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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, 235, 264, 286, and 299

[INS No. 1931–98]

RIN 1115–AF24

Requirements for Biometric Border Crossing Identification Cards (BCCs) and Elimination of Non-Biometric BCCs on Mexican and Canadian Borders

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as amended, requires the establishment of regulations governing the issuance and use of border crossing identification cards (BCCs) containing biometric information. See 8 U.S.C. 1101(a)(6) and note. To satisfy documentary requirements for admission to the United States, Mexican nationals who are not permanent residents must possess either a BCC or a valid passport and a nonimmigrant visa issued at a consulate abroad. Canadians and certain other residents of Canada are not required to possess a visa, but they must present documentation of any waivers of inadmissibility. This rule amends the Immigration and Naturalization Service (Service) regulations by requiring that an alien seeking admission to the United States by presentation of a BCC must present a BCC that contains biometric information that is machine readable. The biometric information on the card will be verified by machine at the ports-of-entry (POEs) where feasible or by other reliable means. This rule further eliminates certain former versions of BCCs and clarifies the validity period of waivers of inadmissibility issued under 8 CFR 212.4. This rule promotes uniformity and clarity in the adjudication and production processes, and is necessary to comply with the congressional mandates set forth in section 104 of the IIRIRA.

DATES: *Effective date:* October 1, 2002.

Comment date: Written comments must be submitted on or before January 31, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, you must include INS No. 1931–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment. Comments can also be submitted electronically at *insregs@usdoj.gov.* When submitting comments electronically, please make sure to place the INS No. 1931–98 in the subject box.

FOR FURTHER INFORMATION CONTACT: Michael J. Flemmi, Assistant Chief Inspector, Office of Inspections, U.S. Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, Telephone (202) 305–9247.

SUPPLEMENTARY INFORMATION:

Background

This rule is essential to meet the requirements of section 104 of the IIRIRA, which amended section 101(a)(6) of the Immigration and Nationality Act (Act) (codified as amended at 8 U.S.C. 1101(a)(6) and 1101 note (2002)). The definition of a BCC and related requirements are covered by section 101(a)(6) of the Act. The IIRIRA, section 104 establishes two new requirements: (1) A machine-readable biometric identifier must be included in any document issued on or after April 1, 1998, that is designated as a ''border crossing identification card,'' and (2) an alien who presents such a card cannot be permitted to cross the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien who presents the card on or after October 1, 2002.

Section 601 of the Enhanced Border Security and Visa Entry Reform Act (Border Security Act), Public Law 107–173, 116 Stat. 543 (May 14, 2002) amended section 104 of IIRIRA to extend the deadline from October 1, 2001 to October 1, 2002 for presentation of the biometric BCC at the borders. The deadline had previously been extended from 1999 to 2001. (Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Sec. 410(b), Public Law 105–277, 112 Stat. 2681 (October 21, 1998)). Between October 1, 2001 and the passage of the most recent deadline extension in the Border Security Act, the Service required border crossers to present the new biometric BCC, passports, visas, other appropriate documents, or valid waivers if required. After enactment of the Border Security Act extension, the Service again accepted unexpired non-biometric BCCs. This regulation ends the acceptance of the non-biometric BCCs as required by law.

The Service and the Department of State (DOS) have realigned their responsibilities so that each agency specializes in part of the BCC adjudication and production process: The DOS adjudicates all applications for the biometric BCCs for Mexicans, and the Service produces most such BCCs. The DOS also produces some of the BCCs. Canadian BCCs are no longer produced. Canadians and certain other Canadian residents are not required to possess a visa or BCC; however, waivers of any relevant grounds of inadmissibility will continue to be required of eligible Canadians and Canadian residents. See 8 U.S.C. 1182(d)(3–4); 8 CFR 212.1(a); 8 CFR 212.4, and 8 CFR 212.7. The concept for the realignment of responsibilities for the adjudication and production of BCCs grew out of discussions with the DOS about areas where the two agencies' programs interface.

This rule eliminates the use of Form I–175, Application for Nonresident Alien Canadian Border Crossing Card, and Form I–190, Application for Nonresident Alien Mexican Border Crossing Card. It also terminates the production of Form I–185, Nonresident Alien Canadian Border Crossing Card, and Form I–586, Nonresident Alien Mexican Border Crossing Card. In addition, this rule prohibits the use of

Form I–186 (previous version of the Mexican BCC Card), Form I–185 and Form I–586 BCCs. The rule also prohibits the use of the non-biometric BCC portion of the combined B–1/B–2 visitor visa and border crossing identification card (B–1/B–2 Visa/BCC) (or similar combination stamp in a passport) that the DOS issued prior to April 1, 1998. The B–1/B–2 visas contained on the older DOS-issued cards will remain valid until their expiration dates unless otherwise revoked or voided.

Mexican Border Crossing Cards

How Were Mexican BCCs Issued Prior to This Rulemaking?

Under the previous procedures, both the Service and the DOS adjudicated and produced Mexican BCCs. The Service issued BCCs on Form I–586 and Form I–186. Several different revisions of the Forms have been issued (last revision 1997). The Service adjudicated about 240,000 BCC applications per year at more than 30 southwest border POEs. Approximately 180,000 BCC applications were approved annually.

The DOS adjudicated about 800,000 BCC applications per year at its eight consular posts in Mexico. The DOS non-biometric BCCs were also issued in several formats, including a document that is a combination B–1/B–2 Visa/BCC and a similar combination stamp in the person's passport. In 1998, the DOS published regulations on application procedures and criteria for the new biometric BCC (Form DSP–150). See 22 CFR 41.32. Those procedures must be followed by all Mexican applicants seeking BCCs. Following publication of this rule, the Service's previous regulations concerning applications for the older non-biometric cards will no longer be effective.

How Many of the Service-Issued BCCs Are Now in Use, and Why Must They Be Replaced?

In 1998 when the biometric BCCs became available and all other versions ceased to be produced, the Service had estimated that between 2 and 5 million of the non-biometric, Service-issued BCCs remained in circulation. The number of such cards has steadily declined as the older versions of both the Service-issued and DOS-issued cards have been replaced with the biometric BCC. The Service and DOS have adjudicated and produced nearly 6 million BCCs with a biometric identifier.

Section 104 of the IIRIRA requires that each BCC issued on or after April 1, 1998, include a biometric identifier that is machine readable, and that each alien presenting a BCC on or after October 1, 2002, be refused admission unless the biometric identifier on the card matches the biometric identifier of the alien. None of the BCCs issued before April 1, 1998, contain the required biometric identifier. Thus, they cannot be accepted for admission into the United States on or after October 1, 2002. Therefore, an individual who wishes to continue using a BCC (rather than obtaining a B–1/B–2 visa at a consulate) must replace his or her older BCC with the new biometric BCC in order to be admitted to the United States on or after October 1, 2002.

Is a DOS-Issued Combination B–1/B–2 Visa/BCC Document or Stamp Issued Before April 1, 1998, Still Valid for Admission?

The BCC portion will no longer be valid for admission because it does not contain the required biometric identifier. The B–1/B–2 visa portion will remain valid for admission until its expiration date, unless the alien is subject to a ground of inadmissibility that has not been waived. However, a holder of any B–1/B–2 visa, including a visa documented on a non-biometric BCC, must also present his or her passport, unless otherwise exempt from the passport requirement. Since the DOS-issued BCCs are considered both a nonimmigrant visa and a BCC, they will not be subject to this card replacement requirement and may continue to be used only as a nonimmigrant visa after October 1, 2002, with a passport.

Is a Biometric BCC Mandatory for Mexican Nationals?

No. A biometric BCC may be presented in lieu of a passport and visa. A nonimmigrant Mexican national may present any of the following documents for admission into the United States: (1) A valid, unexpired visa *and* unexpired passport if the alien is otherwise admissible; (2) A valid, unexpired biometric BCC (DSP–150) if the alien is otherwise admissible and provided that the inspector has matched the biometric identifier on the card to the bearer's corresponding characteristic(s). If the biometric authentication is unsuccessful, the alien cannot be permitted to cross the border, as required under section 104 of IIRIRA. A passport may be required under 8 CFR 212.6 if the BCC-bearer is not arriving from Mexico or Canada, or is arriving from Canada but has been in another country other than the United States or Canada since leaving Mexico; (3) a non-biometric DOS-issued combination BCC/B–1/B–2 visa (or similar stamp in a passport) may be accepted on the basis of the unexpired B–1/B–2 visa portion only. The non-biometric BCC portion of the card (or stamp) is no longer valid on or after October 1, 2002. As usual with a B–1/B–2 visa, a valid, unexpired passport is also required. A Form I–94 should be issued unless the individual is otherwise exempt from the Form I–94 requirement by regulation; or (4) other applicable documents may be accepted depending on the alien's eligibility for admission (*e.g.,* Form I–512, Authorization for Parole; Form I–194, Notice of Advance Permission to Enter as Non-immigrant Pursuant to 212(d)(3)(A) or (B) of the Act).

What Are the Application Procedures for Replacing the Non-Biometric BCCs?

The application procedures for replacing a non-biometric BCC are described in the regulation published by the DOS at 22 CFR 41.32. The DOS consular officers in Mexico accept and adjudicate the application for replacement BCCs. After receiving an appropriate card order from the DOS, the Service (or DOS in some cases) will process and produce the biometric BCC (DSP–150, B–1/B–2 Visa and Border Crossing Card), through its Integrated Card Production System (ICPS). The Service sends the cards to the DOS and the DOS will then return the biometric BCC to the applicant.

Each time the bearer presents this biometric BCC to an immigration officer at the border, the officer must make sure that the biometric identifier on the BCC matches the bearer's characteristics. If the biometric identifier does not match, the person will not be admitted to the United States.

If An Immigration Officer Voids and Cancels Either a Biometric or a Non-Biometric BCC For Any Reason, What Procedures Will Apply?

If an alien's BCC is voided and cancelled and the alien presenting the BCC does not possess other valid admission documents (such as a visa and a passport), he or she may be denied admission, unless the Service grants a discretionary waiver of the applicable ground of inadmissibility, or for an unforeseen emergency under sections 212(d)(3) or 212(d)(4) of the Act, or determines that the alien should be paroled into the United States under section 212(d)(5) of the Act. If a waiver or parole is not granted, the Service, in its discretion, may permit the alien to withdraw his or her application for admission and seek appropriate documentation for his or her future admission. See 8 CFR 235.4. In certain cases, the alien may be subject to

expedited removal under section 235(b)(1) of the Act and 8 CFR 235.3. The expedited removal provisions give immigration officers at POEs the authority to order aliens removed, without further hearing or review (unless they request asylum or express a fear of persecution) if they apply for admission without proper documents, or seek to procure documentation or admission by fraud or misrepresentation. Following consultation with a wide variety of immigrant, legal, and community-based groups, the Service developed extensive detailed regulations and procedures to ensure fair and consistent application of the expedited removal process. These procedures further ensure that individuals who express fears of persecution or torture are given an opportunity for a determination of credible fear and to apply for asylum where appropriate. See 8 CFR 235.3. During the transition period of the new biometric BCC, immigration officers generally will not apply the expedited removal procedures to aliens who present only their older, non-biometric BCCs, even if they do not meet the criteria discussed above for granting a section 212(d)(4)(A) waiver. Unless there is fraud, willful misrepresentation, evidence that the applicant is an imposter, or other serious violations involved in the alien's application for a visa or application for admission, the alien will be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

If there is evidence of fraudulent documentation or willful misrepresentation, or other serious violations, the Service may take appropriate investigative and enforcement actions, where necessary. These enforcement actions may include administrative procedures and criminal charges.

Where the person is not subject to the expedited removal procedures, this rule restates the existing procedures that will be applied when a BCC is declared void and cancelled. The individual will be advised that he or she may request a hearing before an immigration judge to determine admissibility in accordance with 8 CFR 235.6 and may be represented by an attorney of his or her choice with no expense to the government. The person will be provided with a list of free legal services providers. If the applicant chooses not to have a hearing, the BCC will be cancelled and the applicant will receive a notice of the action taken and the reasons for that action. If the BCC was issued by the DOS, the Service will also notify the DOS in writing of the reasons for the voidance of the BCC. Where applicable, the alien may also be ordered removed under the expedited removal provisions.

Canadian Border Crossing Cards

How Will the Issuance of Canadian BCCs Be Affected by This Rulemaking?

As a result of the IIRIRA mandate and the realignment of responsibilities with the DOS, the issuance of Canadian BCCs (Form I–185) ceased as of April 1, 1998. Long existent regulations permit Canadians to travel temporarily to the United States without visas. 8 CFR 212.1(a). Currently, Canadian BCCs are used primarily for Canadian citizens and certain other Canadian residents in possession of an approved Form I–194, Notice of Approval of Advance Permission to Enter as Nonimmigrant, following a request for a discretionary waiver of inadmissibility under section 212(d)(3) of the Act. The Canadian card is both a BCC and documentation of the waiver, which is noted separately on the card. This procedure allows Canadian citizens, who would otherwise be inadmissible, to enter the United States.

Although the Canadian BCC is no longer issued, Canadians who require and are eligible for a waiver of inadmissibility still must possess appropriate documentation of the waiver. Individuals who require but do not have any documentation of a waiver of inadmissibility must apply for one according to the procedures in 8 CFR 212.4. If eligible, a waiver applicant will be issued a Form I–194, Notice of Approval of Advance Permission to Enter as Nonimmigrant. The rule further provides that an unexpired waiver of inadmissibility that was previously granted and documented on a BCC issued to a Canadian or other Canadian resident exempt from the visa requirements under 8 CFR 212.1 remains valid, although the non-biometric BCC portion of the card does not. The Service is considering alternative documentation for waivers issued to Canadians and certain other Canadian residents.

In addition, with the issuance of this rule, approvals of new applications for the exercise of discretion under section 212(d)(3) of the Act may be granted for a maximum period of 5 years. All admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the waiver authorization. The period for which the alien's admission is authorized shall not exceed the period justified, subject to the limitations specified in 8 CFR part 214 (Nonimmigrant Classes). The section 212(d)(3) waiver allows the applicant to apply for admission into the United States without reapplying for a discretionary waiver for the same grounds of inadmissibility upon each application for admission into the United States. Previous regulations restricted the granting of such waiver approvals to 1 year unless the DOS had recommended a longer period. The extension of the period of validity of waiver approvals will provide long-term documentation (the Form I–194 will be valid for up to 5 years) to approved waiver applicants.

Proposed Changes

What Exactly Does This Rule Do?

This rule establishes the procedures to terminate the use of current non-biometric BCCs and introduces a card that is machine-readable and contains a personal biometric identifier of the alien. The rule also provides a requirement that the biometric characteristic contained in any BCC presented for admission on or after October 1, 2002, must be matched to the alien presenting the card. The rule further removes references to application forms and documents that can no longer be used. Specifically this rule:

(1) Amends 8 CFR 103.7 to remove references to Form I–175 and Form I–190.

(2) Amends 8 CFR 212.1 to prohibit the use of the former non-biometric BCCs, to add references to allow the use of the biometric DSP–150, B–1/B–2 Visa and Border Crossing Card; and to add the requirement that the biometric identifier on any BCC presented must be matched to the alien presenting the BCC at time of admission before the alien will be permitted to enter the United States.

(3) Amends 8 CFR 212.4 to extend the maximum period of validity of a waiver authorization issued under section 212(d)(3)(A) or (B) of the Act from 1 to 5 years and restructures the section for the purpose of clarity. Further amends 8 CFR 212.4 to provide that a waiver previously issued in conjunction with a Form I–185, Nonresident Alien Canadian Border Crossing Card, may remain valid although the Form I–185 itself is void.

(4) Amends 8 CFR 212.6 to change the title; add a reference to the biometric Form DSP–150, B–1/B–2 Visa and Border Crossing Card, to be issued by the DOS; specify the application process for the DOS-issued card; limit the remaining validity period of the current border crossing cards; give authority to Service officers to physically cancel the

former non-biometric DOS-issued cards; and provides for the replacement of the former versions of specified Service-issued BCCs.

(5) Amends 8 CFR 214.2 to eliminate the use of the Nonresident Alien Mexican Border Crossing Card (Form I–186 or I–586) and allows for the use of the Form DSP–150, B–1/B–2 Visa and Border Crossing Card, for applications for admission of aliens pursuant to the North American Free Trade Agreement. Substantive changes have not been made to this section.

(6) Amends 8 CFR 235.1(f)(1)(iv) to reference § 212.1(c) for Mexican documentary requirements.

(7) Amends 8 CFR 264.1 to remove references to Form I–175 and Form I–190.

(8) Removes 8 CFR 264.4, which refers only to the collection of fees for applications for BCCs, in its entirety.

(9) Amends 8 CFR 286.9 to add a reference to the Form DSP–150, B–1/B–2 Visa and Border Crossing Card, where the issuance of Form I–94 is required, and to remove 8 CFR 286.9(b)(5) and (6) which referenced the collection of fees in conjunction with the former BCC applications.

(10) Amends 8 CFR 299.1 to remove the references to BCC applications (Form I–175 and Form I–190), to the ''Nonresident Alien Canadian Border Crossing Card'' (Form I–185), to the ''Nonresident Alien Border Crossing Card (Form I–586), and to add a reference to the new DOS Form DSP–150, B–1/B–2 Visa and Border Crossing Card.

(11) Amends 8 CFR 299.5 to remove references to Form I–175 and Form I–190.

Good Cause Exception

Implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for immediate implementation of this interim rule is that the statutory deadlines contained in section 104 of the IIRIRA of 1996, as amended, require that only BCCs bearing a machine-readable biometric identifier may be produced on or after April 1, 1998, and that a verification of the biometric identifier for all bearers of these cards must be completed before the alien may be admitted on or after October 1, 2002. The production of the new cards began on April 1, 1998, in accordance with regulations published by the DOS, and these cards are now in use. The publication of an interim rule will promote the timely institution of procedures necessary to comply with the statute. Accordingly, since delaying the effective date of this rule is impractical and contrary to the public interest, there is good cause under 5 U.S.C. 553 to make this rule effective immediately.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individuals who are applicants for admission. Although some applicants may be business persons, the requirement for a machine-readable biometric identifier in any BCC presented for admission after October 1, 2002 is a statutory mandate that the Service must implement. This rule further standardizes the adjudication and production processes for BCCs, thereby improving government efficiency and service to the public. It also provides greater flexibility in the permissible validity periods for waivers under section 212(d)(3) of the Act. This is anticipated to reduce the burdens on certain frequent border crossers and thereby help to improve traffic flows at the POEs.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department has reviewed this rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget. The Department has assessed both the costs and benefits of this rule and has made a reasoned determination that the benefits of this regulation justify its costs. The benefits include the following: (1) Promulgation of this rule meets the statutory requirements of section 104 of IIRIRA, as amended; (2) this rule ensures consistency between the Service's regulations on BCCs and the regulations issued in 1998 by the DOS regarding the application process for the new biometric BCC (22 CFR 41.32); (3) the rule's requirement that INS inspectors must match the biometric identifier in any BCC that is presented for admission to the characteristic of the nonimmigrant card holder enhances enforcement of the immigration laws and national security by improving the verification of a border crosser's true identity; (4) the rule will reduce the ability of illegal aliens to present fraudulent BCCs at the ports and in the interior of the United States; (5) the rule maintains the validity of waivers of inadmissibility issued to certain Canadian BCC holders so that they will continue to be able to enter the country although their non-biometric BCCs are now invalid.

The costs considered by the Department include: (1) The effort required by holders of the invalid non-biometric BCC to obtain the biometric BCC (DSP–150), or a valid visa and passport by the effective date of this rule. The Department determined that the vast majority of people who wished to replace their nonbiometric BCCs had already done so by October 1, 2002 because nearly 6 million biometric BCCs have been issued since 1998, and the Service had estimated that there were between 2–5 million old cards in circulation that would require replacement; DOS also reports that the vast majority of current applicants (approximately 95%) are applying for a BCC for the first time, not replacing a nonbiometric BCC; in addition, there are no significant card processing backlogs; and (2) the costs and burdens to the public associated with the BCC application process under the DOS procedures at 22 CFR 41.32. The DOS has previously determined that the BCC application can be completed in approximately one hour and that the application fee would be $65 for adults and $13 for children under age 15. *See*

63 FR 16892–01 (April 7, 1998); 22 CFR 22.1 (schedule of fees).

The primary purpose of this rule and the Congressional mandate in section 104 of IIRIRA is to enhance the security of BCCs, reduce the prevalence of fraudulent documents presented by border crossers, and improve the ability of immigration inspectors to verify a card holder's identity. The benefits of implementing this rule outweigh any burdens it imposes.

Executive Order 13132

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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires the use of Optional Form DS–156, Nonimmigrant Visa Application, and Service Form I–192, Application for Advance Permission to Enter as Nonimmigrant, and Form I–193, Application for Waiver of Passport and/or Visa, which are considered information collections under the Paperwork Reduction Act. These information collections have previously been approved for use by the Office of Management and Budget (OMB). The OMB information collection control numbers are 1405–0018, 1115–0028 and 1115–0042, respectively. This rule also eliminates Form I–185, I–175, I–190, and I–586.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Reporting and recordkeeping requirements.

8 CFR Part 212

Aliens, Immigration, Passports and visas.

8 CFR Part 214

Foreign officials, Health professionals, Students.

8 CFR Part 235

Aliens, Immigration.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Maritime carriers.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. Section 103.7(b)(1) is amended by removing the entry for ''Form I–175'' and ''Form I–190.''

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

4. Section 212.1 is amended by removing paragraphs (c–1) and (c–2), and by revising paragraphs (c) and (g) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(c) *Mexican nationals.*

(1) A visa and a passport are not required of a Mexican national who:

(i) Is in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the DOS and is applying for admission as a temporary visitor for business or pleasure from contiguous territory.

(ii) Is a Mexican national entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border.

(2) A visa shall not be required of a Mexican national who:

(i) Is in possession of a Form DSP–150, with a biometric identifier, issued by the DOS, and a passport, and is applying for admission as a temporary visitor for business or pleasure from other than contiguous territory;

(ii) Is a crew member employed on an aircraft belonging to a Mexican company owned carrier authorized to engage in commercial transportation into the United States; or

(iii) Bears a Mexican diplomatic or official passport and who is a military or civilian official of the Federal Government of Mexico entering the United States for 6 months or less for a purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States, and the official's spouse or any of the official's dependent family members under 19 years of age, bearing diplomatic or official passports, who are in the actual company of such official at the time of admission into the United States. This provision does not apply to the spouse or any of the official's family members classifiable under section 101(a)(15)(F) or (M) of the Act.

