposed civil penalty to the respondent, as provided by 28 U.S.C. 2462.

(iii) *Respondent's motion for more definite statement.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. The respondent must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain. If the administrative law judge grants the motion, the complainant must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the complainant fails to supply a more definite statement, the administrative law judge must strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent must file an answer and must serve a copy of the answer on each party not later than 10 days after service of the order of denial.

(3) *Other motions to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal.

(4) *Complainant's motion for more definite statement.* The complainant may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. The complainant must set forth, in detail, the indefinite or uncertain allegations contained in the answer and must submit the details that the complainant believes would make the allegation or response definite and certain. If the administrative law judge grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge must strike those statements in the answer to which the motion is directed. An administrative law judge shall treat a respondent's failure to supply a more definite statement as an admission of unanswered allegations in the complaint.

(5) *Other motions for more definite statement.* A party may file a motion for more definite statement of any pleading that requires or permits a response under this subpart. A party must set forth, in detail, each indefinite or uncertain allegation contained in a pleading or response and must submit the details that would make each allegation definite and certain.

(6) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike and must serve a copy on each party before a response to that pleading is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(7) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(8) *Motion for disqualification.* A party may file a motion for disqualification. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing reason for disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party may respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge must issue a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is granted.

§ 406.143 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, at any time after a complaint has been filed.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and responses with the Docket Management System or submit any of them to the administrative law judge. In the event of a discovery dispute, a party must attach a copy of these documents in support of a motion filed under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee with the agency attorney.

(d) *Time for response to discovery request.* Unless otherwise directed by this subpart or agreed by the parties, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The administrative law judge must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidentiality order.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file and serve a motion for a confidentiality order in accordance with § 406.117.

(h) *Protective order.* A party or a person who has received a request for discovery may file a motion for protective order and must serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend response.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* The following rules apply to all depositions taken pursuant to this section:

(1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In a foreign country, a party must take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined,on the person to be deposed, must submit the notice to the administrative law judge, and must file the notice with the Docket Management System, and must serve the notice on each party, not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. If a subpoena duces tecum is to be served on the person to be examined, the party must attach to the notice of deposition a copy of the subpoena duces tecum that describes the materials to be produced at the deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* (1) A party may not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory must be counted as a separate interrogatory.

(2) A party must file a motion for leave to serve more than 30 interrogatories on a party before serving additional interrogatories on a party. The administrative law judge must grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(3) A party must answer each interrogatory separately and completely in writing.

(4) A party, or the party's attorney or representative of record, must sign the party's responses to interrogatories.

(5) If a party objects to an interrogatory, the party must state the objection and the reasons for the objection.

(6) An opposing party may offer into evidence any part or all of a party's responses to interrogatories at a hearing under this subpart to the extent that the response is relevant, material, and not repetitious.

(l) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve a copy of each document referenced in the request for admission unless the document has been provided or is reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission is not later than 30 days after service of the request constitutes an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission does not constitute an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney or representative.

(2) *Response.* A party may object to a request for admission. The objection must be in writing and signed by the party or the party's attorney or representative of record, and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If an administrative law judge determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is admitted.

(3) *Effect of admission.* Any matter admitted or treated as admitted under this section is conclusively established for the purpose of the hearing and appeal.

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer.

(n) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the administrative law judge, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 406.147 Notice of hearing.

(a) *Notice.* The administrative law judge must give each party at least 60 days notice of the date, time, and location of the hearing.

(b) *Date, time, and location of the hearing.* The administrative law judge must set a reasonable date, time, and location for the hearing within the United States. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether a scheduled air carrier serves the location.

(c) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

(d) *Space hearing consolidated with aviation hearing under 14 CFR part 13*

subpart G. With the consent of the administrative law judge, the parties may agree to hold the hearing, or parts of the hearing, together with a hearing under 14 CFR part 13 subpart G if the cases involve some common issues of fact. If the hearings are consolidated, the administrative law judge may issue a consolidated initial decision covering both cases. The Administrator will serve as the FAA decisionmaker on appeal for both cases and will issue a consolidated decision, with the Associate Administrator for Commercial Space Transportation serving as an advisor to the FAA decisionmaker.