(3) A Mexican national who presents a BCC at a POE must present the DOS-issued DSP–150 containing a machine-readable biometric identifier. The alien will not be permitted to cross the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(4) Mexican nationals presenting a combination B–1/B–2 nonimmigrant visa and border crossing card (or similar stamp in a passport), issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains admissible. A passport is also required.

(5) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* A visa and a passport are not required of an alien employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment.

* * * * *

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and a passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act or a valid biometric border crossing card, issued

by the DOS on Form DSP–150, at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f),(i) or (o) of this section. Upon a nonimmigrant's application on Form I–193, Application for Waiver of Passport and/or Visa, a district director may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

5. Section 212.4 is amended by revising paragraph (c) to read as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).

* * * * *

(c) *Terms of authorization.*

(1) *General.* Except as provided in paragraph (c)(2) of this section, each authorization under section 212(d)(3)(A) or (B) of the Act shall specify:

(i) Each section of law under which the alien is inadmissible;

(ii) The intended date of each arrival, unless the applicant is a bona fide crewman. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;

(iii) The length of each stay authorized in the United States, which shall not exceed the period justified and shall be subject to limitations specified in 8 CFR part 214. However, if the authorization is valid for multiple entries rather than for a specified number of entries, this information shall be specified only with respect to the initial entry;

(iv) The purpose of each stay;

(v) The number of entries for which the authorization is valid;

(vi) Subject to the conditions set forth in paragraph (c)(2) of this section, the dates on or between which each application for admission at POEs in the United States is valid;

(vii) The justification for exercising the authority contained in section 212(d)(3) of the Act; and

(viii) That the authorization is subject to revocation at any time.

(2) *Conditions of admission.*

(i) For aliens issued an authorization for temporary admission in accordance with this section, admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the authorization.

(ii) The period for which the alien's admission is authorized pursuant to this section shall not exceed the period justified, or the limitations specified, in 8 CFR part 214 for each class of nonimmigrant, whichever is less.

(3) *Validity.*

(i) Authorizations granted to crew members may be valid for a maximum period of 2 years for application for admission at U.S. POEs and may be valid for multiple entries.

(ii) An authorization issued in conjunction with an application for a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, issued by the DOS shall be valid for a period not to exceed the validity of the biometric BCC for applications for admission at U.S. POEs and shall be valid for multiple entries.

(iii) A multiple entry authorization for a person other than a crew member or applicant for a Form DSP–150 may be made valid for a maximum period of 5 years for applications for admission at U.S. POEs.

(iv) An authorization that was previously issued in conjunction with Form I–185, Nonresident Alien Canadian Border Crossing Card, and that is noted on the card may remain valid. Although the waiver may remain valid, the non-biometric border crossing card portion of this document is not valid after that date. This waiver authorization shall cease if otherwise revoked or voided.

(v) A single-entry authorization to apply for admission at a U.S. POE shall not be valid for more than 6 months from the date the authorization is issued.

(vi) An authorization may not be revalidated. Upon expiration of the authorization, a new application and authorization are required.

* * * * *

6. Section 212.6 is revised to read as follows:

§ 212.6 Border crossing identification cards.

(a) *Application for Form DSP–150, B–1/B–2 Visa and Border Crossing Card, issued by the Department of State.* A citizen of Mexico, who seeks to travel temporarily to the United States for business or pleasure without a visa and passport, must apply to the DOS on Form DS–156, Visitor Visa Application, to obtain a Form DSP–150 in accordance with the applicable DOS regulations at 22 CFR 41.32 and/or instructions.

(b) *Use.*

(1) *Application for admission with Non-resident Canadian Border Crossing Card, Form I–185, containing separate waiver authorization; Canadian residents bearing DOS-issued combination B–1/B–2 visa and border crossing card (or similar stamp in a passport).*

(i) A Canadian citizen or other person sharing common nationality with Canada and residing in Canada who presents a Form I–185 that contains a separate notation of a waiver authorization issued pursuant to § 212.4 may be admitted on the basis of the waiver, provided the waiver has not expired or otherwise been revoked or voided. Although the waiver may remain valid on or after October 1, 2002, the non-biometric border crossing card portion of the document is not valid after that date.

(ii) A Canadian resident who presents a combination B–1/B–2 visa and border crossing card (or similar stamp in a passport) issued by the DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible.

(2) *Application for admission by a national of Mexico—Form DSP–150 issued by the DOS; DOS-issued combination B–1/B–2 visa and border crossing card (or similar stamp in a passport).*

(i) The rightful holder of a Form DSP–150 issued by the DOS may be admitted under § 235.1(f) of this chapter if found otherwise admissible and if the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(ii) The bearer of a combination B–1/B–2 nonimmigrant visa and border crossing card (or similar stamp in a passport) issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains otherwise admissible. A passport is also required.

(iii) Any alien seeking admission as a visitor for business or pleasure, must also present a valid passport with his or her border crossing card, and shall be issued a Form I–94 if the alien is applying for admission from:

(A) A country other than Mexico or Canada, or

(B) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

(c) *Validity.* Forms I–185, I–186, and I–586 are invalid on or after October 1,

2002. If presented on or after that date, these documents will be voided at the POE.

(d) *Voidance for reasons other than expiration of the validity of the form.*

(1) *At a POE.*

(i) In accordance with 22 CFR 41.122, a Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric border crossing identification card or (a similar stamp in a passport), issued by the DOS, may be physically cancelled and voided by a supervisory immigration officer at a POE if it is considered void pursuant to section 222(g) of the Act when presented at the time of application for admission, or as the alien departs the United States. If the card is considered void and if the applicant for admission is not otherwise subject to expedited removal in accordance with 8 CFR part 235, the applicant shall be advised in writing that he or she may request a hearing before an immigration judge. The purpose of the hearing shall be to determine his/her admissibility in accordance with § 235.6 of this chapter. The applicant may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He or she shall also be advised of the availability of free legal services provided by organizations and attorneys qualified under 8 CFR part 3, and organizations recognized under § 292.2 of this chapter located in the district where the removal hearing is to be held. If the applicant requests a hearing, the Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric border crossing identification card (or similar stamp in a passport), issued by the DOS, shall be held by the Service for presentation to the immigration judge.

(ii) If the applicant chooses not to have a hearing, the Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC (or similar stamp in a passport) issued by the DOS, shall be voided and physically cancelled. The alien to whom the card or stamp was issued by the DOS shall be notified of the action taken and the reasons for such action by means of Form I–275, Withdrawal of Application for Admission/Consular Notification, delivered in person or by mailing the Form I–275 to the last known address. The DOS shall be notified of the cancellation of the biometric Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC (or similar stamp in a passport) issued by DOS, by means of a copy of the original Form I–275. Nothing in this paragraph limits the Service's ability to remove an alien pursuant to 8 CFR part 235 where applicable.

(2) *Within the United States.* In accordance with former section 242 of the Act (before amended by section 306 of the IIRIRA of 1996, Div. C, Public Law 104–208, 110 Stat. 3009 (Sept. 30, 1996,) or current sections 235(b), 238, and 240 of the Act, if the holder of a Form DSP–150, or other combined B–1/B–2 visa and BCC, or (similar stamp in a passport) issued by the DOS, is placed under removal proceedings, no action to cancel the card or stamp shall be taken pending the outcome of the hearing. If the alien is ordered removed or granted voluntary departure, the card or stamp shall be physically cancelled and voided by an immigration officer. In the case of an alien holder of a BCC who is granted voluntary departure without a hearing, the card shall be declared void and physically cancelled by an immigration officer who is authorized to issue a Notice to Appear or to grant voluntary departure.

(3) *In Mexico or Canada.* Forms I–185, I–186 or I–586 issued by the Service and which are now invalid, or a Form DSP–150 or combined B–1/B–2 visitor visa and non-biometric BCC, or (similar stamp in a passport) issued by the DOS may be declared void by United States consular officers or United States immigration officers in Mexico or Canada.

(4) *Grounds.* Grounds for voidance of a Form I–185, I–186, I–586, a DOS-issued non-biometric BCC, or the biometric Form DSP–150 shall be that the holder has violated the immigration laws; that he/she is inadmissible to the United States; that he/she has abandoned his/her residence in the country upon which the card was granted; or if the BCC is presented for admission on or after October 1, 2002, it does not contain a machine-readable biometric identifier corresponding to the bearer and is invalid on or after October 1, 2002.

(e) *Replacement.* If a valid Border Crossing Card (Forms I–185, I–186, or I–586) previously issued by the Service, a non-biometric border crossing card issued by the DOS before April 1998, or a Form DSP–150 issued by the DOS has been lost, stolen, mutilated, or destroyed, the person to whom the card was issued may apply for a new card as provided for in the DOS regulations found at 22 CFR 41.32 and 22 CFR 41.103.

PART 214—NONIMMIGRANT CLASSES

7. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 1301–1305; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively; 8 CFR part 2.

8. Section 214.2 is amended by revising paragraph (b)(4) introductory text to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(4) *Admission of aliens pursuant to the North American Free Trade Agreement (NAFTA).* A citizen of Canada or Mexico seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of such citizenship in the case of Canadian applicants, and valid, unexpired entry documents such as a passport and visa, or a passport and BCC in the case of Mexican applicants, a description of the purpose for which the alien is seeking admission, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section. Existing requirements, with respect to Canada, are those requirements which were in effect at the time of entry into force of the Canada/U.S. Free Trade Agreement and, with respect to Mexico, are those requirements which were in effect at the time of entry into force of the NAFTA. Additionally, nothing shall preclude the admission of a citizen of Mexico or Canada who meets the requirements of paragraph (b)(4)(ii) of this section.

* * *

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

9. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

§ 235.1 [Amended]

10. Section 235.1(f)(1)(iv) is amended by revising the reference to ''§ 212.1(c–1)'' to read ''§ 212.1(c)''.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

11. The authority citation for part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

§ 264.1 [Amended]

12. Section 264.1(a) is amended by removing the entries for Forms ''I–175'' and ''I–190''.

§ 264.4 [Removed and reserved]

13. Section 264.4 is removed and Reserved.

PART 286—IMMIGRATION USER FEE

14. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

15. Section 286.9 is amended by revising paragraph (b)(3) and by removing paragraphs (b)(5) and (b)(6).

The revisions read as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

* * * * *

(b) * * *

(3) A Mexican national in possession of a valid Form DSP–150, B–1/B–2 Visa and Border Crossing Card, issued by the DOS, or a passport and combined B–1/B–2 visa and non-biometric BCC (or similar stamp in a passport) issued by the DOS, who is required to be issued Form I–94, Arrival/Departure Record, pursuant to § 235.1(f) of this chapter, must remit the required fee for issuance of Form I–94 upon determination of admissibility.

* * * * *

PART 299—IMMIGRATION FORMS

16. The authority citation for part 299 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

17. Section 299.1 is amended in the table by removing the entries for Form ''I–175'', and Form ''I–190'' and by adding an entry for Form ''DSP–150'', in proper alpha numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
DSP–150	01–01–98	B–1/B–2 Visa and Border Crossing Card.
*	*	*

§ 299.5 [Amended]

18. Section 299.5 is amended by removing the entries in the table for Form ''I–175'' and Form ''I–190''.

Dated: November 22, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–30295 Filed 11–29–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–24–AD; Amendment 39–12965; AD 2002–23–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspection of the flap tracks of the wing trailing edge flaps for adequate cadmium plating and for corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. This amendment also requires post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps for discrepancies, and corrective actions, if necessary. This amendment is prompted by reports of corrosion and cracks found in certain bolt holes reworked according to the existing AD. The actions specified by this AD are intended to find and fix discrepancies of the bolt holes, which could result in fracture of the flap track, separation of the flap, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 6, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–03–17, amendment 39–6884 (56 FR 4534, February 5, 1991), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on July 1, 2002 (67 FR 44116). The action proposed to continue to require inspection of the flap tracks of the wing trailing edge flaps for adequate cadmium plating and for corrosion of certain bolt holes of the fail-safe bar, and plating of such holes, if necessary. That action also proposed to require post-modification inspections of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps for discrepancies, and corrective actions, if necessary.

Comments

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

Conclusion

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

Cost Impact

There are approximately 553 airplanes of the affected design in the worldwide fleet. The FAA estimates that 169 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 91–03–17 take approximately 50 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to $3,000 per airplane.

The borescope inspection required by this AD action will take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the borescope inspection required by this AD on U.S. operators is estimated to be $324,480, or $1,920 per airplane.

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

Should an operator be required to accomplish the eddy current inspection, it takes approximately 40 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection is estimated to be $2,400 per airplane.

Should an operator be required to accomplish the modification of the bolt holes, it takes approximately 256 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification is estimated to be $15,360 per airplane.

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 removing amendment 39–6884 (56 FR 4534, February 5, 1991), and by adding a new airworthiness directive (AD), amendment 39–12965, to read as follows:

2002–23–21 Boeing: Amendment 39–12965. Docket 2002–NM–24–AD. Supersedes AD 91–03–17, Amendment 39–6884.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(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 find and fix discrepancies of certain bolt holes of the fail-safe bar of the flap tracks of the wing trailing edge flaps, which could result in separation of the flap and consequent loss of control of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 91–03–17

Inspections

(a) Prior to the accumulation of 30,000 total flight hours, or 8 years time-in-service on current production flap tracks, whichever is first; or within 2,000 flight cycles after March 11, 1991 (the effective date of AD 91–03–17, amendment 39–6884); whichever is later: Perform a borescope inspection of the forward four bolt holes on each side of the affected trailing edge flap tracks for corrosion and adequate cadmium plating, in accordance with the procedures specified in Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Revision 1, dated November 15, 1990; Revision 2, dated March 5, 1992; or Revision 3, dated June 21, 2001. If the cadmium plating is adequate, as specified in the service bulletin, and no corrosion or cracks are found, no further action is required for this paragraph. If the cadmium plating is not adequate, or if corrosion exists in any bolt hole, prior to further flight, conduct an eddy current inspection of the bolt hole for cracks, in accordance with the service bulletin. After the effective date of this AD only Revision 3 of the service bulletin may be used.

Corrective Actions

(b) If the cadmium plating is not adequate and no corrosion or cracks are found during the inspection required by paragraph (a) of this AD: Within 1,000 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD, cadmium plate the affected bolt holes in accordance with Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Revision 1, dated November 15, 1990; Revision 2, dated March 5, 1992; or Revision 3, dated June 21, 2001; and conduct the inspections of the affected track as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, in accordance with the service bulletin. Restoration of the cadmium plating terminates the inspections required by this paragraph.

Inspections

(1) Within 50 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD: Perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes, and repeat the inspection thereafter at intervals not to exceed 50 flight cycles.

(2) Within 250 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD: Perform an eddy current inspection for cracks of the bolt holes, and repeat the inspection thereafter at intervals not to exceed 250 flight cycles.

(3) Prior to each flight on which a fifth engine is to be carried, perform a close visual inspection of each side of the track, at the lower chord, for cracks emanating from the forward four fail-safe bar bolt holes.

New Requirements of this AD

Cadmium Plating Applied During Production

(c) For airplanes on which cadmium plating of the forward four bolt holes was applied during production: No further action is required by this AD. If operator records indicate that during the inspection required by paragraph (a) of this AD cadmium plating was applied during production (not during rework or replating), no further action is required by this AD. (Indications of rework include oversized fasteners and/or fasteners with repair sleeves, and/or flap track dash numbers that have been changed per the service bulletin.)

Compliance Time for Borescope Inspection

(d) For airplanes on which cadmium plating of the forward four bolt holes was *not* applied during production: Do the action required by paragraph (e) of this AD at the later of the times given in paragraphs (d)(1) and (d)(2) of this AD.

(1) Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever is first; or

(2) Within 6 years after doing the initial bolt hole rework per AD 91–03–17.

Borescope Inspection

(e) Do a borescope inspection of the forward four bolt holes on each side of the fail-safe bar of the flap tracks of the trailing edge flaps for discrepancies (corrosion, cracks, damaged cadmium plating), per Part 2 of the Work Instructions of Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001. Then, do the actions specified in paragraph (e)(1), (e)(2), or (e)(3) of this AD, as applicable, and repeat the borescope inspection every 8 years or 8,000 flight cycles, whichever is first. Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (a) of this AD.

Corrective Actions

(1) If the cadmium plating is damaged, but no corrosion or cracking is found: Before further flight, do the eddy current inspection specified in and per Part 2.F. of the Work Instructions of the service bulletin. If no cracking is found, before further flight, cadmium plate the affected bolt holes per Part 2.F. of the Work Instructions of the service bulletin.

(2) If any corrosion is found, before further flight, rework the affected bolt holes as specified in and per Part 2.G. of the Work Instructions of the service bulletin.

(3) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–03–17, amendment 39–6884, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraph (e)(3) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–57–2256, dated March 8, 1990; Boeing Service Bulletin 747–57–2256, Revision 1, dated November 15, 1990; Boeing Service Bulletin 747–57–2256, Revision 2, dated March 5, 1992; or Boeing Service Bulletin 747–57–2256, Revision 3, dated June 21, 2001; as applicable. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on January 6, 2003.

Issued in Renton, Washington, on November 19, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30026 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–417–AD; Amendment 39–12963; AD 2002–23–19]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Dassault Model Falcon 2000 series airplanes, and certain Dassault Model Falcon 900EX and Mystere Falcon 900 series airplanes. That AD currently requires repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary; repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action if necessary. This amendment removes Model 900EX and Mystere Falcon 900 series airplanes from the applicability of the existing AD. For Model Falcon 2000 series airplanes, this amendment also adds certain repetitive measurements, deletes certain repetitive measurements, and extends the interval for repetitive replacement of certain jackscrews. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent jamming of the flap jackscrews during the approach to landing, which could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

DATES: Effective January 6, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–14–07, amendment 39–11218 (64 FR 36561, July 7, 1999), was published in the **Federal Register** on February 15, 2002 (67 FR 7093). The proposal is applicable to all Dassault Model Falcon 2000 series airplanes; whereas, AD 99–14–07 was applicable to all Dassault Model Falcon 2000 series airplanes, and certain Dassault Model Falcon 900EX and Mystere Falcon 900 series airplanes. The action proposed to supersede AD 99–14–07 to continue to require the following:

- Repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary;
- Repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and
- Repetitive measurement of the screw/nut play of the outboard and center flap jackscrews to detect discrepancies, and corrective action, if necessary.

The action also proposed to remove Model 900EX and Mystere Falcon 900 series airplanes from the applicability of the existing AD. For Model Falcon 2000 series airplanes, the action also proposed to add certain repetitive measurements, delete certain repetitive measurements, and extend the interval for repetitive replacement of certain jackscrews.

Comments

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

Request To Add Part Numbers

One commenter requests adding ''Amdt A'' to the jackscrew part numbers (P/Ns) that are already specified by the proposed AD (*i.e.*, P/Ns 5318–1, 1–5319–1, and 2–5319–1). We concur with the commenter's request, noting that the designation of ''Amdt A'' simply indicates a reconditioned jackscrew that has been reidentified. As such, we have determined that this change further clarifies, but does not change, the requirements of this AD. In light of this, we have added P/Ns 5318–1 Amdt A, 1–5319–1 Amdt A, and 2–5319–1 Amdt A, as appropriate, for those P/Ns that have been reconditioned and reidentified. We have revised the applicable P/Ns in paragraphs (b) through (h) of the final rule accordingly.

Request To Revise Airplane Maintenance Manual References

The same commenter requests that the final rule reference only Chapter 5–40 of the Airplane Maintenance Manual (AMM) for the operational testing, inspections, and replacement action. The commenter adds that operators are managing the jackscrew life limits and inspections, and have planned the spares and maintenance inspections based on the actions required by AD 99–14–07. The commenter considers that the corrective action can be accomplished only per Chapter 5–40 of the AMM.

We do not concur with the commenter's request that only Chapter 5–40 of the AMM should be cited in the final rule as the appropriate source of service information for the actions required by the AD. In order to accomplish the requirements of the AD, it is necessary to cite all of the service information references that were included in the proposed AD, which include various AMMs and Temporary Revisions. No change to the final rule is necessary in this regard.

Explanation of Changes To Clarify/Revise the Final Rule

We have made the following additional changes to the final rule:

- In the Summary section of the final rule, we have clarified the requirements for the repetitive measurement action. The Summary section of the proposed AD specifies repetitive measurement of the screw/nut play of the ''outboard and center flap'' jackscrews. However, the repetitive measurement action in paragraph (f) of the proposed AD specifies the location of the jackscrew on the ''outboard flaps,'' and paragraph (g) of the proposed AD specifies the ''inboard flap.'' For this reason, we have revised the Summary of the final rule to specify measurement of the jackscrews on the ''inboard and outboard flaps.'' The exact location of the affected jackscrews is specified in paragraphs (f) through (h) of the final rule.
- Although paragraphs (c) and (e) of the proposed AD specify a reconditioned jackscrew having P/N 5318–1, we have revised those paragraphs in the final rule to clarify that the correct P/N of a reconditioned jackscrew is P/N 5318–1 Amdt A.
- Although paragraphs (c)(1) and (e)(1) and Note 2 of the proposed AD did not include the date of the referenced service bulletin, we have added the date (September 16, 1999) in those paragraphs in the final rule.
- In the proposed AD, paragraph (c)(2) specifies that the jackscrew is located on the inboard flap in the ''inboard'' position, and paragraph (e)(2) specifies the location of the jackscrew in the ''outboard'' position. However, because the jackscrew could be located in either the inboard or outboard position, we have determined that the requirements in those paragraphs are unnecessary and should be deleted. In light of this, we have revised the final rule and renumbered the subparagraphs accordingly.
- In paragraph (d) of the final rule, we have clarified the location of the middle jackscrew by specifying that the jackscrew is located on the inboard flap and in the outboard position. We have also clarified the location of the jackscrew in paragraph (e) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This AD is considered to be interim action. The manufacturer has advised that it is currently developing a modification that will positively address the unsafe condition which is the subject of this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 45 airplanes of U.S. registry that will be affected by this AD.