§ 406.149 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge must admit any oral, documentary, or demonstrative evidence introduced by a party but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 406.151 Standard of proof.

The administrative law judge must issue an initial decision or must rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

§ 406.153 Burden of proof.

(a) Except in the case of an affirmative defense, in a civil penalty adjudication the burden of proof is on the complainant.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 406.155 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

§ 406.157 Expert or opinion witnesses.

An employee of the FAA may not be called as an expert or opinion witness for any party other than the agency, in any proceeding governed by this part. An employee of a respondent may not be called as an expert or opinion witness for the complainant in any proceeding governed by this part to which the respondent is a party.

§ 406.159 Subpoenas.

(a) *Request for subpoena.* A party may obtain from the administrative law judge a subpoena to compel the attendance of a witness at a deposition or hearing or to require the production of documents or tangible items. The administrative law judge must deliver the subpoena, signed by the administrative law judge but otherwise in blank, to the party. The party must complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena must serve the subpoena on the witness.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail, the basis for the motion to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, the Secretary may apply to the appropriate district court of the United States to seek enforcement of the subpoena in accordance with 49 U.S.C. 70115(c). A party may request the Secretary to seek such enforcement.

§ 406.161 Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 406.163 Record.

(a) Exclusive record. The transcript of all testimony in the hearing; all exhibits received into evidence; the complaint, answer, and amendments thereto; all motions, applications, and requests, and responses thereto; and all rulings constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) A person may keep the original document, data, or other evidence, with the consent of the administrative law judge, by substituting a legible copy for the record.

§ 406.165 Argument before the administrative law judge.

(a) *Argument during the hearing.* During the hearing, the administrative law judge must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Post-hearing briefs.* The administrative law judge may request written post-hearing briefs before the administrative law judge issues an initial decision if the administrative law judge finds that submission of written briefs would be reasonable. If a party files a written post-hearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give

the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 406.167 Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge must make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge must issue the initial decision and order orally on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge must serve a copy of any written initial decision on each party.

§ 406.173 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on an interlocutory appeal does not constitute a final order of the Secretary for the purposes of judicial review under 5 U.S.C. chapter 7.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge must grant an interlocutory appeal for cause if a party shows that delay of the interlocutory appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a party, or a party's attorney or representative, from the proceedings.

(2) A ruling or order by the administrative law judge allegedly in violation of the limitations on the administrative law judge under § 406.109(c).

(3) Failure of the administrative law judge to grant a motion for a confidentiality order based on 49 U.S.C. 70114, under § 406.117(c)(2).

(4) Failure of the administrative law judge to dismiss the proceedings in accordance with § 406.135.

(d) *Procedure.* A party must file with the Docket Management System and serve each other party a notice of interlocutory appeal, with supporting documents, not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause. A party must file with the Docket Management System a reply brief, if any, and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The FAA decisionmaker must render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) *Rejection of interlocutory appeal.* The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 406.175 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to § 406.173, by filing with the Docket Management System and serving on each party a notice of appeal. A party must file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker, who serves a letter confirming the extension of time on each party.

(2) *Motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a motion for an extension and must serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party must file the appeal brief with the Docket Management System and serve each party.

(1) A party must set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also must set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party must specifically refer to the pertinent evidence contained in the record in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA

decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief with the Docket Management System and serve on each other party not later than 35 days after the appeal brief has been served on that party. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the record in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker, who will serve a letter confirming the extension of time on each party.

(2) *Motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file and serve a motion for an extension and must serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The FAA decisionmaker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief without permission of the FAA decisionmaker. A party may file with the Docket Management System a motion for permission to file an additional brief and must serve a copy of the motion on each other party. The party may not file the additional brief with the motion. The FAA decisionmaker may grant permission to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party must file the original brief and two copies of the brief with the Docket Management System and serve one copy on each other party.

(h) *Oral argument.* The FAA decisionmaker has sole discretion to permit oral argument on the appeal. On the FAA decisionmaker's own initiative or upon written motion by any party, the FAA decisionmaker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection or argument in a brief if the party does not specifically refer in the brief to the pertinent evidence from the record.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, to determine if the administrative law judge committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the FAA decisionmaker requires the consideration of additional testimony or evidence, the FAA decisionmaker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the FAA decisionmaker is solely an issue of law or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the FAA decisionmaker.

(2) The FAA decisionmaker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party.

(3) A final decision and order of the FAA decisionmaker is precedent in any other civil penalty action under this part. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the FAA decisionmaker is not precedent in any other civil penalty action.

§ 406.177 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party must file a petition to reconsider or modify with the Docket Management System not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and must serve a copy of the petition on each party. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA decisionmaker.

(b) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support, the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party must describe these allegations and must describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(c) *Repetitious and frivolous petition.* The FAA decisionmaker will not consider a repetitious or frivolous petition. The FAA decisionmaker may summarily dismiss any repetitious or frivolous petition to reconsider or modify.

(d) *Reply to petition.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply. A party must serve a copy of the reply on each party.

(e) *Effect of filing petition.* Unless otherwise ordered by the FAA decisionmaker, filing a petition under this section stays the effective date of the FAA decisionmaker's final decision and order on appeal, and tolls the time allowed for judicial review.

(f) *FAA decisionmaker's decision on petition.* The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

§ 406.179 Judicial review of a final decision and order.

(a) A person may seek judicial review of a final decision and order of the FAA decisionmaker as provided in 5 U.S.C. chapter 7 and 28 U.S.C. 1331. A party seeking judicial review must file with a United States district court.

(b) In accordance with § 406.9(e)(iv), if a person seeks judicial review not later than 60 days after the final decision and order has been served on the respondent, the final decision and order is stayed.

(c) In accordance with § 406.9(i), if a respondent does not pay a civil penalty and does not file an appeal with the United States district court within 60 days after service of the final decision and order, the FAA may refer the order to the United States Department of Treasury or Department of Justice to collect the civil penalty.

Issued in Washington, DC on January 3, 2001.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 01–554 Filed 1–9–01; 8:45 am]

BILLING CODE 4910–13–U

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LIST OF PUBLIC LAWS

This completes the listing of public laws enacted during the second session of the 106th Congress. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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.

The list will resume when bills are enacted into public law during the next session of Congress. A cumulative list of Public Laws will be published in the **Federal Register** on Tuesday, January 16, 2001.

H.R. 5528/P.L. 106–568
Omnibus Indian Advancement Act (Dec. 27, 2000; 114 Stat. 2868)

H.R. 5640/P.L. 106–569
American Homeownership and Economic Opportunity Act of 2000 (Dec. 27, 2000; 114 Stat. 2944)

S. 2943/P.L. 106–570
Assistance for International Malaria Control Act (Dec. 27, 2000; 114 Stat. 3038)

H.R. 207/P.L. 106–571
Federal Physicians Comparability Allowance Amendments of 2000 (Dec. 28, 2000; 114 Stat. 3054)

H.R. 2816/P.L. 106–572
Computer Crime Enforcement Act (Dec. 28, 2000; 114 Stat. 3058)

H.R. 3594/P.L. 106–573
Installment Tax Correction Act of 2000 (Dec. 28, 2000; 114 Stat. 3061)

H.R. 4020/P.L. 106–574
To authorize the addition of land to Sequoia National Park, and for other purposes. (Dec. 28, 2000; 114 Stat. 3062)

H.R. 4656/P.L. 106–575
To authorize the Forest Service to convey certain lands in the Lake Tahoe Basin to the Washoe County School District for use as an elementary school site. (Dec. 28, 2000; 114 Stat. 3063)

S. 1761/P.L. 106–576
Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 (Dec. 28, 2000; 114 Stat. 3065)

S. 2749/P.L. 106–577
To establish the California Trail Interpretive Center in Elko, Nevada, to facilitate the interpretation of the history of development and use of trails in the settling of the western portion of the United States, and for other purposes. (Dec. 28, 2000; 114 Stat. 3068)

S. 2924/P.L. 106–578
Internet False Identification Prevention Act of 2000 (Dec. 28, 2000; 114 Stat. 3075)

S. 3181/P.L. 106–579
National Moment of Remembrance Act (Dec. 28, 2000; 114 Stat. 3078)

H.R. 1795/P.L. 106–580
National Institute of Biomedical Imaging and Bioengineering Establishment Act (Dec. 29, 2000; 114 Stat. 3088)

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