The costs of performing actions required by AD 99–14–07 and retained in this AD for Falcon 2000 series airplanes are described below.

The repetitive operational test of the flap asymmetry detection system takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive operational test on U.S. operators is estimated to be $2,700, or $60 per airplane, per test cycle.

The measurement of the screw/nut play in the flap jackscrews takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the measurement on U.S. operators is estimated to be $21,600, or $480 per airplane, per measurement cycle.

The repetitive replacement of jackscrews takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. New jackscrews cost approximately $21,200 per airplane. However, the AD permits a one-time reconditioning and re-use of jackscrews, which could reduce the cost of parts by 50%. Based on these figures, the cost impact of replacement of jackscrews on U.S. operators is estimated to be between $498,600 and $975,600, or between $11,080 and $21,680 per airplane, per replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. 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 removing amendment 39–11218 (64 FR 36561, July 7, 1999), and by adding a new airworthiness directive (AD), amendment 39–12963, to read as follows:

2002–23–19 Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)): Amendment 39–12963; Docket 2000–NM–417–AD. Supersedes AD 99–14–07, Amendment 39–11218.

Applicability: All Model Falcon 2000 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the flap jackscrews during the approach to landing, which could result in the inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Operational Test

(a) Within 5 flight cycles after August 11, 1999 (the effective date of AD 99–14–07, amendment 39–11218): Perform an operational test of the flap asymmetry detection system to ensure that the system is functioning correctly, in accordance with the procedures specified in Dassault Falcon 2000 Airplane Maintenance Manual (AMM) 27–502, dated November 1995. Prior to further flight, repair any discrepancy detected, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent). Repeat the operational test thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Repetitive Replacement

(b) Prior to the accumulation of 1,000 total flight cycles on the inboard jackscrew located on the inboard flap in the inboard position, or within 25 flight cycles after August 11, 1999, whichever occurs later: Replace each jackscrew having part number (P/N) 5318–1 or 5318–1 Amdt A, which is located on the inboard flap in the inboard position, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995. The replacement jackscrew may be new or may have been reconditioned in accordance with paragraph (c) of this AD. Repeat the replacement of a jackscrew having P/N 5318–1 or 5318–1 Amdt A thereafter at intervals not to exceed 1,000 flight cycles on the jackscrew located on the inboard flap in the inboard position.

(c) A jackscrew having P/N 5318–1 and located on the inboard flap in the inboard position may be replaced by a reconditioned jackscrew having P/N 5318–1 Amdt A, provided that all of the conditions specified in paragraphs (c)(1) and (c)(2) of this AD are met.

(1) The jackscrew has been reconditioned and reidentified as P/N 5318–1 Amdt A, in accordance with Dassault Service Bulletin AVIAC 5318–27–01, dated September 16, 1999.

(2) The jackscrew has been reconditioned only one time.

(d) Prior to the accumulation of 2,200 total flight cycles on the middle jackscrew located on the inboard flap and in the outboard position, or within 25 flight cycles after August 11, 1999, whichever occurs later: Replace each jackscrew having P/N 5318–1 or 5318–1 Amdt A on the inboard flap and in the outboard position, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995. The replacement jackscrew may be new or may have been reconditioned in accordance with paragraph (e) of this AD. Repeat the replacement of a jackscrew having P/N 5318–1 or 5318–1 Amdt A thereafter at intervals not to exceed 2,200 flight cycles on the jackscrew located on the inboard flap and in the outboard position.

(e) A jackscrew having P/N 5318–1 and located on the inboard flap and in the outboard position may be replaced by a reconditioned jackscrew having P/N 5318–1 Amdt A, provided that all of the conditions specified in paragraphs (e)(1) and (e)(2) of this AD are met.

(1) The jackscrew has been reconditioned and reidentified as P/N 5318–1 Amdt A, in accordance with Dassault Service Bulletin AVIAC 5318–27–01, dated September 16, 1999.

(2) The jackscrew has been reconditioned only one time.

Repetitive Measurements

(f) Prior to the accumulation of 1,000 total flight cycles on the outboard jackscrews

located on the outboard flaps, or within 25 flight cycles after August 11, 1999, whichever occurs later: Measure the screw/nut play of the jackscrews having P/N 1–5319–1 or 1–5319–1 Amdt A (on the left wing) and P/N 2–5319–1 or 2–5319–1 Amdt A (on the right wing) on the outboard flaps, in accordance with the procedures specified in Dassault Falcon 2000 AMM Temporary Revision (TR) 27–504, dated October 1998.

Note 2: Jackscrews having P/N 1–5319–1 or 2–5319–1 may be reconditioned in accordance with Dassault Service Bulletin AVIAC 5319–27–01, dated September 16, 1999. These jackscrews may be reconditioned and reused more than one time.

(1) If the initial measurement is equal to or less than 0.014 inch: Repeat the measurement thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first. If any repetitive measurement detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraph (f)(2) of this AD.

(2) If the initial measurement is greater than 0.014 inch: Perform the actions required by paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Prior to further flight, replace the jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995.

(ii) Prior to the accumulation of 1,000 total flight cycles on the new or reconditioned jackscrew, perform a follow-on measurement of the screw/nut play in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998.

(iii) If any follow-on measurement required by paragraph (f)(2)(ii) of this AD detects a nut/screw play equal to or less than 0.014 inch, perform the actions required by paragraph (f)(1) of this AD. If any follow-on measurement required by paragraph (f)(2)(ii) of this AD detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(g) Prior to the accumulation of 750 total flight cycles on the jackscrew located on the inboard flap in the inboard position, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the jackscrew having P/N 5318–1 or 1–5318–1 Amdt A, which is located on the inboard flap in the inboard position, to detect discrepancies, in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998. If the measurement is greater than 0.014 inch, prior to further flight, replace the discrepant jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995.

(h) Prior to the accumulation of 1,000 total flight cycles on the jackscrew located on the inboard flap in the outboard position, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the jackscrew having P/N 5318–1 or 5318–1 Amdt A, which is located on the inboard flap in the outboard position, in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998.

(1) If the initial measurement is equal to or less than 0.014 inch: Repeat the measurements thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first. If repetitive measurement detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraph (h)(2) of this AD.

(2) If the initial measurement is greater than 0.014 inch: Perform the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Prior to further flight, replace the jackscrew with a new or reconditioned jackscrew, in accordance with Dassault Falcon 2000 AMM 27–510, dated November 1995.

(ii) Prior to the accumulation of 1,000 total flight cycles on the new or reconditioned jackscrew, perform a follow-on measurement of the screw/nut play in accordance with the procedures specified in Dassault Falcon 2000 AMM TR 27–504, dated October 1998.

(iii) If any follow-on measurement required by paragraph (h)(2)(ii) of this AD detects a nut/screw play equal to or less than 0.014 inch, perform the actions required by paragraph (h)(1) of this AD. If any follow-on measurement required by paragraph (h)(2)(ii) of this AD detects a nut/screw play greater than 0.014 inch, perform the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

Alternative Methods of Compliance

(i)(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) Alternative methods of compliance, approved previously in accordance with AD 99–14–07, amendment 39–11218, are not considered to be approved as alternative methods of compliance with this AD.

Special Flight Permits

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

Incorporation by Reference

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with Dassault Falcon 2000 Airplane Maintenance Manual Temporary Revision 27–504, dated October 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–038–008(B) R1, dated September 20, 2000.

Effective Date

(l) This amendment becomes effective on January 6, 2003.

Issued in Renton, Washington, on November 19, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30025 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–40–AD; Amendment 39–12969; AD 2002–24–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. This amendment requires revising the Airplane Flight Manual to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 6, 2003.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes, was published in the **Federal Register** on July 17, 2002 (67 FR 46937). That action proposed to require revising the Airplane Flight Manual to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 168 Airbus Model A300 B2 and B4; A300–600; and Model A310 series airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,080, or $60 per airplane.

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

2002–24–04 Airbus: Amendment 39–12969. Docket 2002–NM–40–AD.

Applicability: All Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds.

(1) For Model A300 series airplanes, revise the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

''EMERGENCY PROCEDURES

Cabin Depressurization:

Crew Oxygen Masks	ON
Crew Communications ..	established
Passenger Oxygen	as required

''EMERGENCY PROCEDURES—Continued

Emergency Descent	as required (see 3.02.00 page 8)''

(2) For Model A300–600 and A310 series airplanes: Revise the Procedures Following Failure section of the FAA-approved AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''PROCEDURES FOLLOWING FAILURE

Cabin Press:

Excess Cab Alt.	
Oxy Masks	ON
Descent	AS RQRD
If Rapid Decompression Emerg Descent Proc.	APPLY''

Removal of AD From AFM

(b) When the information included in the AFM procedures specified in paragraphs (a)(1) and (a)(2) of this AD has been incorporated into the FAA-approved general revision of the AFM, and the information contained in the general revision is identical to that specified in this AD, this AD may be removed from the AFM.

Alternative Methods of Compliance

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

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from International Branch, ANM–116.

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on January 6, 2003.

Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30341 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–23]

Establishment of Class E5 Airspace; Tazewell, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Tazewell, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for New Tazewell Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Effective 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Tazewell, TN, (67 FR 62412). This action provides adequate Class E5 airspace for IFR operations at New Tazewell Municipal Airport, Tazewell, TN. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Tazewell, TN.

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 Fl]exibility 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 AIRPSACE 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; EO 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 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Tazewell, TN [NEW]

New Tazewell Municipal Airport, TN
Point In Space Coordinates
(lat. 36°24′47″ long. 83°30′00″)
That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°24′47″ long. 83°30′00″ W) serving New Tazewell Municipal Airport.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30333 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–22]

Amendment of Class E5 Airspace; Rockwood, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Rockwood, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Harriman City Hospital, Harriman, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Effective 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Rockwood, TN, (67 FR 62413). This action provides adequate Class E5 airspace for IFR operations at Harriman City Hospital, Harriman, TN. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 74009.K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Rockwood, TN.

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; EO 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 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO TN E5 Rockwood, TN [REVISED]

Rockwood Municipal Airport, TN
(lat. 35°55′20″N, long. 84°41′23″W)
Harriman City Hospital
Point in Space Coordinates
(lat. 35°56′36″N, long. 84°30′18″W)
That airspace extending upward from 700 feet or more above the surface within a 9.5-mile radius of Rockwood Municipal Airport and within a 6-mile radius of the point in space (lat. 35°56′36″N, long. 84°30′18″W) serving Harriman City Hospital; excluding that airspace within the Crossville, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30332 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–21]

Establishment of Class E5 Airspace; Newport, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Newport, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Cocke County Baptist Hospital, Newport, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Effective 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Newport, TN, (67 FR 62414). This action provides adequate Class E5 airspace for IFR operations at Cocke County Baptist Hospital, Newport, TN. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Newport, TN.

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; EO 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 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Newport, TN [NEW]

Cocke County Baptist Hospital, TN
Point In Space Coordinates
(Lat. 36°00′13″N long. 83°10′53″W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°00′13″N long. 83°10′53″W) serving Cocke County Baptist Hospital; excluding that airspace within the Knoxville TN, and the Morristown, TN Class E airspace areas.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30331 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–20]

Establishment of Class E5 Airspace; Middlesboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Middlesboro, KY. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Middlesboro—Bell County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Middlesboro, KY, (67 FR 62415). This action provides adequate Class E5 airspace for IFR operations at Middlesboro—Bell County Airport, Middlesboro, KY. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Middlesboro, KY.

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; EO 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 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Area Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO KY E5 Middlesboro, KY [NEW]

Middlesboro-Bell County Airport, KY

Point In Space Coordinates
(lat. 36°36′37″ long. 83°43′32″
That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°36′37″ long. 83°43′32″ W) serving Middlesboro-Bell County Airport.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30330 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–19]

Amendment of Class E5 Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Class E5 airspace at Augusta, GA. A Non-Directional Beacon (NDB) Runway (RWY) 17 Standard Instrument Approach Procedure (SIAP) has been developed for Millen Airport, Millen, GA. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Millen Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include FR operations concurrent with the publication of the SIAP.

DATES: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace

at Augusta, GA, (67 FR 62416). This action provides adequate Class E5 airspace for IRF operations at Millen, GA. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Augusta, GA.

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 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; EO 10854, 24 FR 9565, 3 CFR, 1959–1964 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Augusta, GA [REVISED]

Augusta, Bush Field, GA
(Lat 33°22′12″N, long. 81°57′52″W)
Bushe NDB
(Lat. 33°17′13″N, long. 81°56′49″W)
Daniel Field
(Lat. 33°27′59″N, long. 82°02′21″W)
Burke County Airport
(Lat, 33°02′27″N, long. 82°00′14″W)
Burke County NDB
(Lat. 33°02′33″N, long. 82°00′17″W)
Millen Airport
(Lat. 32°53′38″N, long. 81°57′54″W)
Millen NDB
(Lat. 32°53′41″N, long. 81°58′01″W)
That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Bush Field and within 8 miles west and 4 miles east of the Augusta ILS localizer south course extending from the 8.2-mile radius to 16 miles south of the Bushe NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB, and within a 6.4-mile radius of Millen Airport and within 4 miles east and 8 miles west of the 357° bearing from the Millen NDB extending from the 6.4-mile radius to 16 miles north of the airport.

* * * * *

Issued in College Park, Georgia, November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30329 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2001–10527; Airspace Docket No. ASD 02–AGL–16]

RIN 2120–AA66

Revision of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action realigns Jet Route 211 (J–211) southeast of the Johnstown, PA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) by realigning it clockwise by one degree. The realignment is necessary because the Johnstown 129° radial has become unusable. The FAA is taking this action to enhance aviation safety in the Johnstown, PA, area.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

Aircraft navigating on J–211 currently use the 129° radial of the Johnstown, PA, VORTAC. A review by the FAA has revealed that the 129° radial of the Johnstown, PA, VORTAC has become unusable. This action revises J–211 from the Johnstown 129° radial to the Johnstown 130° radial. The FAA is taking this action to enhance aviation safety in the affected area.

The Rule

This amendment to 14 CFR part 71 realigns a segment of J–211 southeast of the Johnstown, PA, VORTAC by moving it one degree from the Johnstown 129° radial to the Johnstown 130° radial. This action is necessary to ensure the safety of aircraft navigating on J–211. Because this action is needed for safety reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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 Department of Transportation (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.

Jet routes are published in paragraph 2004 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR

71.1. The jet routes listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–211 [Revised]

From Youngstown, OH; Johnstown, PA; INT Johnstown 130° and Westminster, MD, 292° radials; to Westminster.

* * * * *

Issued in Washington, DC, on November 22, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–30326 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 16

[Docket No. 02N–0251]

Presiding Officers at Regulatory Hearings; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of January 2, 2003, for the direct final rule that appeared in the **Federal Register** of August 15, 2002 (67 FR 53305). The direct final rule amends the administrative regulations governing who may act as a presiding officer at a regulatory hearing. This document confirms the effective date of the final rule.

DATES: Effective date confirmed: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of the Chief Counsel (GCF–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7144.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 2002 (67 FR 53305), FDA solicited comments concerning the direct final rule for a 75-day period ending October 29, 2002. FDA stated that the effective date of the direct final rule would be 30 days after the publication of this confirmation document in the **Federal Register**, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Therefore, under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 et al.), and under the authority delegated to the Commissioner of Food and Drugs, the amendments issued thereby will go into effect on January 2, 2003.

Dated: November 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30483 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 02P–0177]

Food Labeling: Health Claims; D-tagatose and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation authorizing a health claim on sugar alcohols and dental caries, i.e., tooth decay, to include the sugar D-tagatose, a novel food ingredient. Similar to the sugar alcohols currently listed in § 101.80 (21 CFR 101.80), D-tagatose is a carbohydrate sweetener that is slowly fermented by oral microorganisms, thus producing less acid than more fermentable carbohydrates. We (FDA) are taking this action in response to a petition filed by Arla Foods Ingredients amba. We previously concluded that there was significant scientific agreement for the relationship between slowly fermented carbohydrate sugar substitutes, specifically certain sugar alcohols, and the nonpromotion of dental caries. Based on the totality of publicly available scientific evidence, we now have determined that the sugar D-tagatose, like the sugar alcohols, is not fermented by oral bacteria to an extent sufficient to lower dental plaque pH to levels that would cause the erosion of dental enamel. Therefore, we have concluded that D-tagatose does not promote dental caries, and we are amending the regulation authorizing a health claim relating certain sugar alcohols and nonpromotion of dental caries to include D-tagatose as a substance eligible for the claim. Moreover, because D-tagatose is a sugar, we are denying the petitioner's request to exclude D-tagatose from the definition of ''sugars,'' and instead are exempting foods containing D-tagatose from the requirement that foods bearing a health claim about nonpromotion of dental caries be sugar-free. Accordingly, although products containing D-tagatose will not be permitted to be labeled as ''sugar-free,'' they will be authorized to say that D-tagatose sugar does not promote, or may reduce the risk of, tooth decay.

DATES: This rule is effective December 2, 2002. Submit written or electronic comments by February 18, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: James Hoadley, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–832), Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD, 20740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535) amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One aspect of the 1990 amendments was that they confirmed FDA's authority to

regulate health claims on food labels and in food labeling.

We issued several new regulations in 1993 that implemented the health claim provisions of the 1990 amendments. Among these were § 101.14 (21 CFR 101.14), Health Claims: General Requirements, (58 FR 2478, January 6, 1993) and § 101.70 (21 CFR 101.70), Petitions for Health Claims (58 FR 2478, January 6, 1993), which established a process for petitioning the agency to authorize health claims about substance-disease relationships and set out the types of information that a health claim petition must include. These regulations became effective on May 8, 1993.

The final rule for § 101.80 (61 FR 43433, August 23, 1996), relating sugar alcohols and the nonpromotion of dental caries (the dental caries health claim), completed the first rulemaking that we conducted in response to a health claim petition (Docket No. 95P–0003). Section 101.80(a) describes the role of fermentable carbohydrates, i.e., dietary sugars and starches, in the development of dental caries. The fermentation of these carbohydrates by microorganisms on the surface of teeth produces organic acids, which contribute to the development of dental caries through erosion of tooth enamel. Section 101.80 (b) explains that sugar alcohols are fermented by oral microorganisms more slowly than fermentable carbohydrates. Thus, the rate of acid production is lower than that from fermentable carbohydrates. Consequently, sugar alcohols, when used in place of fermentable carbohydrates, are useful as sweeteners that do not promote dental caries. Section 101.80 (c) describes the specific requirements of the dental caries health claim, including the requirement that the food bearing the claim be ''sugar free'' as defined by § 101.60(c)(1)(i) (21 CFR 101.60(c)(1)(i)). Section 101.80 (c) also specifies the sugar alcohols that are eligible for the claim: xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, erythritol, or a combination of these (§ 101.80(c)(2)(ii)(B)). Section 101.80(c)(2)(ii)(C) further states that:

> When fermentable carbohydrates are present in the sugar alcohol-containing food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption, or up to 30 minutes after consumption, as measured by the indwelling plaque pH test found in ''Identification of Low Caries Risk Dietary Components,'' * * * which is incorporated by reference * * *.

In the dental caries health claim final rule, the agency stated that for other sugar alcohols to be listed in § 101.80(c)(2)(ii)(B), a petitioner must show how the substance conforms to the requirements of §§ 101.14(b) and 101.80 and must provide evidence that the new sugar alcohol will not lower dental plaque pH below 5.7 (61 FR 43433 at 43442).

In 1997, the agency received a health claim petition (Docket No. 97P–0206) requesting that we amend the dental caries health claim regulation to include erythritol among the sugar alcohols listed in § 101.80(c)(2)(ii)(B). The petition met the requirements in §§ 101.14(b) and 101.80, including evidence from clinical studies using the indwelling plaque pH test cited in § 101.80(c)(2)(ii)(C), demonstrating that erythritol-containing foods do not lower plaque pH below 5.7. Therefore, we amended § 101.80(c)(2)(ii)(B) to include erythritol as one of the sugar alcohols that is eligible to bear a dental caries health claim (62 FR 63653, December 2, 1997).

II. Petition for Health Claim on D-tagatose and the Nonpromotion of Dental Caries

A. The Petition

On January 9, 2002, Arla Foods Ingredients amba, DK–8260 Viby, Denmark, (the petitioner) submitted a petition under section 403(r)(4) of the act (21 U.S.C. 343(r)(4)). The petition requested that we: (1) Amend § 101.80 to include the sugar D-tagatose as one of the substances eligible to bear the dental caries health claim; (2) amend § 101.9 (21 CFR 101.9), the nutrition labeling regulation, to exclude D-tagatose from the definition of ''sugars'' (§ 101.9(c)(6)(ii)), thereby allowing a ''sugar free'' nutrient content claim; and (3) modify the wording of § 101.80 because D-tagatose is not a sugar alcohol. On April 19, 2001, we notified the petitioner that we had completed our initial review of the petition and that the petition had been filed for further action (Docket No. 02P–0177, Let 1) in accordance with section 403(r)(4) of the act. The April 19, 2001, letter stated that consistent with our strategy for implementation of the 1999 Pearson court decision (see 65 FR 59855, October 6, 2000), the agency would consider using its interim final rule authority under section 403(r)(7)(A)(iii) of the act to allow use of the health claim immediately upon publication of the proposal. If the agency does not act, by either denying the petition or issuing a proposed regulation to authorize the health claim, within 90 days of the date of filing, the petition is deemed to be denied unless an extension is mutually agreed upon by the agency and the petitioner (Section 403(r)(4)(A)(i) of the act and § 101.70(j)(3)(iii)). On July 11, 2002, FDA and the petitioner agreed to extend the deadline to publish a proposed regulation until December 2, 2002 (Docket No. 02P–0177, Let 2).

B. Nature of the Substance

As noted by the petition, D-tagatose, the subject of this health claim, is a sugar (see Ref. 1 at page 2). D-tagatose is a monosaccharide ketohexose sugar.[1] There are four different ketohexose sugars, differing only in the orientation of the hydroxyl groups attached to the carbon atoms in positions 3, 4, and 5; the other three ketohexoses are D-fructose, D-sorbose, and D-psicose. D-fructose is the only abundant ketohexose in nature; D-tagatose occurs naturally in the human food supply at only trace amounts. D-tagatose and D-fructose differ in the orientation of the hydroxyl group at the carbon atom at position 4. The Chemical Abstracts Service Registry Number (CAS No.) for D-tagatose is 87–81–0. It has a sweetness of about 75–92 percent that of sucrose.

C. Review of Preliminary Requirements for a Health Claim

1. The Substance Is Associated With a Disease for Which the U.S. Population Is at Risk

At the time that the dental caries health claim initially was proposed, the agency recognized that, although the prevalence of dental caries among children in the United States had been declining since the early 1970s, the overall prevalence of dental caries remained a substantial burden throughout the U.S. population (60 FR 37507 at 37509, July 20, 1995). Currently, the Department of Health and Human Services' Healthy People 2010 Objectives recognizes dental caries as the single most common chronic disease of childhood, and states that 30 percent of adults have untreated dental decay (Ref. 2). Based on these facts, FDA concludes that, as required in § 101.14(b)(1), dental caries is a disease for which the U.S. population is at risk.

2. The Substance Is a Food

Under § 101.14(b)(3)(i), the substance that is the subject of a health claim must contribute taste, aroma, or nutritive value, or any other technical effect

[1] All of the common monosaccharides are six-carbon sugars, i.e., hexoses. All sugars have a carbon-oxygen double bond at either the carbon atom in position 1 (aldose) or at the carbon atom in position 2 (ketose). Sugar alcohols differ from sugars in that the double-bonded oxygen of sugars is reduced to a hydroxyl group (-OH) in the sugar alcohols.

listed in § 170.3(o) (21 CFR 170.3(o)), to the food and must retain that attribute when consumed at the levels that are necessary to justify a claim. The petition states that the intended use of D-tagatose in foods is as a nutritive sweetener, humectant, texturizer or stabilizer (§ 170.3(o)(16), (o)(21), (o)(28), (o)(32)). D-tagatose used as a sweetener contributes taste to the food. Existing § 101.80 does not specify the levels in foods of sugar alcohols necessary to justify the health claim and the current petition does not propose a qualifying level for D-tagatose. As a substitute for dietary sugars, D-tagatose will be used in foods at levels necessary to provide the desired level of sweetness in the finished product. Because D-tagatose contributes taste and other technical effects listed in § 170.3(o) to food, the agency concludes that the preliminary requirement of § 101.14(b)(3)(i) is satisfied.

3. The Substance Is Safe and Lawful

On May 11, 2001, the petitioner notified FDA of its view that D-tagatose is generally recognized as safe (GRAS), through scientific procedures, for use as a bulk sweetener, humectant, texturizer, or stabilizer in a variety of foods. FDA replied to this notice on October 25, 2001, stating that based on the information provided by the petitioner, as well as other information available to FDA, the agency had no questions regarding the petitioner's determination that the intended use of D-tagatose is GRAS (Agency Response Letter to GRAS Notice No. GRN 000078, October 25, 2001) (Ref. 1, Appendix 2). Furthermore, FDA is not aware of any scientific evidence that D-tagatose, under the intended conditions of use, would be harmful. The agency has not made its own determination regarding the GRAS status of D-tagatose, however, and notes that authorization of a health claim for a substance should not be interpreted as affirmation that the use of the substance is GRAS.

The petitioner's May 11, 2001 submission reveals significant evidence supporting the safety of the use of D-tagatose as a sweetener. FDA is not aware of any evidence that provides a basis to reject the petitioner's position that the use of D-tagatose as a sweetener is safe and lawful. Therefore, FDA concludes that the petitioner has satisfied the requirement of § 101.14(b)(3)(ii) to demonstrate that the use of D-tagatose as a sweetener is safe and lawful.

III. Review of Scientific Evidence of the Substance-Disease Relationship

A. Basis for Evaluating the Relationship Between D-Tagatose and Dental Caries

In the preamble to the 1996 dental caries health claim final rule, the agency concluded that there was significant scientific agreement among qualified experts to support the relationship between certain sugar alcohols and the nonpromotion of dental caries (61 FR 43433). The agency noted that it would take action to add additional sugar alcohols to this regulation when presented with evidence that the additional sugar alcohols will not lower plaque pH below 5.7, and that the substance conforms to the requirements of § 101.14(b) (61 FR 43433 at 43442).

In 1997, the agency amended the dental caries health claim to add erythritol as an additional sugar alcohol eligible for the claim (62 FR 63653, December 2, 1997). The petition to amend § 101.80 to add erythritol (Docket No. 97P–0206) presented scientific data from a rodent cariogenicity study and from a clinical indwelling plaque pH test of erythritol. The agency was satisfied that the results of these two studies were consistent with the results of the studies that investigated the cariogenic potential of the sugar alcohols listed in § 101.80(c)(2)(ii)(B) and that erythritol met the requirements of § 101.14(b). Therefore, erythritol was added to the list of eligible sugar alcohols.

The substance that is the subject of the current petition, D-tagatose, is a sugar rather than a sugar alcohol. However, like the sugar alcohols, the intended food ingredient use of D-tagatose is as a nutritive sweetener with reduced caloric value relative to traditional sugars. Also, as is the case with the sugar alcohols, the potential dental health benefit from D-tagatose derives from its reduced fermentability relative to traditional sugars. Consequently, the criteria that were used to evaluate the sugar alcohols in the existing dental caries health claim can be applied to D-tagatose to assess whether it qualifies for such a claim. As discussed in section II.C of this document FDA has concluded that D-tagatose satisfies the requirements of § 101.14(b).

B. Review of Scientific Evidence

1. Evidence Considered in Reaching the Decision

In the initial proposal to authorize a health claim relating sugar alcohols and nonpromotion of dental caries (60 FR 37507, July 20, 1995), FDA considered evidence about the cariogenic potential of several specific sugar alcohols from long-term controlled human caries trials, in vivo and in vitro plaque pH measurements, demineralization and remineralization techniques, and rat caries experimental models. FDA's review focused on the scientific evidence from studies evaluating changes in plaque pH, plaque acid production, decalcification or remineralization of tooth enamel, and the incidence of dental caries with sugar alcohols. FDA limited its review to these types of studies because previous Federal Government and other authoritative reviews had focused on these areas, and the majority of research efforts have also focused on these areas (60 FR 37507 at 37523). The well-established role of sucrose in the etiology of dental caries is related to the ability of sucrose to be metabolized by oral bacteria into extracellular polymers that adhere firmly to the tooth surfaces (i.e., plaque), at the same time forming acids that can demineralize tooth enamel. FDA previously concluded that human studies show sugar alcohols, relative to sucrose, are associated with reduced rate of acid production in dental plaque and, in some studies, a reduced incidence of dental caries (60 FR 37507 at 37523).

The current petition to amend the dental caries health claim requires FDA to consider the effects of a sugar, D-tagatose, on the rate of acid production in dental plaque and thus on the incidence of dental caries. To determine whether there is an association between D-tagatose and the nonpromotion of dental caries, FDA compared scientific evidence regarding the cariogenic potential of D-tagatose from two human studies investigating the rate of acid production in dental plaque from D-tagatose relative to that of sucrose with the similar evidence that the agency had previously reviewed regarding the cariogenic potential of certain sugar alcohols. Upon review of this evidence, FDA concluded that, like the sugar alcohols previously authorized for this health claim, D-tagatose is associated with the nonpromotion of dental caries.

2. Review of D-tagatose Studies

The petition included reports (Ref. 1, Appendix 3) from the evaluation of D-tagatose using the indwelling plaque pH test described in ''Identification of Low Caries Risk Dietary Components,'' T. N. Imfeld, Volume 11, *Monographs in Oral Science*, 1983, which is incorporated by reference in the dental caries health claim regulation (§ 101.80(c)(2)(iii)(C)). This evaluation was conducted twice under the same test protocol and with

the same six test subjects. The purpose of the repeat test was to investigate the potential for oral bacteria adaptation to D-tagatose.

Each of the six subjects of these trials had his or her normal dental prosthesis replaced with a mandibular bridge-work that contained a miniaturized telemeterized glass pH-electrode that transmits pH data to an external recording device. Once the telemetric pH prosthesis was inserted into the subject's mouth, the subject was asked not to alter his or her eating habits. The prostheses remained in place throughout the test period to allow an undisturbed growth of plaque over the tips of the pH-electrodes. With the exception of water rinses, the subjects also were asked to refrain from all oral hygiene measures. Following a 3- to 7-day plaque buildup period, the interdental plaque pH telemetry test was conducted. The two tests differed only in that, for the first test, exposure to D-tagatose was limited to a single 2-minute rinse during the pH measurements that followed the plaque buildup period; in the second test, subjects rinsed with D-tagatose five times per day throughout the 3- to 7-day plaque buildup period to determine whether the oral bacteria could adapt to utilize D-tagatose.

For both tests, baseline plaque pH was measured over a 15-minute period after the subjects chewed a piece of paraffin for 3 minutes. The subjects then rinsed with a 10-percent aqueous solution of D-tagatose, followed by plaque pH measurements over a 30-minute period. The same paraffin chew and rinse sequence was then repeated using a 10-percent sucrose rinse. The sucrose rinse served as a positive control to demonstrate the accurate functioning of the pH telemetric equipment and of plaque metabolism.

The results of these tests showed that baseline plaque pH, following the first paraffin chew, ranged from 6.7 to 7.15. The report of these two studies notes that baseline plaque pH in these trials was comparable to that of previous trials of other substances conducted with the same subjects and plaque ages (Ref. 1, Appendix 3). During the D-tagatose rinse and the 30 minutes following the D-tagatose rinse, lowest plaque pH recorded among the six subjects ranged from 5.7 to 6.55. During and after the sucrose rinse, lowest plaque pH recorded among the six subjects ranged from 4.10 to 4.90. Plaque pH measurements during the first test (without exposure to D-tagatose during the plaque build-up period) and the second test (with daily D-tagatose exposure during the plaque buildup period) were substantially the same. The report of these studies concluded that no critical decrease (i.e. below pH 5.7) in the pH of interdental plaque due to bacterial fermentation of D-tagatose occurred; and that dental plaque layers having grown up under repeated exposure to D-tagatose were not more acidified by D-tagatose bacterial fermentation than were nonexposed plaque layers in the same volunteers. Although these two reports of in vivo dental plaque pH tests of D-tagatose constitute a limited body of scientific evidence on the cariogenic potential of D-tagatose, we are satisfied that these reports, in conjunction with the information previously considered by the agency on the etiology of dental caries and the effects of slowly fermentable carbohydrates, are sufficient to enable the agency to evaluate whether D-tagatose should be added to the list of substances eligible for the dental caries health claim.

IV. Decision to Authorize a Health Claim Relating D-Tagatose to the Nonpromotion of Dental Caries

FDA previously concluded that there is significant scientific agreement among qualified experts to support the relationship between certain sugar alcohols and the nonpromotion of dental caries in that the rate and amount of acid production from the metabolism of sugar alcohols by bacteria is significantly less than that produced from the metabolism of sucrose and other fermentable carbohydrates and therefore does not cause the loss of important minerals from tooth enamel (§ 101.80(b)). The petition contains evaluations of the cariogenic potential of D-tagatose from two indwelling plaque pH tests. As discussed previously, the results of the plaque pH tests demonstrate that D-tagatose does not lower plaque pH below 5.7 and, therefore, does not promote demineralization of dental enamel. The results of these studies are consistent with the results of the studies that investigated the cariogenic potential of the sugar alcohols originally listed in § 101.80(c)(2)(ii)(B), and are consistent with the evidence relied upon by the agency when adding erythritol to this list. Therefore, based on the totality of publicly available evidence pertaining to the cariogenicity of D-tagatose and to the relationship between dental plaque pH and dental caries, we conclude that there is significant scientific agreement that D-tagatose does not promote dental caries. Accordingly, we are amending § 101.80 to authorize a dental caries health claim for D-tagatose.

V. Request to Amend the Definition of ''Sugars'' in § 101.9(c)(6)(ii) and Decision to Exempt Foods Containing D-Tagatose From the Sugar-Free Requirement

Section 101.80 (c)(2)(ii)(A) (the dental caries health claim regulation) requires that foods bearing the health claim be ''sugar free'' as defined by (§ 101.60(c)(1)(i) (21 CFR 101.60(c)(1)(i)). D-tagatose is a sugar under the nutrition labeling definition of ''sugars''[2] in 21 CFR 101.9(c)(6)(ii); therefore, by definition, a food containing D-tagatose is not ''sugar free.'' The petition urges FDA to amend § 101.9(c)(6)(ii) to exclude D-tagatose from the ''sugars'' definition, thereby qualifying D-tagatose-containing foods for the ''sugar free'' nutrient content claim, and to provide for a separate declaration of D-tagatose in nutrition labeling. The stated purpose of this request was to assure consistency with other regulations, and to permit D-tagatose-containing noncariogenic foods to inform consumers that the product is ''sugar free'' in accordance with 21 CFR 101.60. (Ref. 1). However, the effect of this request also would be to alter the reported information in the nutrition label for foods containing D-tagatose, because if the request were granted, the amount of D-tagatose in the product would not be recorded under sugars. Thus, products containing D-tagatose and no other sugars would appear to contain zero sugars for purposes of the nutrition label.

The petition identifies D-tagatose as a sugar but asserts that: (1) There is no compelling health or nutritional reason for D-tagatose to be included in the nutrition labeling ''sugars'' definition and (2) excluding D-tagatose from the ''sugars'' definition will help address public health concerns about tooth decay and will improve the ability of

[2] Simple sugars (monosaccharides) consist of a single polyhydroxy aldehyde or ketone unit. The most abundant simple sugars are six-carbon molecules; i.e., hexoses. Two or more monosaccharides can be combined to form disaccharides (e.g., sucrose and lactose) and polysaccharides; however, in general, polysaccharides of more than two saccharide units are not sweet. For purposes of food labeling, the term ''sugar'' refers only to sucrose (§ 101.4(b)(20)). For nutritional labeling purposes FDA has defined the term ''sugars'' as the sum of all mono- and disaccharides present in a food (§ 101.9(c)(6)(ii)). Although the authorized nutrient content claims that characterize the amount of sugars in a food (e.g., sugar free) use the term ''sugar,'' the criteria for these claims are based on the amount of ''sugars'' as defined in § 101.9(c)(6)(ii); e.g. the criteria for a ''sugar free'' claim is that the food contain less than 0.5 gram of ''sugars'' per reference amount and per labeled serving (§ 101.60(c)(1)(i)). D-tagatose is included within this definition of ''sugars'' as any other monosaccharide sugar would be.

the label to assist consumers in maintaining healthy dietary practices with respect to dental health. The petition asserts that not excluding D-tagatose from the definition of ''sugars'' will frustrate efforts to address the public health concerns about dental caries.

FDA disagrees with these arguments. D-tagatose is a sugar (Ref. 3), unlike sugar alcohols, which are not; therefore, a sugar-free claim for D-tagatose would be neither scientifically accurate nor truthful. Moreover, the petition provides no data to support the assertion that identifying D-tagatose as a sugar in the nutrition label will frustrate efforts to address public health concerns about dental caries. This interim final rule provides the petitioner with an opportunity to use health claim label statements to promote the usefulness of D-tagatose as a sweetener that does not promote dental caries. The agency does not believe that a ''sugar free'' nutrient content claim is essential to the effectiveness of the dental caries health claim in communicating the usefulness of D-tagatose as a sweetener that does not promote dental caries.

The petition also asserts that the metabolic and nutritional characteristics of D-tagatose are sufficiently different from those of dietary sugars to justify excluding D-tagatose from the sugars definition for nutrition labeling purposes. The petition further states that, unlike dietary sugars and similar to sugar alcohols, D-tagatose passes unabsorbed through the small intestine on to the large intestine where it is reduced to short chain fatty acids via fermentation by intestinal bacteria; for this reason, and because D-tagatose is intended to substitute for dietary sugars, the petition argues that D-tagatose should be exempted from the ''sugars'' definition as are the sugar alcohols.

FDA disagrees with these assertions. FDA had proposed to include the sugar alcohols within the nutrition labeling definition of ''sugars'' in the ''Food Labeling; Reference Daily Intakes and Daily Reference Values'' proposed rule (56 FR 60366 at 60369, November 27, 1991). However, as explained in the 1993 final rule, we were persuaded by public comments to revise our ''sugars'' definition to exclude the sugar alcohols in recognition of their usefulness as sugar substitutes in reducing the cariogenic potential of foods, and because of their metabolic differences from dietary sugars, e.g., differences in intestinal digestion and absorption (58 FR 2079 at 2099, January 6, 1993). We agree with the petitioner that these are attributes that the sugar alcohols and D-tagatose have in common. However, a critical difference is that sugar alcohols are sugar-like substances used in foods to substitute for sugars, whereas D-tagatose is a sugar. The current situation, therefore, is distinguishable from our previous decision to exclude sugar alcohols from the nutrition labeling ''sugars'' definition.

We also had considered, in the 1993 mandatory nutrition labeling final rule, public comments urging the exclusion of lactose from the nutrition labeling ''sugars'' definition. These comments argued that lactose, the disaccharide sugar of dairy products, should be excluded from ''sugars'' because, due to its inefficient intestinal digestion and absorption, the metabolism of lactose more closely resembles that of complex carbohydrates than that of simple sugars (58 FR 2079 at 2098). FDA disagreed, stating:

> * * * The agency has been persuaded of the need to define ''sugars'' * * * to be consistent with standard analytical methodologies and in conformity with the traditional usage of the term. Lactose, a di-saccharide, is clearly a sugar by conventional standards and is identified with all other mono- and di-saccharides in routine analytical procedures (58 FR 2079 at 2098).

Thus, although in 1993, FDA cited slow intestinal digestion and absorption among the factors considered in our decision to exclude sugar alcohols from the definition of ''sugars,'' those same factors were rejected as a rationale for excluding lactose because, unlike sugar alcohols, lactose is clearly a sugar within the traditional definition and usage of the term, as well as by conventional standards. Likewise, D-tagatose is clearly a sugar within the traditional definition and usage of the term, as well as by conventional standards (Ref. 3).

The petition asserts that identifying noncariogenic D-tagatose-containing foods as ''sugar free'' is fully consistent with the commonly understood meaning of a ''sugar free'' food and fully consistent with consumer expectations. The petition further argues that to exempt D-tagatose from the ''sugars'' definition, and thereby allow a ''sugar free'' claim, would provide consumers with critical information needed to select noncariogenic foods, reduced calorie foods, and foods that help diabetics follow healthy dietary practices.

FDA is not persuaded by these arguments. The petition contains no consumer survey data with regard to consumer understanding or expectations of ''sugar free'' nutrient content claims. Absent factual support for the petitioner's assertion that a ''sugar free'' claim on a food sweetened with D-tagatose is consistent with consumer understanding and expectations (to which we are open and which we would consider), FDA finds no reason to depart from the accepted scientific classification of D-tagatose as a sugar (Ref. 3). We remain skeptical that a ''sugar free'' claim on the food label is critical information needed for consumers to select D-tagatose-containing noncariogenic foods when such foods will be permitted to bear the dental caries health claim to identify them as noncariogenic. Neither are we convinced that a ''sugar free'' claim is critical information required for consumers to be able to select reduced calorie foods. The ''calories per serving'' declaration in the nutrition label, not a ''sugar free'' claim, is the primary food label information that identifies the energy content of the food. Further, if a food meets the criteria for a ''reduced calorie'' food (described in § 101.60(b)), the food may bear such a claim regardless of the sugar content of the food. Finally, the subject of this health claim petition is D-tagatose and nonpromotion of dental caries. A consideration of labeling information useful to identify foods that help diabetics follow healthy dietary practices is clearly outside the scope of this petition. This health claim petition contains no scientific data regarding the appropriateness of recommending D-tagatose for use by diabetics, and FDA has not evaluated any such information.

Finally, the petition asserts that excluding D-tagatose from the nutrition labeling ''sugars'' definition would allow consistency between the dental caries health claim, the ''sugar-free'' nutrient content claim, and nutrition labeling. The petition also asserts that consumers will be thoroughly confused by a nutrition label showing a food to contain sugars when the food label also bears a ''Does not promote tooth decay'' health claim. The petition contains no data to measure the extent of consumer understanding, misunderstanding, or confusion from foods labeled both as noncariogenic and as containing sugars. Therefore, we have no basis, other than the petitioner's subjective views, to evaluate whether or not consumers would be confused. We note that, in the future, it would be helpful to have data like this submitted along with the petition. If such data are submitted, FDA will consider them.

In summary, the petition presents two main arguments for why FDA should omit D-tagatose from the term ''sugars'' as used in the nutrition labeling of foods so as to permit D-tagatose-containing foods to be labeled as ''sugar free'': (1) There is no compelling nutritional or public health reason to include D-

tagatose within the definition of ''sugars,'' and (2) identifying D-tagatose as a sugar will frustrate efforts to communicate the potential dental health benefits of D-tagatose. The agency notes that the dental caries health claim, which is the subject of this health claim petition, is the most direct vehicle for promoting the dental health benefits of the substance. Should there be some potential misunderstandings on the part of consumers regarding the health claim, such problems can be addressed by refining the wording of the health claim. The declaration of ''sugars'' in the nutrition label and the use of ''sugar free'' nutrient content claims are not label information intended to communicate the specific disease-related health benefits (e.g., nonpromotion of dental caries) of a food. Moreover, this situation is not analogous to FDA's decision to exclude sugar alcohol, a nonsugar substance, from the ''sugars'' declared in nutrition labeling. To grant the petitioner's request would be to allow a labeling claim identifying a sugar as a nonsugar. Such a claim would be both false and misleading. For these reasons, FDA is not amending § 101.9(c)(6)(ii) to exclude D-tagatose, a sugar, from the definition of ''sugars.''

The dental caries health claim regulation requires that a food bearing the health claim meet the requirements of § 101.60(c)(1)(i), the ''sugar free'' nutrient content claim (§ 101.80(c)(2)(ii)(A)). As discussed earlier, we are satisfied that the scientific evidence presented in the petition demonstrates that the cariogenic potential of D-tagatose, like that of certain sugar alcohols, is significantly lower than the cariogenic potential of sucrose. However, because D-tagatose is a sugar, we believe that it would be false and misleading to allow D-tagatose containing foods to bear a ''sugar free'' claim. Consequently, rather than granting the petitioner's request and allowing a sugar to declare itself to be ''sugar free,'' we instead are exempting D-tagatose from the ''sugar free'' requirement for the dental caries health claim by amending redesignated § 101.80(c)(2)(iii)(A) to provide that a food bearing the claim be ''sugar free'' except for D-tagatose.

We do recognize that there is a potential incongruity in declaring D-tagatose as a sugar in the nutrition label of a D-tagatose-containing food bearing the dental caries health claim stating that foods high in sugars promote tooth decay. To address this concern, we are adding a new provision in the ''Nature of the Claim'' paragraph to inform consumers about the uniqueness of D-tagatose as a noncariogenic sugar. New § 101.80(c)(2)(i)(H) will provide that where D-tagatose is the substance referred to by the dental caries health claim, the claim must identify D-tagatose as a sugar that, unlike other sugars, does not promote tooth decay or dental caries.

VI. First Amendment Analysis

This interim final rule affects speech because it grants the petitioner's request to authorize a health claim for D-tagatose and dental caries, while denying the petitioner's request to permit a ''sugar free'' nutrient content claim for foods containing D-tagatose. Because Government regulation of food labeling and other commercial speech has constitutional implications, we are providing an analysis explaining why our decision is consistent with the first amendment.

Speech that is inherently misleading is not protected by the first amendment and may be prohibited. (*Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n*, 447 U.S. 557, 563–64 (1980)). The Supreme Court has labeled as misleading, and thus not protected, both speech that is inherently likely to deceive and that ''experience has proved * * * is subject to abuse.'' (*In re R.M.J.*, 455 U.S. 191, 203 (1982)). The agency believes that a sugar-free nutrient content claim for D-tagatose would be inherently likely to deceive, because it is simply untrue. D-tagatose is a sugar and thus, by definition, cannot be sugar-free.

However, even if a sugar-free nutrient content claim for D-tagatose would be only potentially misleading, FDA's decision not to permit such a claim, but to authorize a dental caries health claim for D-tagatose by making an exception to the sugar-free requirement, is constitutional. The Government may place restrictions on commercial speech that is merely potentially misleading as long as the Government interest is substantial, the restrictions directly advance the Government interest, and the restrictions are no more extensive than necessary to serve that interest. (*Central Hudson*, 447 U.S. at 566). FDA's authorization of the dental caries health claim by making an exception to the sugar-free requirement for foods containing the sugar D-tagatose, rather than allowing such foods to be considered ''sugar free'' and to bear a sugar-free claim as the petitioner requested, passes this test.

First, the Government has a substantial and compelling interest in ensuring that food labels are truthful, nonmisleading, and scientifically valid. More specifically, FDA's interest in preventing deceptive nutrient content claims from being made is clearly substantial. The food labeling regulations seek to ensure that consumers have access to information about food that is scientifically valid, truthful, reliable, understandable, and not misleading. (58 FR 2478 at 2526, January 6, 1993). Consumers have a first amendment interest in obtaining information on which to base a decision regarding whether to buy a product, and this interest is ''served by insuring that the information is not false or deceptive.'' (*National Comm'n on Egg Nutrition* v. *FTC*, 570 F.2d 157, 162 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978)).

Second, this interim final rule regulating D-tagatose claims in food labeling directly advances the Government interest. It allows the petitioner and other marketers of D-tagatose to publicize the benefits of D-tagatose in not promoting dental caries, without causing the product to carry a false nutrient content claim (i.e., calling itself sugar-free when it is actually a sugar). Thus, the interim final rule reasonably and effectively ensures that claims for D-tagatose on food labels will be scientifically valid, informative, and not misleading.

Finally, FDA's regulation of D-tagatose claims in food labeling is no more extensive than necessary to serve the Government interest. Under *City of Cincinnati* v. *Discover Network, Inc.*, regulations that are narrowly tailored to serve the government interest will meet this prong of the *Central Hudson* test. (507 U.S. 410, 418n.13 (1993); *see also 44 Liquormart, Inc.* v. *Rhode Island*, 517 U.S. 484, 507–08 (1996)). ''A regulation need not be absolutely the least severe that will achieve the desired end,'' but in determining whether a restriction on commercial speech is reasonable, an agency must consider whether there are ''numerous and obvious less-burdensome alternatives.'' (id.) By exempting D-tagatose from the sugar-free requirement, rather than allowing a sugar to carry a sugar-free claim, FDA has found a reasonable balance between the interest in making information available about the relationship between D-tagatose and dental caries and the interest in ensuring that information about D-tagatose on food labels is truthful, nonmisleading, and scientifically valid. The restriction on ''sugar-free'' claims for foods containing D-tagatose is no more extensive than necessary to serve the Government's interest in preventing the dissemination of false and misleading information through food labeling, and there do not

exist numerous and obvious less-burdensome alternatives in this case.

Moreover, we know of no disclaimer that could cure the deception that would be caused by allowing a sugar to be called ''sugar free.'' (*See Continental Wax Corp.* v. *Federal Trade Comm'n*, 330 F.2d 475 (2d Cir. 1964) (holding that no disclaimer could cure the deception implicit in the name ''Continental Six Month Floor Wax'' where the evidence showed that the wax would not be effective for 6 months)). Where ''the offending deception is caused by a clear and unambiguous false representation implicit in the product's name,'' courts routinely deny the use of disclaimers because ''the addition of a qualifying phrase denying the truth of that representation would lead to a confusing contradiction in terms.'' (id. at 479–80; *see also Bakers Franchise Corp.* v. *Federal Trade Comm'n*, 302 F.2d 258, 261 (3d Cir. 1962) (use of the phrase ''Lite Diet'' with the phrase ''not a low calorie bread'' or ''not low in calories'' would be ''a contradiction in terms and would completely confuse the public'' where the bread at issue contained the same number of calories as other white bread but had thinner slices)). Here, allowing a sugar to be exempted from the definition of ''sugars'' and thus market itself as ''sugar-free'' would be inherently misleading. We are not aware of any evidence that a disclaimer could cure this deception, and common sense counsels against any such conclusion.

Thus, this interim final rule, allowing the dental caries health claim for foods containing D-tagatose but prohibiting ''sugar-free'' claims for such foods, meets the Central Hudson test and does not violate the first amendment.

VII. Description of Modifications to § 101.80

A. Title of the Regulation

Although in this interim final rule we are responding to a specific petition to authorize a claim about D-tagatose and dental caries, we are amending § 101.80 to establish a framework that will allow the agency to readily add to the list of eligible substances additional noncariogenic sugars, as well as additional sugar alcohols. This will provide flexibility for the inclusion of other noncariogenic carbohydrate sweeteners when adequate data are provided to demonstrate that they do not lower plaque pH below 5.7 and, therefore, that they do not promote tooth decay.

We are amending the title of § 101.80 to reflect that the amended regulation includes a noncariogenic sugar, in addition to sugar alcohols, as a substance that is eligible for the health claim about nonpromotion of dental caries. The amended title is: ''Health Claims: dietary noncariogenic carbohydrate sweeteners and dental caries.'' Throughout the regulation references to ''sugar alcohols'' have been changed to ''noncariogenic carbohydrate sweeteners.''

B. Requirements

1. General Requirements

Section 101.80 (c)(1) specifies that all of the requirements set forth in § 101.14 are to be met, except that sugar alcohol-containing foods are exempt from § 101.14(e)(6). Section 101.14(e)(6) specifies that, except for dietary supplements or where provided for in other 21 CFR part 101 regulations, foods making health claims must contain 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or dietary fiber per reference amount customarily consumed before any nutrient addition. We are amending § 101.80(c)(1) to broaden the exception from the nutrient content requirement in § 101.14(c)(6) to include foods sweetened with any noncariogenic carbohydrate sweetener listed in new paragraph (c)(2)(ii) of this section, including D-tagatose, because of the public health benefit of having a dental caries health claim on the types of foods to which these noncariogenic sweeteners may be added (i.e., chewing gums and confections).

2. Requirements on the Nature of the Claim

Section 101.80 (c)(2)(i) contains requirements on the nature of the claim. For simplicity, we are allowing D-tagatose to be identified in the claim statement as ''tagatose.'' In addition to expanding the coverage of this section from ''sugar alcohols'' to ''noncariogenic carbohydrate sweeteners,'' we are adding new paragraph (c)(2)(i)(H) to require that when a noncariogenic sugar, such as D-tagatose, is the subject of a claim, the claim must explain that the substance is a sugar, but unlike other sugars, does not promote the development of dental caries.

3. Requirements on the Nature of the Substance

As part of establishing a framework to facilitate the addition of other noncariogenic carbohydrate sweeteners to the dental caries health claim, we are adding a new paragraph (c)(2)(ii) to § 101.80 in which to list substances eligible for the claim. This format is consistent with that of most other authorized health claim regulations in which the specific requirements of the claim (§ 101.80 (c)(2)) are divided into three parts: (c)(2)(i) Nature of the claim, (c)(2)(ii) Nature of the substance, and (c)(2)(iii) Nature of the food. Existing § 101.80 (c)(2)(ii) is redesignated as § 101.80 (c)(2)(iii).

The list of sugar alcohols eligible for the dental caries health claim, which is now in the ''Nature of the food'' section, is being moved to new § 101.80 (c)(2)(ii)(A). The noncariogenic sugars currently eligible for the claim, i.e., D-tagatose, are being listed in new § 101.80 (c)(2)(ii)(B).

4. Requirements on the Nature of the Food

Redesignated § 101.80 (c)(2)(iii) contains requirements on the nature of the food bearing the dental caries health claim. Current § 101.80 (c)(2)(ii)(A), redesignated as § 101.80 (c)(iii) (A), reads ''The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content.'' This means that a criterion of the health claim is that the food be ''sugar free.'' As previously discussed, we are amending redesignated § 101.80 (c)(2)(iii)(A) to exempt D-tagatose from the ''sugar free'' requirement for a food bearing the dental caries health claim. Amended § 101.80 (c)(2)(iii)(A) will read ''The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content, except that the food may contain D-tagatose.'' As discussed in section V of this document we are taking this action as an alternative to the petitioner's recommendation that D-tagatose be excluded from the ''sugars'' definition.

We are amending redesignated § 101.80 (c)(2)(iii)(B) to reflect the addition of D-tagatose as a substance eligible for a dental caries health claim. As amended, the section will state ''A food whose labeling includes a health claim under this section shall contain one or more of the noncariogenic carbohydrate sweeteners listed in paragraph (c)(2)(ii) of this section.'' We also are amending redesignated § 101.80 (c)(2)(iii)(C) to reflect the broadening of the scope of the claim beyond sugar alcohols only. This paragraph now will provide that when carbohydrates other than noncariogenic sweeteners eligible for the claim are present in a food bearing the claim, the food shall not lower plaque pH below 5.7 by bacterial fermentation, as measured by the indwelling plaque test specified in § 101.80 (c)(2)(iii)(C). The address of the Center for Food Safety and Applied

Nutrition also has been updated in this paragraph.

The agency is not specifying a qualifying level of D-tagatose in the food product because, like sugar alcohols, D-tagatose will be used as a substitute for fermentable sugars. Therefore, the amount of the substance required is that needed to achieve a desired level of sweetness.

C. Optional Information

Section 101.80(d) lists the optional information that may be included in the dental caries health claim. We are amending this paragraph to reflect the fact that the claim now includes a noncariogenic carbohydrate sweetener other than sugar alcohols.

D. Model Health Claims

Section 101.80 (e) provides model health claims as examples of statements that meet the requirements to make a claim about nonpromotion of dental caries. FDA emphasizes that these model health claims are illustrative only. These model claims illustrate the required, and some of the optional, elements of the interim final rule. Because the agency is authorizing a claim about the relationship between D-tagatose and the nonpromotion of dental caries, and not approving specific claim wording, manufacturers will be free to design their own claim so long as it is consistent with § 101.80(c) and (d).

Current § 101.80 (e)(1) consists of two model claims as examples of the full claim, and § 101.80 (e)(2) consists of two model claims as examples of the shortened claim for use on packages with less than 15-square inches of surface area available for labeling. We are amending § 101.80(e)(1) and (e)(2) to add model claims for D-tagatose. The first example of the full claim states: ''Frequent eating of foods high in sugars and starches as between-meal snacks can promote tooth decay. Tagatose, the sugar used to sweeten this food, unlike other sugars, may reduce the risk of dental caries.'' (§ 101.80(e)(1)(iii)). The second example of the full claim states: ''Frequent between-meal consumption of foods high in sugars and starches promotes tooth decay. Tagatose, the sugar in [name of food], unlike other sugars, does not promote tooth decay.'' (§ 101.80(e)(1)(iv)). We are amending § 101.80 (e)(2) by adding two shortened model claims (paragraphs (e)(2)(iii) and (e)(2)(iv)) that read ''Tagatose sugar does not promote tooth decay'' and ''Tagatose sugar may reduce the risk of tooth decay.''

VIII. Issuance of an Interim Final Rule and Immediate Effective Date

We are issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. Section 403(r)(7) of the act authorizes us to make proposed regulations issued under section 403(r) of the act effective upon publication pending consideration of public comment and publication of a final regulation, if the agency determines that such action is necessary for public health reasons. This authority enables us to act promptly on petitions that provide for information that is necessary to: (1) Enable consumers to develop and maintain healthy dietary practices, (2) enable consumers to be informed promptly and effectively of important new knowledge regarding nutritional and health benefits of food, or (3) ensure that scientifically sound nutritional and health information is provided to consumers as soon as possible. Proposed regulations made effective upon publication under this authority are deemed to be final agency action for purposes of judicial review. The legislative history indicates that such regulations should be issued as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

We are satisfied that all three of the criteria in section 403(r)(7)(A) of the act have been met in the petition submitted by Arla Food Ingredients. This health claim will help enable consumers to develop and maintain healthy dietary practices, such as limiting snacks that contain fermentable sugars. The health claim also will provide consumers with important new knowledge regarding the reduced cariogenic potential of D-tagatose relative to that of other sugars, and will provide consumers with scientifically sound information on the dental health benefits of foods containing D-tagatose . Therefore, we are using the authority given to us in section 403(r)(7)(A) of the act to issue an interim final rule authorizing a health claim for D-tagatose and nonpromotion of dental caries, effective immediately.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this interim final rule by February 18, 2003. Two copies of any comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This regulation is effective upon publication in the **Federal Register**. The agency will address comments and confirm or amend the interim final rule in a final rule.

IX. Analysis of Impacts

A. Regulatory Impact Analysis

We have examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. We have determined that this interim final rule is not a significant regulatory action as defined by Executive Order 12866.

FDA has identified three options: (1) Deny the petition; (2) add D-tagatose to the dental caries health claim and amend § 101.80(c)(2)(ii)(A), the ''Nature of the Food'' requirement that the food be ''sugar free'' except for D-tagatose; or (3) add D-tagatose to the dental caries claim and amend § 101.9(c) to exclude D-tagatose from sugars.

Option one: FDA's denial of the petition would mean no change in the dental caries health claim. Therefore, this option generates no new costs and benefits and is the point of comparison for all other options.

Option two: Option two, the option chosen by the agency, permits foods that contain D-tagatose to bear the dental caries health claim under certain conditions. It will generate social benefits because it provides additional information to consumers who wish to avoid dental caries. Treatment of dental caries creates considerable costs. Dental caries is the most common chronic childhood disease and 94 percent of adults have either untreated decay or fillings in the crowns of their teeth, with an average of 22 affected surfaces, according to the National Oral Health

Survey, part of the National Health and Nutrition Examination Survey (Ref. 6). The cost of treating tooth caries includes: The cost of applying an amalgam, maintaining that amalgam for an individual's lifetime, and lost work time for the application of the amalgam. The median life of an amalgam is 9 to 14 years, and so it must be replaced regularly as long as the tooth remains. The estimated average, weighted lifetime cost of a carious surface is 100.62 dollars in 1995 (Ref. 5). This cost estimate includes: The discounted future costs of replacement amalgams and lost work time, and incorporates the incidence of dental caries by age and the age distribution of the U.S. population. With inflation, the cost is 118.37 dollars in 2002. This estimate does not include pain and suffering associated with dental caries, or possible problems associated with failure to treat dental caries, such as tooth losses or root canals. There are a number of risk factors for developing dental caries: Genetic factors, eating behaviors, and types and characteristics of foods eaten (Ref. 4). Specifically, consumption of dietary sugars and starches have been linked to development of dental caries. Substitution of D-tagatose for other sugars in foods, such as gum, candies, and baked goods, can potentially reduce the risk of dental caries. This would lead to benefits in reduced expenditures on dental care, less work time lost for dental visits, and other complications, such as tooth loss.

Option two will not generate any compliance costs relative to option one, because use of the claim is voluntary. No firm will choose to use the claim allowed by this interim rule unless the firm believes that doing so will increase its profits. However, because the interim rule specifies the manner in which a health claim can be made in product labeling, this interim rule imposes restrictions that may lead to greater or smaller social benefits or costs compared with alternative requirements for making the claim. The expected net benefits of option two are positive.

Option 3: Allowing the addition of D-tagatose to the dental caries claim and amending the definition of sugars also would aid consumers in choosing foods that do not promote dental caries. However, D-tagatose is a sugar. Amending the nutrition labeling definition of sugars to exclude D-tagatose would be counter to the commonly understood definition of sugars. To declare D-tagatose not to be a sugar would mislead consumers and undermine the scientific accuracy of the nutritional labeling, which many consumers currently rely on to make healthy food choices. It is not possible to quantify this cost. Amending the definition of sugars to exclude D-tagatose, and therefore, allowing foods containing D-tagatose to be labeled ''sugar free,'' could potentially generate considerable benefits to the petitioner in its efforts to market D-tagatose. However, these benefits would be offset by the costs of providing invalid information to consumers.

B. Regulatory Flexibility Analysis

We have examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize the economic impact of the rule on small entities.

As previously explained, this interim final rule will not generate any compliance costs for any small entities, because it does not require small entities to undertake any new activity. No small business will choose to use the dental caries health claim authorized by this rule unless it believes that doing so will increase its profits. Accordingly, we certify that this interim final rule will not have a significant impact on a substantial number of small entities. Under the Regulatory Flexibility Act, no further analysis is required.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a ''Federal Mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' We have determined that this interim final rule does not constitute a significant regulatory action under the Unfunded Mandates Reform Act.

X. Environmental Impact

We have determined under 21 CFR 25.32(p) that the actions resulting from this interim final rule are categorically excluded. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Paperwork Reduction Act

FDA concludes that the labeling provisions of this interim final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between D-tagatose and the nonpromotion of dental caries is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.'' (5 CFR 1320.3(c)(2)).

XII. Federalism

We have analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States or on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Accordingly, we have concluded that the interim final rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

XIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Arla Foods Ingredients amba, ''Petition to amend the regulation for 21 CFR Sec. 101.80 to authorize a noncariogenicity dental health claim for D-tagatose,'' CP–1, Docket No. 02P–0177, January 9, 2002.

2. U.S. Department of Health and Human Services, ''Oral Health,'' Chapter 21 in *Healthy People 2010*, vol. II, part B, 2d ed., Washington, DC., U.S. Government Printing Office, (www.health.gov/healthypeople/Document/HTML/Volume2/21Oral.htm), November 2000.

3. Lubert Stryer, ''Carbohydrates,'' Chapter 18 in *Biochemistry*, 4th ed., New York, W. H. Freeman and Co., 1995.

4. U.S. Department of Health and Human Services, *Oral Health in America: A Report of the Surgeon General—Executive Summary*, Rockville, MD, U.S. Department of Health and Human Services, National Institute of Dental and Craniofacial Research, National Institutes of Health, (http://www.nidcr.nih.gov/sgr/execsumm.htm), 2000.

5. Susan O. Griffin, Kari Jones, and Scott L. Tomar, ''An Economic Evaluation of Community Water Fluoridation,'' *Journal of Public Health Dentistry*, 61:78–86, 2001.

6. Department of Health and Human Services, Results of National Oral Health Survey Results Released (press release), (http://www.hhs.gov/news/press/1996pres/960311.html, visited on 6/11/2002), March 11, 1996.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, 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 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.80 is amended by redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii); by revising the section heading, paragraph (a)(4), the first two sentences in paragraph (b), paragraphs (c)(1), (c)(2)(i) introductory text, (c)(2)(i)(B), (c)(2)(i)(C), (c)(2)(i)(E), and (c)(2)(i)(F); by revising newly redesignated paragraph (c)(2)(iii); by revising paragraphs (d)(1), (d)(4), and (e) introductory text; and by adding new paragraphs (c)(2)(i)(H), (c)(2)(ii), (e)(1)(iii), (e)(1)(iv), (e)(2)(iii), and (e)(2)(iv) to read as follows:

§ 101.80 Health claims: dietary noncariogenic carbohydrate sweeteners and dental caries.

(a) * * *

(4) Noncariogenic carbohydrate sweeteners, such as sugar alcohols, can be used to replace dietary sugars, such as sucrose and corn sweeteners, in foods such as chewing gums and certain confectioneries. Noncariogenic carbohydrate sweeteners are significantly less cariogenic than dietary sugars and other fermentable carbohydrates.

(b) *Significance of the relationship between noncariogenic carbohydrate sweeteners and dental caries.* Noncariogenic carbohydrate sweeteners do not promote dental caries. The noncariogenic carbohydrate sweeteners listed in paragraph (c)(2)(ii) of this section are slowly metabolized by bacteria to form some acid. * * *

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met, except that noncariogenic carbohydrate sweetener-containing foods listed in paragraph (c)(2)(ii) of this section are exempt from § 101.14(e)(6).

(2) *Specific requirements*—(i) *Nature of the claim.* A health claim relating noncariogenic carbohydrate sweeteners, compared to other carbohydrates, and the nonpromotion of dental caries may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) * * *

(B) The claim shall state that the noncariogenic carbohydrate sweetener present in the food ''does not promote,'' ''may reduce the risk of,'' ''useful [or is useful] in not promoting,'' or ''expressly [or is expressly] for not promoting'' dental caries.

(C) In specifying the nutrient, the claim shall state ''sugar alcohol,'' ''sugar alcohols,'' or the name or names of the substances listed in paragraph (c)(2)(ii) of this section, e.g., ''sorbitol.'' D-tagatose may be identified as ''tagatose.''

(D) * * *

(E) The claim shall not attribute any degree of the reduction in risk of dental caries to the use of the noncariogenic carbohydrate sweetener-containing food.

(F) The claim shall not imply that consuming noncariogenic carbohydrate sweetener-containing foods is the only recognized means of achieving a reduced risk of dental caries.

(G) * * *

(H) When the substance that is the subject of the claim is a noncariogenic sugar, the claim shall identify the substance as a sugar that, unlike other sugars, does not promote the development of dental caries.

(ii) *Nature of the substance.* Eligible noncariogenic carbohydrate sweeteners are:

(A) The sugar alcohols xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, and erythritol, or a combination of these.

(B) The sugar D-tagatose.

(iii) *Nature of the food.* (A) The food shall meet the requirement in § 101.60(c)(1)(i) with respect to sugars content, except that the food may contain D-tagatose.

(B) A food whose labeling includes a health claim under this section shall contain one or more of the noncariogenic carbohydrate sweeteners listed in paragraph (c)(2)(ii) of this section.

(C) When carbohydrates other than those listed in paragraph (c)(2)(ii) of this section are present in the food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption or up to 30 minutes after consumption, as measured by the indwelling plaque pH test found in ''Identification of Low Caries Risk Dietary Components,'' dated 1983, by T. N. Imfeld, in Volume 11, *Monographs in Oral Science*, 1983. The Director of the Office of the Federal Register has approved the incorporation by reference of this material in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from Karger AG Publishing Co., P.O. Box, Ch–4009 Basel, Switzerland, or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, Harvey W. Wiley Federal Building, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the **Federal Register**, 800 North Capital St. NW., suite 700, Washington, DC.

(d) *Optional information.* (1) The claim may include information from paragraphs (a) and (b) of this section, which describe the relationship between diets containing noncariogenic carbohydrate sweeteners and dental caries.

* * * * *

(4) The claim may indicate that a substance listed in paragraph (c)(2)(ii) of this section serves as a sweetener.

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the relationship between noncariogenic carbohydrate sweetener-containing foods and dental caries.

(1) Examples of the full claim:

(i) * * *

(ii) * * *

(iii) Frequent eating of foods high in sugars and starches as between-meal snacks can promote tooth decay. Tagatose, the sugar used to sweeten this food, unlike other sugars, may reduce the risk of dental caries.

(iv) Frequent between-meal consumption of foods high in sugars and starches promotes tooth decay. Tagatose, the sugar in [name of food], unlike other sugars, does not promote tooth decay.

(2) Examples of the shortened claim for small packages:

(i) * * *

(ii) * * *

(iii) Tagatose sugar does not promote tooth decay.

(iv) Tagatose sugar may reduce the risk of tooth decay.

Dated: November 25, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30474 Filed 11–27–02; 1:26 pm]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 2003. This rule also amends the PBGC's regulation on Disclosure to Participants by adding information on 2003 maximum guaranteed benefit amounts. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 2003.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to ''$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200].'' This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Appendix D to part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to Appendix D to Part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $64,500 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2003. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $64,500/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2003 is $3,664.77 per month in the form of a life annuity beginning at age 65. This amendment updates Appendix D to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 2003. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $3,664.77 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2003 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2003 maximum guaranteeable benefit amounts for the information of the public.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

1. The authority citation for Part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

2. Appendix B to part 4011 is amended by adding a new entry in numerical order to the table to read as follows.

APPENDIX B TO PART 4011—TABLE OF MAXIMUM GUARANTEED BENEFITS

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
*	*	*	*	*	*	*	*	
2003	$3,664.77	$43,977.24	$2,895.17	$34,742.04	$2,382.10	$28,585.20	$1,649.15	$19,789.80

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

3. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

4. Appendix D to part 4022 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

APPENDIX D TO PART 4022—MAXIMUM GUARANTEEABLE MONTHLY BENEFITS

[The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:]

Year	Maximum guaranteeable monthly benefit
* * *	* *
2003	3,664.77

Issued in Washington, DC, this 25th day of November, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–30304 Filed 11–29–02; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table that applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2003, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach ''unreduced retirement age'' (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, *etc.*

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–02 with Table I–03 in order to provide an updated correlation, appropriate for calendar year 2003, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–03 will be used to value benefits in plans with valuation dates during calendar year 2003.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2003, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2003.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 4044 is amended by removing Table I–02 and adding in its place Table I–03 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–03.—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 2002, and before January 1, 2004]

Participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low [1] if monthly benefit at URA is less than—	Medium [2] if monthly benefit at URA is		High [3] if monthly benefit at URA is greater than—
		From	To	
2004	465	465	1,965	1,965
2005	476	476	2,010	2,010
2006	487	487	2,059	2,059
2007	499	499	2,108	2,108
2008	511	511	2,159	2,159
2009	523	523	2,210	2,210
2010	535	535	2,261	2,261
2011	547	547	2,313	2,313
2012	560	560	2,366	2,366
2013 or later	573	573	2,421	2,421

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, DC, this 25th day of November, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–30303 Filed 11–29–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–02–033]

RIN 2115–AE47

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the Rock Island Railroad & Highway Drawbridge, Mile 482.9, Upper Mississippi River at Rock Island, Illinois. This deviation allows the drawbridge to remain closed to navigation for 57 days starting at 8 a.m., December 28, 2002, and ending at 8 a.m., February 22, 2003, Central Standard Time. This deviation is necessary to allow the bridge owner time for preventive maintenance that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 8 a.m., December 28, 2002 until 8 a.m., February 22, 2003.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Department of the Army, Rock Island Arsenal requested a temporary deviation on October 1, 2002 for the operation of the drawbridge to allow the bridge owner time for preventive maintenance. The drawbridge operation regulations found at 33 CFR 117.5, require the drawbridge to open on signal. In order to perform extensive repairs and required annual maintenance, the bridge must be kept inoperative and in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for 57 days starting at 8 a.m., December 28, 2002 and ending at 8 a.m., February 22, 2003. This maintenance period was scheduled during the winter months to lessen the impact on vessel traffic which will increase when Lock 17 reopens on March 1, 2003.

The Rock Island Railroad & Highway Drawbridge provides a vertical clearance of 23.8 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will not be able to open for emergencies during the repair period. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 14, 2002.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 02–30323 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–026]

RIN 2115–AE47

Drawbridge Operation Regulation; St. Croix River, Prescott, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the Burlington Northern Railroad Drawbridge, Mile 0.2, St. Croix River at Prescott, Wisconsin. This deviation allows the drawbridge to remain closed to navigation except upon 24 hours notice to open for 44 days from 8 a.m., November 8, 2002, until 11:59

p.m., December 14, 2002, Central Standard Time. The deviation will facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 8 a.m., November 8, 2002, until 11:59 p.m., December 14, 2002.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

The Burlington Northern Santa Fe Railroad requested a temporary deviation on September 23, 2002 for the operation of the drawbridge to allow the bridge owner time for preventative maintenance. The drawbridge operation regulations found at 33 CFR 117.667(a) require the drawbridge to open on signal if at least 24 hours notice is given from December 15 through March 31. At all other times the bridge is required to open on signal. This deviation allows the bridge to remain closed to navigation, even upon signal, from 8 a.m., November 8, 2002, to 11:59 p.m., December 14, 2002 unless 24 hours advance notice is given. The bridge will open for vessels giving at least 24 hours advance notice.

The Burlington Northern Santa Fe Railroad Drawbridge provides a vertical clearance of 20.4 feet above normal pool in the closed to navigation position. Navigation on the waterway is a mixture of recreational boating and commercial tows. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 8, 2002.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 02–30322 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–135]

RIN 2115–AE47

Drawbridge Operation Regulations; Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the 103 Street (Wards Island) Bridge, at mile 0.0, across the Harlem River at New York. This temporary change to the drawbridge operation regulations will allow the bridge to remain closed to vessel traffic from November 21, 2002 through January 19, 2003. This action is necessary to facilitate maintenance at the bridge.

DATES: This rule is effective from November 21, 2002 through January 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–135) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

On September 27, 2002, the Coast Guard published a temporary deviation from the Drawbridge Operation Regulations (67 FR 60865) entitled Drawbridge Operation Regulations Harlem River, New York. That temporary deviation allowed the bridge to remain closed to navigation from September 23, 2002 through November 20, 2002. The bridge has been in the closed position to navigation since September 23, 2002.

The bridge owner recently advised the Coast Guard that due to inclement weather the completion of the repair work has been delayed and will not be completed until January 19, 2003. The bridge is presently inoperable due to painting scaffolding located at the bridge.

There have been no requests to open the bridge during the time period November through January for several years. The Coast Guard believes this closure is reasonable and notice and public comment are not necessary based upon the need to complete the bridge maintenance and the fact that the bridge has no requests to open.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to complete this bridge maintenance.

Background and Purpose

The Wards Island Bridge has a vertical clearance of 55 feet at mean high water and 60 feet at mean low water. The existing regulations are listed at 33 CFR 117.789(c).

The bridge owner, New York City Department of Transportation, asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to need not open for the passage of vessel traffic from September 23, 2002 through November 20, 2002, to facilitate structural repairs and bridge painting operations. On September 27, 2002, the Coast Guard published a temporary deviation from the Drawbridge operation regulations (67 FR 60865) [CGD01–02–105] entitled Drawbridge Operation Regulations Harlem River, New York.

The Coast Guard was recently notified by the bridge owner that the painting operations at the bridge will not be completed by November 20, 2002, the end of the temporary deviation effective period. They requested to extend the bridge closure from November 21, 2002 through January 19, 2003, to complete their work. The bridge normally has no requests to open November through January. The Coast Guard believes the bridge closure is reasonable due to the need to complete the bridge maintenance and the lack of vessel traffic.

Discussion of Rule

In § 117.789 a new paragraph (h) will be added to allow the 103 Street (Wards Island) Bridge to remain closed to vessel traffic from November 21, 2002 through January 19, 2003.

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 has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the bridge has historically had no requests to open during the effective period of this temporary final rule.

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 conclusion is based on the fact that the bridge has historically had no requests to open during the effective period of this temporary final rule.

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1d, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A ''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.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From November 21, 2002 through January 19, 2003, in § 117.789, a new paragraph (h) is added, to read as follows:

§ 117.789 Harlem River.

* * * * *

(h) The draw of the 103 Street (Wards Island) Bridge shall open on signal from 10 a.m. to 5 p.m. if at least a four-hour notice is given to the New York City Highway Radio (Hotline) Room; except that, from November 21, 2002 through January 19, 2003, the 103 Street (Wards Island) Bridge need not open for the passage of vessel traffic.

Dated: November 18, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–30434 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–02–148]

RIN 2115–AA97

Security Zones; Ports of Jacksonville and Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving security zones around certain vessels within the ports of Jacksonville and Canaveral. The security zones will prohibit entry into or movement within 100 yards of all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the ports

of Jacksonville and Canaveral. These security zones are needed to ensure public safety and prevent sabotage or terrorist acts against vessels in the COTP Jacksonville area of responsibility. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida or his designated representative.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD07–02–148] and are available for inspection or copying at Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

DATES: This rule is effective from 12 a.m. (noon) on November 20, 2002 until 12 a.m. (noon) on January 30, 2003.

FOR FURTHER INFORMATION CONTACT: LTJG Drew Casey, Coast Guard Marine Safety Office Jacksonville, at (904) 232–3610, ext. 105.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since the Captain of the Port of Jacksonville has determined that immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001. On October 3, 2001, the Coast Guard published a second temporary rule continuing these zones until June 15, 2002. A third temporary rule continued the zones until November 15, 2002. This fourth temporary rule will continue the zones until January 30, 2003. The Coast Guard published a notice of proposed rulemaking on June 18, 2002 proposing to make these regulations permanent in nature.

Regulatory Evaluation

On September 12, 2001, one day after the September 11 terrorist attacks, the Coast Guard established a temporary rule establishing security zones around tank vessels, passenger vessels, and military pre-positioned ships until October 3, 2001 (published on September 26, 2001, 66 FR 49104). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. As a result, on October 17, 2001, the Coast Guard published a second temporary rule in the **Federal Register** continuing these zones through 11:59 p.m. June 15, 2002 (66 FR 52689). The third temporary rule continued the zones through noon on November 15, 2002 (67 FR 41339). This fourth temporary rule continues the zones until January 30, 2003 so the Coast Guard can give adequate consideration to the comments received from the notice of proposed rulemaking (67 FR 55184).

This temporary rule creates 100-yard security zones around all tank vessels, cruise ships, and military pre-positioned ships when these vessels enter, depart or moor within the Ports of Jacksonville and Canaveral. No person or vessel may enter these zones without the permission of the Captain of the Port of Jacksonville. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23″ 35′ N, 81 deg. 19″ 08′ West, when entering the Port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7′ N, 80 deg. 31.8′ W, and 28 deg. 23.7′ N, 80 deg. 29.2′ W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville and Canaveral, Florida.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case-by-case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 discretionary regulatory actions. 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.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

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

2. A new temporary § 165.T07–148 is added to read as follows:

§ 165.T07–148 Security zone; Ports of Jacksonville and Canaveral, Florida.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships during transits entering or departing the ports of Jacksonville and Canaveral, Florida. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30 deg. 23' 35'' N, 81 deg, 19' 08'' West, when entering the port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28 deg. 22.7' N, 80 deg 31.8' W, and 28 deg. 23.7' N, 80 deg. 29.2' W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, cruise ships, and military pre-positioned ships docked in the Ports of Jacksonville and Canaveral, Florida.

(b) *Regulations.* In accordance with the regulations of § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Definition.* As used in this section: Cruise ship means a passenger vessel, except for a ferry, greater than 100 feet in length that is authorized to carry more than 12 passengers for hire.

(d) *Dates.* This section becomes effective at 12 a.m. (noon) on November 20, 2002 and will terminate at 12 a.m. (noon) on January 30, 2003, unless terminated earlier by the Captain of the Port, Jacksonville, Florida.

Dated: November 20, 2002.

R.J. Petow,

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

[FR Doc. 02–30433 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2002–9 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to continuing delays in the receipt of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2002. In order to ensure that their claims are timely received, claimants are encouraged to file their DART claims online or by fax, utilizing the special procedures described in this document.

EFFECTIVE DATE: December 2, 2002.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540. *See* **SUPPLEMENTARY INFORMATION** for information about on-line electronic filing through the Copyright Office website. Submissions by facsimile should be sent to (202) 252–3423. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Susan Grimes, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media (''DART'') who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or

analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed ''[d]uring the first 2 months of each calendar year'' with the Librarian of Congress ''in such form and manner as the Librarian of Congress shall prescribe by regulation.'' 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February [1] or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.[2] 37 CFR 259.5(e). The regulations do not provide for the filing of DART claims by alternative methods such as on-line submission or facsimile transmission.

Last year, due to severe disruptions in the delivery of mail to the Office caused by threat of possible anthrax contamination, the Copyright Office waived the regulations requiring that claims bear ''the original signature of the claimant or of a duly authorized representative of the claimant,'' 37 CFR 259.3(b), and prohibiting the filing of by ''facsimile transmission,'' 37 CFR 259.5(d), for the filing of claims to the DART royalty funds for the year 2001. *See* 67 FR 5213 (February 5, 2002). While mail delivery to the Office has now resumed, incoming mail continues to be irradiated and diverted to an off-site location for treatment, resulting in delays in its delivery. Consequently, in light of these continuing delays, the Office once again is waiving §§ 259.3(b) and 259.5(d) and allowing the on-line and facsimile submission of DART claims to the 2002 royalty funds. The Office has decided not to allow the filing of claims by electronic mail because lists of joint claimants can now be filed through the Office's website. The alternative methods set forth in this Notice apply only to the filing of DART claims for the 2002 royalties which are due by February 28, 2003, and in no way apply to other filings with the Office.

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2002

Claims to the 2002 DART royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their DART claims, the Office strongly encourages claimants to personally deliver their claims by 5 p.m. E.S.T. on February 28, 2003, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers are subject to treatment at the off-site facility before being delivered to the Office and will be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on February 28, 2003. Thus, claims should be hand delivered by the claimant or a representative of the claimant (*i.e.*, the claimant's attorney or a member of the attorney's staff).

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR part 259.

b. On-line Submission

The Office has devised on-line electronic forms for filing both single and joint DART claims. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms electronically as provided in the instructions accompanying the forms. DART forms will be posted on the Office Web site at *http://www.copyright.gov/carp/dart/index.html*. Claimants filing a joint claim may list each of their joint claimants directly on the Office's on-line joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document (''PDF'') format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the list of names of joint claimants. Joint claims with attachments containing information other than the joint claimants' names will be rejected.

The DART forms will be available for use during the months of January and February. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on-line using forms or formats other than those specified in this Notice will not be accepted by the Office. Claims filed on-line must be received by the Office no later than 11:59 p.m. E.S.T. on February 28, 2003. Specifically, the completed electronic forms must be received in the Office's server by that time. Any claim received after that time will be considered as untimely filed. Claimants will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. Claimants submitting their claims on-line are strongly encouraged to send their claim no later than February 27, 2003, in order to better ensure timely receipt by the Office.

When filing claims on-line, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

c. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252–3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2003. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 with the exception of § 259.5(d), which prohibits the filing of claims by

[1] In those years where the last day of February falls on a Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims must be received by the first business day in March. 37 CFR 259.5(b).

[2] Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

d. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after the last day in February. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

Because of delays in mail delivery, claimants are urged not to use the mail as a means of filing their claims to the 2002 DART royalty funds. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner, and/or that the mail, when received by the Office, will be damaged. Claims sent by mail should be addressed in accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after February 28, 2003, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

Waiver of Regulation

The regulations governing the filing of DART claims require ''the original signature of the claimant or of a duly authorized representative of the claimant,'' 37 CFR 259.3(b), and do not allow claims to be filed by ''facsimile transmission,'' 37 CFR 259.5(d). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2002 DART royalties. The Office is not, and indeed cannot, waive the statutory deadline for the filing of DART claims. *See, United States* v. *Locke,* 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2003.

Waiver of an agency's rules is ''appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.'' *Northeast Cellular Telephone Company* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also, Wait Radio* v. *FCC,* 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continuing delays in the delivery of the mail constitutes a special circumstance which has forced the Office to deviate from its usual mail processing procedures. Thus, given the delays in mail delivery, the Office believes that the public interest will best be served by waiving, for this filing period, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed on-line through the Office's website. *See* 67 FR at 5214.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after February 28, 2003. *See Locke, supra.* Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed on-line and by facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: November 26, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–30445 Filed 11–29–02; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7415–2]

Clean Air Act Approval of Revision to Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve, as a revision to Washington's title V air operating permits program, revisions to Washington's regulations for insignificant emissions units and other minor revisions to Washington's title V regulations. In a notice of deficiency published in the **Federal Register** on January 2, 2002 (67 FR 73), EPA notified Washington of EPA's finding that Washington's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Final approval of this program revision resolves the deficiency identified in the Notice of Deficiency.

EFFECTIVE DATE: January 2, 2003.

ADDRESSES: Copies of Washington's submittal and other supporting information used in developing this action are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Jeff Kenknight, Office of Air Quality (OAQ–107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6641.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permits program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval of Washington's operating permits program on one issue, along with a notice of correction, on December 8, 1995 (60 FR 62992).

Washington's title V operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Commission (EFSEC), and seven local air pollution control authorities: The Benton Clean Air Authority (BCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Regional Clean Air Authority (ORCAA); the Puget Sound Clean Air Agency (PSCAA); the Spokane County Air Pollution Control Authority

(SCAPCA); the Southwest Clean Air Agency (SWCAA); and the Yakima Regional Clean Air Authority (YRCAA). After these State and local agencies revised their operating permits programs to address the conditions of the interim approval, EPA promulgated final full approval of Washington's title V operating permits program on August 13, 2001 (66 FR 42439).

On May 15, 2002, Ecology proposed revisions to its regulations for insignificant emissions units (IEU), as well as other minor revisions to its title V regulations. The proposed revisions to Ecology's IEU regulations were intended to resolve a deficiency in Washington's title V program identified by EPA in a notice of deficiency published in the **Federal Register** on January 2, 2002 (67 FR 73). On June 28, 2002, EPA proposed to approve Ecology's proposed revisions to its title V regulations at the same time that Ecology was considering and taking public comment on the proposed changes. *See* 67 FR 43575. The public comment period on the Ecology regulations ended on June 21, 2002. In response to comments received by Ecology during that public comment process, Ecology made minor changes to its proposed title V revisions. On September 26, 2002, Ecology submitted the final revisions to its title V regulations and asked EPA to give final approval to the revisions.

EPA received no comments on its proposal to approve Ecology's proposed revisions to its title V regulations. EPA has reviewed Ecology's final submittal and has determined that the minor changes made by Ecology in response to public comment at the state level do not change the substance of the regulatory revisions proposed by Ecology and continue to meet the requirements of part 70. Accordingly, EPA is taking final action to approve Ecology's final revisions to its IEU provisions, as well as the other minor revisions to its title V regulations.

The version of WAC 173–401–530 (Ecology's IEU provision) finalized by Ecology is identical to the proposed rule submitted to EPA in May 2002. Ecology did make a minor change to the definition of ''continuous compliance,'' which is used in the IEU provision as well as elsewhere in Ecology's title V regulations in describing the compliance certification obligations of permittees. The definition of ''continuous compliance'' proposed by Ecology was identical to the definition in the instructions to the standard annual compliance certification form developed by EPA for use by permittees subject to the Federal operating permits program. *See http://www.epa.gov/oar/oaqps/permits/p71forms.html.* Under that definition, a permittee could certify continuous compliance if there were no ''deviations and no other information that indicates deviations, except for malfunctions or upsets during which compliance is not required.'' The final definition adopted by Ecology states that a permittee could certify continuous compliance if there were no ''deviations and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required.'' Ecology has clarified that nothing in the final definition of ''continuous compliance'' it adopted was intended to take a position on whether compliance is or is not required during unavoidable excess emissions or other operating conditions. EPA therefore continues to believe that the definition of ''continuous compliance'' is approvable. As noted by EPA in the proposal and by Ecology during its rulemaking process, however, Ecology would be required to later revise its definition of ''continuous compliance'' if EPA later adopts a definition of this term after notice and comment rulemaking and Ecology's definition is not consistent with the Federal definition. *See* 67 FR 43577.

Ecology also added a sentence to the proposed definition of ''intermittent compliance,'' which is also used in describing the compliance certification obligations of permittees. The added sentence clarifies that a certification of intermittent compliance is appropriate where the monitoring data or other information shows there are periods of noncompliance or periods of time during which monitoring required by the permit was not performed or recorded. EPA finds this definition approvable, subject again to the qualification that if EPA later adopts a definition of ''intermittent compliance'' after notice and comment rulemaking and if the Ecology definition is not consistent with the Federal definition, Ecology would be required to later revise its definition.

Ecology also made a further change to the definition of ''major source'' in its final title V revisions. *See* WAC 173–401–200. In the final rule adopted by Ecology, the definition of ''major source'' is consistent with EPA's recent amendments to the definition of ''major source'' in part 70 in all respects. *See* 66 FR 59161 (November 27, 2001). As originally proposed, the Ecology definition was more stringent than EPA's definition in one respect. *See* 67 FR 43577. Because the final definition of ''major source'' adopted by Ecology is consistent with the definition in part 70, EPA continues to believe that Ecology's final change to the definition of ''major source'' is approvable.

Finally, Ecology made a minor change to its proposed revision to the time for reporting of deviations that do not represent a potential threat to human health or safety.[1] *See* WAC 173–401–615(3)(b). As proposed, such a deviation was required to be reported no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports, whichever occurred first. In the final version, the rule requires such deviations to be reported no later than 30 days after the end of the month during which the deviation is discovered. This is still more stringent that the previous version of Ecology's rule which gave permitting authorities the discretion to require reporting of ''other deviations'' (that is, deviations that do not represent a potential threat to human health or safety) either no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports. EPA therefore continues to believe that the final rule adopted by Ecology is consistent with the requirements of part 70.

II. Final Action

EPA is taking final action to approve as a revision to Ecology's title V air operating permits program revisions to Ecology's regulations for IEUs, specifically, revisions to WAC 173–401–530(2)(c) and the deletion of WAC 173–401–530(2)(d). EPA has determined that these changes meet the requirements of title V and part 70 relating to IEUs, and adequately address the deficiency identified in the notice of deficiency published in the **Federal Register** on January 2, 2002 (67 FR 73). EPA is also approving the addition of definitions for ''continuous compliance'' and ''intermittent compliance,'' the change to the definition of ''major source,'' changes to clarify that the use of a standard application form is not required if all required information is provided by the applicant, and a change to the time frame for the prompt reporting of permit deviations. Because the revisions chapter 173–401 apply throughout the State of Washington, this approval applies to all State and local agencies that implement Washington's operating permits program. As discussed above, those agencies include

[1] Reporting of deviations that represent a potential threat to human health and safety continues to be required as soon as possible, but in no case later than twelve hours after the deviation is discovered. WAC 173–401–615(3)(b).

Ecology, EFSEC, BCAA, NWAPA, ORCAA, PSCAA, SCAPCA, SWCAA, and YRCAA.

Consistent with EPA's proposal to approve these revisions, this approval does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151, except with respect to non-trust lands within the 1873 Survey Area of the Puyallup Reservation.[2] *See* 66 FR 42439, 42440 (August 13, 2001); 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR 42552, 42554 (August 18, 1994).

III. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (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. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely approves existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. 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 State operating permit program for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2003. 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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 70

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

Dated: November 20, 2002.

Ronald A. Kreizenbeck,

Deputy Regional Administrator, Region 10.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

2. In appendix A to part 70, the entry for Washington is revised to read as follows:

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

* * * * *

Washington

(a) Department of Ecology (Ecology): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(b) Energy Facility Site Evaluation Council (EFSEC): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(c) Benton Clean Air Authority (BCAA): Submitted on November 1, 1993; interim approval effective on

[2] As these terms are defined in the Agreement dated August 27, 1988, among the Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States, and certain private property owners.

December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(d) Northwest Air Pollution Authority (NWAPA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(e) Olympic Regional Clean Air Authority (ORCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(f) Puget Sound Clean Air Agency (PSCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(g) Spokane County Air Pollution Control Authority (SCAPCA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(h) Southwest Clean Air Agency (SWCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

(i) Yakima Regional Clean Air Authority (YRCAA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 26, 2002; revision approved January 2, 2003.

* * * * *

[FR Doc. 02–30465 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps ((FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2878 or (e-mail) *michael.grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the final determinations of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator, Federal Insurance and Mitigation Administration, has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

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

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

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

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under

Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Cleburne, (Case No. 02–06–784P) (FEMA Docket No. P7610).	Unincorporated Areas.	April 3, 2002, April 10, 2002, *The Sun Times*.	The Honorable Claude Dill, Judge, Cleburne County, County Courthouse, 301 West Main Street, Heber Springs, AR 72543.	Mar. 12, 2002	050424
Sebastian, (Case No. 01–06–1837P) (FEMA Docket No. P7612).	City of Fort Smith	June 12, 2002, June 19, 2002, *Southwest Times Record*.	The Hon. Raymond C. Baker, Mayor, City of Fort Smith, P.O. Box 1908, Fort Smith, AR 72902.	May 31, 2002	55013
Illinois:					
Will, (Case No. 02–05–2034P) (FEMA Docket No. P7612).	City of Joliet	June 20, 2002, June 27, 2002, *Farmers Weekly Review*.	The Honorable Arthur Schultz, Mayor, City of Joliet, Municipal Building, 150 West Jefferson Street, Joliet, IL 60432.	Sept. 26, 2002	170702
McHenry, (Case No. 01–05–3762P) (FEMA Docket No. P7614).	Village of Lake In The Hills.	July 2, 2002, July 9, 2002, *The Northwest Herald*.	The Honorable Ed Plaza, Village President, 1115 Crystal Lake Road, Lake In The Hills, IL 60156.	Oct. 8, 2002	170481
McHenry, (Case No. 01–05–3762P) (FEMA Docket No. P7614).	Unincorporated Areas.	July 2, 2002, July 9, 2002, *The Northwest Herald*.	The Honorable Mike Tryon, Chairperson, McHenry County Board, McHenry County Gov't Center, 2200 North Seminary Avenue, Woodstock, IL 60098.	Oct. 8, 2002	170732
Will, (Case No. 02–05–2034P) (FEMA Docket No. P7612).	Village of Plainfield.	June 19, 2002, June 26, 2002, *The Enterprise*.	Mr. Richard Rock, Village President, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	Sept. 25, 2002	170771
Will, (Case No. 02–05–2034P) (FEMA Docket No. P7612).	Unincorporated Areas.	June 19, 2002, June 25, 2002, *The Herald News*.	Mr. Joseph Mikan, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	Sept. 24, 2002	170695
Minnesota:					
Dakota, (Case No. 01–05–2461P) (FEMA Docket No. P7612).	City of Lakeville ...	May 1, 2002, May 8, 2002, *The Lakeville Sun Current*.	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	Aug. 7, 2002	270107

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dakota, (Case No. 02–05–0298P) (FEMA Docket No. P7612).	City of Lakeville ...	May 22, 2002, May 29, 2002, *The Lakeville Sun Current*.	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	Aug. 28, 2002	270107
Lyon, (Case No. 02–05–1586P) (FEMA Docket No. P7612).	City of Marshall ...	May 24, 2002, May 31, 2002, *Marshall Independent*.	The Honorable Robert Byrnes, Mayor, City of Marshall, 344 West Main Street, Marshall, MN 56258.	Aug. 30, 2002	270258
Missouri:					
St. Louis, (Case No. 01–07–499P) (FEMA Docket No. P7610).	City of Ladue	April 19, 2002, April 26, 2002, *Saint Louis Post Dispatch*.	The Honorable Jean Quenlen, Mayor, City of Ladue, 9345 Clayton Road, Ladue, MO 63124–1511.	Apr. 2, 2002	290363
Ohio:					
Lorain, (Case No. 02–05–1841P) (FEMA Docket No. P7612).	City of Avon Lake	May 23, 2002, May 30, 2002, *The Sun*.	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon-Belden Road, Avon Lake, OH 44012.	Aug. 28, 2002	390602
Butler and Warren (Case No. 01–05–1645P) (FEMA Docket No. P7614).	Village of Monroe	July 3, 2002, July 10, 2002, *Middletown Journal*.	The Hon. Michael P. Morris, Mayor, Village of Monroe, 233 South Main Street, Monroe, OH 45050.	Oct. 9, 2002	390042
Cuyahoga, (Case No. 01–05–542P) (FEMA Docket No. P7612).	City of Parma Heights.	May 2, 2002, May 9, 2002, *Parma Sun Post*.	The Honorable Paul Cassidy, Mayor, City of Parma Heights, 6281 Pearl Road, Parma Heights, OH 44130.	Aug. 8, 2002	390124
Franklin and Delaware, (Case No. 02–05–1465P) (FEMA Docket No. P7612).	City of Westerville	May 22, 2002, May 29, 2002, *Westerville News and Public Opinion*.	The Hon. Stewart Flaherty, Mayor, City of Westerville, 21 South State Street, Westerville, OH 43081.	Aug. 29, 2002	390179
Warren, (Case No. 01–05–1645P) (FEMA Docket No. P7614).	Unincorporated Areas.	July 3, 2002, July 10, 2002, *The Western Star*.	Mr. C. Michael Kilburn, President, Warren County, Board of Commissioners, 406 Justice Drive, Lebanon, OH 45036.	Oct. 9, 2002	390757
Oklahoma:					
Tulsa, (Case No. 01–06–701P) (FEMA Docket No. P7612).	City of Bixby	April 25, 2002, May 2, 2002, *The Bixby Bulletin*.	The Honorable Joe Williams, Mayor, City of Bixby, 116 West Needles Street, Bixby, OK 74008.	Aug. 1, 2002	400207

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma, Canadian, Cleveland, McClain and Pottawatomie, (Case No. 01–06–2001P) (FEMA Docket No. P7612).	City of Oklahoma City.	June 18, 2002, June 25, 2002, *The Daily Oklahoman*.	The Hon. Kirk Humphreys, Mayor, City of Oklahoma city, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	Sept. 24, 2002	405378
Texas:					
Collin, (Case No. 02–06–1539P) (FEMA Docket No. P7612).	City of Allen	May 29, 2002, June 5, 2002, *The Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, One Allen Civil Plaza, Allen, TX 75013.	Sept. 4, 2002	480131
Collin, (Case No. 01–06–820P) (FEMA Docket No. P7612).	City of Allen	June 14, 2002, June 21, 2002, *The Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, One Allen Civic Plaza, Allen, TX 75013.	Sept. 18, 2002	480131
Travis, (Case No. 02–06–826P) (FEMA Docket No. P7610).	City of Austin	April 30, 2002, May 7, 2002, *Austin American Statesman*.	The Honorable Kirk Watson, Mayor, City of Austin, 124 West 8th Street, Austin, TX 78701.	Aug. 6, 2002	480624
Travis, (Case No. 01–06–338P) (FEMA Docket No. P7612).	City of Austin	May 31, 2002, June 7, 2002, *Austin American Statesman*.	The Honorable Gus Garcia, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Sept. 6, 2002	480624
Bexar, (Case No. 02–06–761P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 9, 2002, May 16, 2002, *San Antonio Express News*.	The Honorable Nelson Wolff, Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonio, TX 78205.	Aug. 15, 2002	480035
Bexar, (Case No. 01–06–1795P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 24, 2002, May 31, 2002, *San Antonio Express News*.	The Honorable Nelson Wolff, Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonio, TX 78205.	Aug. 30, 2002	480035
Brazos, (Case No. 02–06–031P) (FEMA Docket No. P7612).	City of College Station.	May 24, 2002, May 31, 2002, *The Bryan/College Station Eagale*.	The Hon. Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, TX 77842.	Aug. 30, 2002	480083
Denton, (Case No. 02–06–276P) (FEMA Docket No. P7612).	City of Denton	May 22, 2002, May 29, 2002, *Denton Record Chronicle*.	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	May 2, 2002	480194
Tarrant, (Case No. 01–06–508P) (FEMA Docket No. P7610).	City of Fort Worth	March 20, 2002, March 27, 2002, *Fort Worth Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, City Hall, Fort Worth, TX 76102–6311.	June 26, 2002	480596

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant, (Case No. 01–06–982P) (FEMA Docket No. P7612).	City of Forth Worth.	June 7, 2002, June 14, 2002, *Fort Worth Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, City Hall, Fort Worth, TX 76102.	Sept. 13, 2002	480596
Gillespie, (Case No. 00–06–1860P) (FEMA Docket No. P7612).	City of Fredericks-burg.	May 22, 2002, May 29, 2002, *Fredericksburg Standard Radio Post*.	The Honorable Tim Crenwelge, Mayor, City of Fredericksburg, 126 West Main Street, Fredericksburg, TX 78624.	Aug. 28, 2002	480252
Dallas, (Case No. 02–06–591P) (FEMA Docket No. P7610).	City of Garland	March 7, 2002, March 14, 2002, *Garland Morning News*.	The Honorable Jim Spence, Mayor, City of Garland, 200 North 5th Street, P.O. Box 469002, Garland, TX 76046–9002.	June 13, 2002	485471
Dallas, (Case No. 02–05–151P) (FEMA Docket No. P7612).	City of Garland	May 2, 2002, May 9, 2002, *Garland Morning News*.	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046–9002.	Aug. 8, 2002	485471
Dallas, (Case No. 01–06–1213P) (FEMA Docket No. P7612).	City of Glenn Heights.	May 22, 2002, May 29, 2002, *Focus Daily News*.	The Honorable Mary Coffman, Mayor, City of Glenn Heights, 1938 South Hampton, Glenn Heights, TX 75154.	Aug. 28, 2002	481265
Hood, (Case No. 02–06–198P) (FEMA Docket No. P7612).	City of Granbury ..	May 30, 2002, June 6, 2002, *Hood County News*.	The Honorable David Southern, Mayor, City of Granbury, P.O. Box 969, Granbury, TX 76048.	Sept. 5, 2002	480357
Hidalgo, (Case No. 02–06–715P) (FEMA Docket No. P7612).	Unincorporated Areas.	July 1, 2002, July 8, 2002, *The Monitor*.	The Honorable Jose E. Pulido, Judge, Hidalgo County, 100 E. Cano Street, Edinburg, TX 78539.	May 30, 2002	480334
Hood, (Case No. 02–06–198P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 30, 2002, June 6, 2002, *Hood County News*.	The Honorable Linda Steen, Judge, Hood County, 100 East Pearl Street, Granbury, TX 76048.	Sept. 5, 2002	480356
Tarrant, (Case No. 01–06–1481P) (FEMA Docket No. P7612).	City of Hurst	May 24, 2002, May 31, 2002, *Dallas Morning News*.	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Apr. 30, 2002	480601
Gregg and Harrisson, (Case No. 02–06–512P) (FEMA Docket No. P7612).	City of Longview ..	May 10, 2002, May 17, 2002, *Longview News Journal*.	The Honorable Earl Roberts, Mayor, City of Longview, P.O. Box 1952, 300 West Cotton Street, Longview, TX 75606.	Aug. 16, 2002	480264
Collin, (Case No. 01–06–1229P) (FEMA Docket No. P7612).	City of McKinney	May 7, 2002, May 14, 2002, *McKinney Cou-rier Gazette*.	The Honorable Don Dozier, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Aug. 13, 2002	480135

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montgomery, (Case No. 02–06–763P) (FEMA Docket No. P7612).	Unincorporated Areas.	May 1, 2002, May 8, 2002, *The Courier*.	The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	Aug. 7, 2002	480483
Travis, (Case No. 00–06–1827P) (FEMA Docket No. P7610).	Unincorporated Areas.	March 6, 2002, March 13, 2002, *Austin American Statesman*.	The Honorable Samuel Biscoe, Judge, Travis County, P.O. Box 1748, Austin, TX 78767–1748.	June 12, 2002	481026

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

Dated: November 14, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–29867 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 112202D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Quota transfers; fishery reopening.

SUMMARY: NMFS adjusts the October-December subquota for the coastwide General category Atlantic bluefin tuna (BFT) fishery by transferring 10.0 metric tons (mt) from the Longline North subcategory quota, 15.0 mt from the Angling category (10.0 mt from the school size class North and 5.0 mt from the school size class South subcategories), 15.0 mt from the Harpoon category, 65.0 mt from the Reserve category, and 10.0 mt from the General category New York Bight set-aside for a revised coastwide General category subquota of approximately 386.7 mt for October-December. NMFS reopens the coastwide BFT General category until the adjusted October-December subquota has been filled. These actions are being taken to allow for maximum utilization of the U.S. BFT landings quota while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted subquotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The quota transfers are effective November 26, 2002, through May 31, 2003. The coastwide General category reopening is effective December 1 through December 31, 2002 or until the subquota has been reached.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

Quota Transfers

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

Quota Adjustments

Annual BFT quota specifications issued under § 635.27 provide for a quota of 647.0 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the General category quota during the 2002 fishing year. The General category BFT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. The October-December subquota was initially set at 63.7 mt for the 2002 fishing year, and is currently 271.7 mt, after the addition of approximately 78.0 mt of unharvested subquota from previous periods and a previous quota transfer of 130 mt (67 FR 63854, October 16, 2002). As of November 13, 2002, BFT landings against the adjusted October-December General category subquota have totaled approximately 326.8 mt, exceeding the available coastwide quota by 55.1 mt. An additional 10 mt has been set aside for the traditional fall New York Bight fishery.

After considering the factors for making transfers between categories,

NMFS has determined that 10 mt of the remaining adjusted Longline North subcategory quota of approximately 13.3 mt should be transferred to the coastwide General category quota. NMFS has also determined that 15 mt of the remaining Angling school subcategory quota of approximately 195.6 mt (10 mt of the remaining Angling school north subcategory quota of approximately 94.1 mt, and 5 mt of the remaining Angling school south subcategory quota of approximately 57.4 mt), 15 mt of the remaining Harpoon category quota of approximately 36.2 mt, and 65 mt of the remaining Reserve category quota should be transferred to the coastwide General category. Finally, NMFS has determined to transfer the remaining General category New York Bight set-aside subquota of approximately10 mt into the coastwide General category quota. The adjusted subquota for the coastwide General category fishery for the October-December period is 386.7 mt. Landings of large medium or giant BFT in the General category New York Bight set-aside area have been minimal this year and the transfer of the 10 mt set-aside should not adversely impact General category participants in this set-aside area. Vessels participating in General category New York Bight fishery may continue to land and sell large medium or giant BFT against the adjusted coastwide General category quota.

Once the adjusted General category subquota for the October-December period has been attained, the coastwide fishery will be closed. Announcement of the closure will be filed with the Office of the **Federal Register**, stating the effective date of closure, and further communicated through the HMS Fax Network, the Atlantic Tunas Information Lines, HMS websites, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA or (978) 281–9305 or access *www.nmfspermits.com*, to check the status of the fishery before leaving for a fishing trip.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that providing prior notice and public comment, as required under 5 U.S.C. 553 (b)(B), is impracticable and contrary to the public interest. Without immediate effectiveness of these inseason adjustments, NMFS would not be providing U.S. fishermen with a reasonable opportunity to catch the quota that ICCAT allocated to the United States. For this reason, and because the action relieves a restriction in reopening the fishery, the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d)(1) and (3). This action is undertaken pursuant to 50 CFR 635.27 and is exempt for review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 25, 2002.

John H. Dunnigan,

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

[FR Doc. 02–30451 Filed 11–26–02; 5:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 101602D]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Winter II Period

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

ACTION: Scup commercial quota harvested for Winter II period.

SUMMARY: NMFS announces that the scup commercial quota available in the 2002 Winter II period (November - December) to the coastal states from Maine to North Carolina has been harvested. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2002 Winter II quota period (through December 31, 2002). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the scup quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders.

DATES: Effective 0001 hrs local time, December 2, 2002, through 2400 hrs local time, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods. The Winter II commercial quota (November through December) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the seasonal allocation is described at § 648.120.

The total commercial quota for scup for the 2002 calendar year was initially set at 8,000,000 lb (3,628,739 kg) and then adjusted downward to 7,834,522 lb (3,553,679 kg), to account for research quota set-asides (66 FR 66351; December 26, 2001). The Winter II period quota, which is equal to 15.94 percent of the annual commercial quota, was 1,248,823 lb (566,456 kg). The 2002 Winter II quota allocation was then adjusted downward to compensate for 2001 Winter II landings in excess of the 2001 Winter II quota (67 FR 49621, July 31, 2002), consistent with the procedures specified at § 648.120(d)(3)(ii). Accordingly, the final adjusted 2002 Winter II period commercial quota is 1,179,502 lb (535,013 kg).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying federally permitted commercial vessels and federally permitted dealers that, effective upon a specific date, the scup commercial quota has been harvested. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 2002 Winter II period has been harvested.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, December 2, 2002, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through December 31, 2002. The 2003 Winter I period for commercial scup harvest will open on January 1, 2003. Effective 0001 hours, December 2, 2002, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North

Carolina for the remainder of the Winter II period (through December 31, 2002).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–30452 Filed 11–26–02; 5:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 112202B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Catcher Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific cod allocated for catcher processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 25, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear in the BSAI was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) and by two reallocations of Pacific cod (67 FR 61826, October 2, 2002 and 67 FR 70557 November 25, 2002) as a directed fishing allowance of 89,920 metric tons. *See* § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A)&(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2002.

Bruce Morehead,

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

[FR Doc. 02–30354 Filed 11–25–02; 4:34 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 231
Monday, December 2, 2002

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–78]

Robert H. Leyse; Receipt of Petition for Rulemaking, Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; extension of comment period.

SUMMARY: On October 31, 2002, the Nuclear Regulatory Commission (NRC) published for public comment a notice of receipt of a petition for rulemaking (PRM) filed by Robert H. Leyse (PRM–50–78). The petitioner is requesting that the NRC regulations that govern domestic licensing of production and utilization facilities be amended to address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants. The comment period for this PRM was to have expired on December 16, 2002, after a 45-day comment period. The comment period is normally 75 days. The NRC has decided to extend the comment period for an additional 30 days.

DATES: The comment period has been extended and now expires on January 16, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://ruleforum.llnl.gov*). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to this action, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking website.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *MTL@NRC.Gov.*

Dated at Rockville, Maryland, this 25th day of November, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–30417 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE191]; Notice No. 23–03–022–SC]

Special Conditions: Air Tractor Incorporated, Models AT–401, AT–402, AT–502, AT–602, and AT–802; Seats With Goodrich Aircraft Interior Products (AIP) Four-Point Inflatable Restraints

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the following Air Tractor AT series airplanes; AT–401, AT–402, AT–502, AT–602, and AT–802. These airplanes, as modified by Goodrich Aircraft Interior Products, will have novel and unusual design features associated with a four-point inflatable (airbag) restraint. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before January 2, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE191, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE191. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Pat Mullen, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4128, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made:

''Comments to CE191.'' The postcard will be date stamped and returned to the commenter.

Background

On March 8, 2002, Goodrich Aircraft Interior Products (GAIP), 1275 N. Newport Road, Colorado Springs, CO 80916–2779, applied for a supplemental type certificate to install four-point inflatable restraints in Air Tractor AT series airplanes AT–401, AT–402, AT–502, AT–602, and AT–802. The Air Tractor AT series airplanes comprise a group of agricultural aircraft certificated under 14 Code of Federal Regulations (CFR) 21.25, Restricted Category. These airplanes are intended for single pilot operation, sharing the same seating environment and seat-to-aircraft attachments. Therefore, the inflatable restraint system proposed by GAIP can be used with each Air Tractor model listed. The inflatable restraint system limits occupant forward excursion in case of an accident, while forming a protective cushion around the sides of the occupant's head. This will reduce the potential for head and torso injury. The inflatable four-point restraint behaves in a manner that is similar to an automotive airbag, but in this case, the airbags are integrated into each shoulder harness, inflating away from the occupant. The lapbelt portion of this four-point restraint is conventional and does not inflate. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable four-point restraint is novel for agricultural operations.

Agricultural airplanes, like the Air Tractor AT series, contain many elements of a cashworthy design first described in a 1949 Cornell University study. These elements include a cockpit structure that encases the pilot, crushable structure forward of and underneath the pilot, a low-positioned instrument panel which the pilot's head would not strike, required use of a helmet, and other features such as a strong harness system and an energy absorbing seat. These design features have contributed to the excellent safety record of agricultural airplanes. The fatality rates experienced by the agricultural airplane fleet are roughly half of that experienced by the general aviation fleet. This lower fatality rate is in spite of a higher overall accident rate with respect to that of general aviation.

In consideration of the excellent fatality record of agricultural airplanes in general, and the Air Tractor AT series in particular, the FAA has determined that installation of a four-point inflatable restraint must be accomplished on the basis of not lowering the current level of safety of the AT–401, AT–402, AT–502, AT–602, and AT–802. Therefore, the FAA considers that installation of an inflatable restraint as having two primary safety concerns:

- That it perform properly under foreseeable operating conditions, and;
- That it not perform in a manner or at such times as would constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. Agricultural operations typically occur at very low altitudes. An unexpected deployment while conducting these operations may result in an unsafe condition in flight. The unexpected deployment may either startle the pilot, or generate a force sufficient to cause a sudden movement of the control stick. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitude. The FAA has considered this when establishing the special conditions.

GAIP has developed a ''Smartbelt'' Four-Point Manually Adjusting Restraint seatbelt with an integrated inflatable airbag device. This inflatable restraint will rely on electronic sensors for firing and pyrotechnic charges for activation. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. GAIP must substantiate that the effects of an inadvertent deployment in flight are not a hazard to the airplane. In addition, the operating conditions of agricultural aircraft can generate a large amount of cumulative wear and tear on the restraint system. It is likely that the potential for inadvertent deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Ultimately, because of the effects of this cumulative damage, a life limit must be established for the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. Agricultural airplanes are exposed to an extreme operating environment. The effect of this environment on inadvertent deployment of the restraint must be understood. The qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for agricultural airplanes, and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of this threat. For complying with HIRF requirements, the inflatable system is considered a critical system if its deployment could have a hazardous effect on the airplane; otherwise, it is considered an essential system. Finally, the inflatable restraint should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

While restricted category aircraft need not demonstrate compliance to 14 CFR part 23, § 23.562, there are many elements of § 23.562 that can be used to ensure an adequate level of protection during an emergency landing. These elements include an appropriate crash pulse and various injury pass/fail criteria. Therefore, the inflatable seatbelt must undergo qualification tests of the firing hardware/software for the 26 G deceleration pulse defined under § 23.562(b)(2). When the inflatable portion of the restraint is subjected to, and operates as a result of the 26 G deceleration pulse, it must be shown that deployment of the device will not be a hazard to the occupant. This can be accomplished by assuring that the 4-point restraint does not ride above the pelvis into the abdomen, as required by § 23.562(c)(4). This also includes satisfying the maximum harness loads permitted by § 23.562(c)(6).

Given the level of safety of the current Air Tractor harness, the inflatable restraint must show that it will offer an equivalent level of protection in the event the inflatable portion fails to deploy. In the event of an inadvertent deployment, the restraint must still have the same strength capability after the inflatable portion of the restraint has been deployed. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable seatbelt system must deploy and provide protection under crash conditions where it is necessary to prevent serious injury. In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, GAIP can establish inspection intervals

where they have demonstrated the system to be reliable between these intervals.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. In addition, the operation of this restraint must be transparent to the user. Therefore, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. In addition, when deployment does occur, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit area.

Finally, the inflatable restraint is likely to have a large volume displacement, where the inflated bag could impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restrain may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under the provisions of § 21.101, Goodrich Aircraft Interior Products must show that the Air Tractor AT series airplanes AT–401, AT–402, AT–502, AT–602, and AT–802, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A17SW (for AT–401, AT–402, and AT–502) and Type Certificate No. A19SW (for AT–602 and AT–802) or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A17SW are as follows:

• For models AT–401, AT–401A, and AT–401B, § 21.25(a)(1), 14 CFR part 23 through 23–9, and Appendix B, CAM 8. For models AT–402, AT–402A, AT–402B, AT–502, AT–502A, and AT–502B, § 21.25(a), (b)(1), (b)(2), Amendments 23–1 through 23–9, Appendix B, CAM 8, and additional turbine engine requirements that are of no relevance to the special conditions.

The regulations incorporated by reference in Type Certificate No. A19SW are as follows:

• For model AT–602, 14 CFR part 23 through Amendment 23–42. For model AT–802, 14 CFR part 23 through Amendment 23–42, plus § 21.25(b)(1), (b)(2), and (b)(7). For model AT–802A, 14 CFR part 23 through Amendment 42, plus § 21.25(b)(1), (b)(2), and (b)(7).

For each model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

The Administrator has determined that the applicable airworthiness regulations (*i.e.,* part 23 as amended) do not contain adequate or appropriate safety standards for the GAIP inflatable restraint as installed on Air Tractor models AT–401, AT–402, AT–502, AT–602, and AT–802 because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of § 21.6.

In addition to the applicable airworthiness regulations and special conditions, Air Tractor models equipped with the GAIP inflatable restraint must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

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

Novel or Unusual Design Features

Air Tractor Models AT–401, AT–402, AT–502, AT–601, and AT–802 will incorporate the following novel or unusual design features.

The Goodrich Aircraft Interior Products ''Smartbelt'' Four-Point Manually Adjusting Restraint Seatbelt

The purpose of the inflatable airbag seatbelt is to reduce the potential for injury in the event of an accident. In a severe impact, airbags will deploy out of the shoulder harnesses portion of the restraint, in a manner similar to an automotive airbag. These airbags will restrain the motion of the occupant during a severe impact and offer some protection to the head of the occupant. The restraint will rely on electronic sensors for firing, and pyrotechnic charges for activation.

The CFR states performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints in agricultural airplanes. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of inflatable four-point restraints.

Accordingly, these special conditions are adopted for Air Tractor Models AT–401, AT–402, AT–502, AT–602, and AT–802 equipped with the Goodrich Aircraft Interior Products four-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety for these Air Tractor models. The FAA recognizes that the current Air Tractor occupant restraint system has an excellent safety record. The FAA has considered the installation of inflatable restraints as having two primary safety concerns: (1) That they perform properly under foreseeable operating conditions; (2) that they not perform in a manner or at such times as would constitute a hazard to the airplane or occupants.

Applicability

As discussed above, these special conditions are applicable to the Air Tractor model series AT–401, AT–402, AT–502, AT–602, and AT–802 equipped with the GAIP four-point inflatable restraint. Should GAIP apply at a later date for a supplemental type certificate to modify any other model on Type Certificate numbers A17SW or AW19SW to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Air Tractor model series AT–401, AT–402, AT–502, AT–602, and AT–802 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101 for STC or 21.17 for TC; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety for the Air Tractor Model AT–401, –402, –502, –602, and –802 series occupant restraint design. Accordingly, the (FAA) proposes the following special conditions as part of the type certification basis for Air Tractor series airplanes AT–401, AT–402, AT–502, AT–602, and AT–802 modified by Goodrich Aircraft Interior Products.

4-Point Inflatable Restraints for Agricultural Airplanes

1. It must be shown that the inflatable seatbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious injury. A dynamic test is required to verify that the system operates as intended when subjected to the 26 G deceleration pulse described in § 23.562(b)(2). The dynamic test need only be performed using a 50 percentile male ATD.

2. The means of protection must take into consideration a range of stature from a 5 percentile female to a 95 percentile male. The inflatable seatbelt must provide a consistent level of energy absorption throughout that range.

3. The design must prevent the inflatable seatbelt from either being incorrectly buckled or incorrectly installed, or both, such that the airbag would not properly deploy.

4. It must be shown that an inadvertent deployment does not cause an unsafe condition (or hazard to the airplane). Consideration needs to be given as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service. The seat belt must have the same strength capability after the inflatable portion of the restraint has been deployed.

5. It must be shown that deployment of the device is not hazardous to the occupant. In addition, the seated occupant must not be injured as established by criteria in § 23.562 as a result of the inflatable seatbelt deployment, including keeping the lap belt located on the pelvis.

6. It must be shown that the inflatable seatbelt will not impede rapid egress of the occupant 10 seconds after its deployment.

7. For the purpose of complying with HIRF and lightning requirements, the inflatable seatbelt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise, it is considered an ''essential'' system.

8. It must be shown that the inflatable seatbelt will not release hazardous quantities of gas or particulate matter into the cabin.

9. The inflatable seatbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

10. There must be a means to verify the integrity of the inflatable seatbelt activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

11. A life limit needs to be established for appropriate system designs.

12. Qualification testing of the internal firing mechanism must be accomplished using the vibration levels appropriate for an agricultural airplane.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30325 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Turmo IV A and Turmo IV C Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Turbomeca Turmo IV A and IV C series turboshaft engines. This proposal would require initial and repetitive borescope and eddy current or ultrasonic inspections of centrifugal compressor intake wheel blades for cracks and evidence of corrosion pitting, and, if found cracked or if there is evidence of corrosion pitting, replacement with serviceable parts. This proposal is prompted by reports of cracked centrifugal compressor intake wheel blades, resulting in the release of one or more blade fragments. The actions specified by the proposed AD are intended to prevent centrifugal compressor intake wheel blade cracks, which can result in in-flight engine power loss or shutdown.

DATES: Comments must be received by January 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00; fax (33) 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–12–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca Turmo IV A and IV C series turboshaft engines. The DGAC advises that they have received reports of cracked centrifugal compressor intake wheel blades. The phenomena of blade cracking occurs in two phases; initiation after a single event, such as foreign object damage or surge, and crack propagation due to operating at a gas generator speed, between 80 percent and 83 percent, that appears to set up a vibration. Although the exact cause of the initiation of cracks has not yet been identified, cracks could initiate at corrosion pits. The investigation is continuing. This condition, if not corrected, could result in centrifugal compressor intake wheel blade cracks, which can result in in-flight engine power loss or shutdown.

Manufacturer's Service Information

Turbomeca has issued Turmo IV Service Bulletin (SB) No. 249 72 0100, Update No. 4, dated January 25, 2000, that specifies procedures for the centrifugal compressor intake wheel blade inspections. The DGAC classified this SB as mandatory and issued airworthiness directive (AD) DGAC AD 97–122(A), Revision 3, dated April 5, 2000, in order to ensure the airworthiness of these engines in France. Turbomeca has also issued Turmo IV SB No. 249 72 0117, dated March 11, 2000, that specifies procedures for installation of modification TU 224.

Bilateral Agreement Information

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

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require:

- Initial and repetitive borescope and eddy current or ultrasonic inspections of centrifugal compressor intake wheel blades for cracks and evidence of corrosion pitting; and
- Replacement with serviceable parts if found cracked or if there is evidence of corrosion pitting.

At this time there is no modification available as terminating action; as the investigation is ongoing into the cause of crack initiation, future rulemaking may be necessary. The actions would be required to be done in accordance with the SB described previously.

Economic Analysis

There are approximately 1,110 engines of the affected design in the worldwide fleet. The FAA estimates that there are currently 11 engines installed on helicopters of U.S. registry that would be affected by this proposed AD, that it would take approximately 41 work hours per engine to perform the proposed inspections, including disassembling and assembling engines, and that the average labor rate is $60 per work hour. A replacement centrifugal compressor assembly costs approximately $21,651. Based on these figures, the cost per inspection is estimated to be $265,221.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Turbomeca: Docket No. 99–NE–12–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca Turmo IV A and IV C series turboshaft engines. These engines are installed on but not limited to Aerospatiale FA 330–PUMA helicopters.

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

Compliance: Compliance is required as indicated, unless already done

To prevent centrifugal compressor intake wheel blade cracks, which can result in in-flight engine power loss or shutdown, do the following:

(a) For engines that have been modified to TU 197 standard, but have not been modified to TU 191 or TU 224 standard, do the following:

(1) Remove modification TU 197 and install modification TU 224 in accordance with Turmo IV SB 249 72 0117, dated March 11, 2000, within the next 50 cycles or six months after the effective date of the AD, whichever occurs first.

(2) Within 1,000 flight hours (FH) after the installation of modification TU 224 standard, do the following:

(i) Perform a visual inspection and an ultrasonic inspection (USI) in accordance with paragraph 2.B.(3) of Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000.

(ii) Thereafter, perform a visual inspection and a USI at intervals not to exceed 1,000 FH in accordance with paragraph 2.B.(3) of Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000.

(b) For engines that have not been modified to TU 191, TU 197, or TU 224 standard, do the following in accordance with Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000:

(1) For centrifugal compressor intake wheels that, on the effective date of this AD, have been operated for more than 250 FH since the last inspection of the centrifugal compressor intake wheel blades, do the following:

(i) Perform an initial borescope inspection of the blades for evidence of corrosion within the next 50 FH, or six months after the effective date of this AD, whichever occurs first, in accordance with paragraph 2.B.(1) of the SB.

(ii) If corrosion is found, perform an ECI or USI, as applicable, of the blades for cracks within 50 FH after the borescope inspection performed in accordance with paragraph 2.B.(3) of the SB, and if necessary, replace with serviceable parts.

(iii) If corrosion is not found, perform an ECI or USI, as applicable, of the blades for cracks within 250 FH after the borescope inspection performed in accordance with paragraph (b)(1)(i) of this AD, and if necessary, replace with serviceable parts.

(iv) Thereafter, perform borescope inspections and ECI's or USI's, as applicable, of the blades for cracks and evidence of corrosion, alternating at intervals not to exceed 250 FH since the last inspection.

(v) Remove from service centrifugal compressor intake wheels found cracked and replace with serviceable parts.

(2) For centrifugal compressor intake wheels that, upon the effective date of this AD, have been operated for less than or equal to 250 FH since the last inspection of the blades, do the following:

(i) Perform an initial borescope inspection of the blades for evidence of corrosion prior to accumulating 250 FH since the last inspection of the blades in accordance with paragraph 2.B.(1) of the SB.

(ii) If corrosion is found, perform an ECI or USI, as applicable, of the blades for cracks, and, if necessary, replace with serviceable parts, within 50 FH after the borescope inspection performed in accordance with paragraph 2.B.(3) of the SB.

(iii) If corrosion is not found, perform an ECI or USI, as applicable, of the blades for cracks, and, if necessary, replace with serviceable parts, within 250 FH after the borescope inspection performed in accordance with paragraph (b)(2)(i) of this AD.

(iv) Thereafter, perform borescope inspections and ECI's or USI's, as applicable, of the blades for cracks and evidence of corrosion, alternating at intervals not to exceed 250 FH since the last inspection.

Note 2: Alternating intervals means that if the last inspection was an ECI or a USI, the next inspection will be a borescope inspection. If the last inspection was a borescope inspection, the next 250 FH inspection will be an ECI or a USI as applicable.

(v) Remove from service centrifugal compressor intake wheels found cracked and replace with serviceable parts.

(c) For engines not modified to TU 197 but have been modified to TU 191 or TU 224 standard, that have been operated for more than 1,000 flight hours since the last inspection of the blades, do the following in accordance with Turbomeca Turmo IV SB 249 72 0100, Update 4, dated January 25, 2000:

(1) Perform an initial ECI or USI, as applicable, of the blades for cracks, in accordance with paragraph 2.B.(3) of the SB, within the next 50 FH, or 6 months after the effective date of this AD, whichever occurs first.

(2) Thereafter, inspect at intervals not to exceed 1,000 FH.

(3) Remove from service centrifugal compressor intake wheels found cracked, and replace with a serviceable part

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive AD97–122(B), dated May 21, 1997.

Issued in Burlington, Massachusetts, on November 21, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–30351 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Model RB211–22B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) model RB211–22B turbofan engines with intermediate pressure (IP) compressor stage 6 to 7 rotor shaft assembly part number (P/N) UL37094 installed. This proposal would require removal from service of IP compressor stage 6 to 7 rotor shaft assemblies P/N UL37094 before reaching newly reduced life limits. This proposal is prompted by the discovery of corrosion during inspection and analysis of IP compressor stage 6 to 7 rotor shaft assemblies returned from the field. The actions specified by the proposed AD are intended to prevent corrosion-induced cracking of the IP compressor stage 6 to 7 rotor shaft assembly, resulting in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by January 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9–ane–adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–10—AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The manufacturer has recently analyzed the conditions of some IP compressor stage 6 to 7 rotor shaft assemblies, P/N 37094, that were returned from the field, and has determined that rotor shafts of this part number are unable to achieve currently published life limits. This is due to the potential for corrosion-induced cracking to occur at these published life limits. As a result of this analysis, new lower life limits have been assigned to this P/N IP compressor stage 6 to 7 rotor shaft assembly. This condition, if not corrected, could result in corrosion-induced cracking of the IP compressor stage 6 to 7 rotor shaft assembly, resulting in an uncontained engine failure and damage to the airplane.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR model RB211–22B turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require removing from service IP compressor stage 6 to 7 rotor shaft assemblies, P/N UL37094, before reaching new reduced life limits. The life limits are established based on whether or not the engine has incorporated service bulletin (SB) RR SB 72–8700. That SB increases the engine thrust rating.

Economic Analysis

The FAA estimates that one engine installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that no additional labor cost will be incurred to remove the affected part, which will be at time of engine shop visit. Required parts would cost approximately $33,150 per engine, based on a part life reduction estimate. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $33,150.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 2002–NE–10–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce (RR) model RB211–22B turbofan engines with intermediate pressure (IP) compressor stage 6 to 7 rotor shaft assembly part number (P/N) UL37094 installed. These engines are installed on, but not limited to Lockheed Martin L1011 airplanes.

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

Compliance:

Compliance with this AD is required as indicated, unless already done.

To prevent corrosion-induced cracking of the IP compressor stage 6 to 7 rotor shaft assembly, resulting in an uncontained engine failure and damage to the airplane, do the following:

(a) For engines that have not incorporated RR service bulletin (SB) 72–8700, remove IP compressor stage 6 to 7 rotor shaft assemblies from service before accumulating 13,500 cycles-since-new (CSN).

(b) For engines that have incorporated RR service bulletin (SB) 72–8700, remove IP compressor stage 6 to 7 rotor shaft assemblies from service before accumulating 12,980 cycles-since-new (CSN).

(c) After the effective date of this AD, do not install any IP compressor stage 6 to 7 rotor shaft assembly, P/N UL37094, that has accumulated the CSN specified in paragraph (a) or (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

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 done.

Issued in Burlington, Massachusetts, on November 20, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–30350 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections for cracking of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track, if necessary. That AD also provides for an optional modification of the forward end clevis lugs, which terminates the required inspections. This action would expand the applicability of the existing AD, and would require new repetitive inspections for evidence of rotation or migration of the bushings or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, and corrective actions if necessary. This action also would require an eventual terminating action. This action is necessary to prevent cracking and fracture of the forward end clevis of the flap track, which could result in reduced structural capability of the flap and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–55–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this 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 2002–NM–55–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. 2002–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has previously issued AD 90–24–09, amendment 39–6815 (55 FR 48228, November 20, 1990), applicable to certain Boeing Model 747 series airplanes. That AD requires inspections of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track, if necessary. That AD also provides for an optional modification of the forward end clevis lugs, which terminates the required inspections. That action was prompted by reports of cracked or failed clevis lugs on two flap tracks. The requirements of that AD are intended to prevent separation of the wing trailing edge flap track from the airplane and reduction in the controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received many reports of rotated and migrated bushings of the forward end clevis of the flap tracks that support the wing trailing edge flaps. Rotation and migration of the bushings has been attributed to insufficient interference fit. These findings occurred on airplanes not included in the applicability of the existing AD. In some cases, the rotation or migration of bushings resulted in stress corrosion cracking and fracture of the forward end clevis. This condition, if not corrected, could result in reduced structural capability of the flap and reduced controllability of the airplane.

Explanation of Relevant Service Information

The existing AD refers to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, as the applicable source of service information for the actions required by that AD. Since the issuance of the existing AD, the FAA has reviewed and approved Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. That service bulletin replaces Boeing Service Bulletin 747–57–2231, and describes actions similar to those in Boeing Service Bulletin 747–57–2231, Revision 2, as described below. Modification of the forward end clevis lugs as described in Boeing Service Bulletin 747–57–2231, Revision 2, eliminates the need to do the actions in Boeing Service Bulletin 747–57–2307, Revision 1.

Boeing Service Bulletin 747–57–2307, Revision 1, describes procedures for repetitive detailed inspections for evidence of rotation or migration of the bushings or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, and corrective actions if necessary. Evidence of migration or rotation of the bushings includes cracked or missing sealant around the bushing flange, or a gap between the bushing flange and the lug face. If migration or rotation of the bushings is found, but there is no cracking of the lugs, corrective actions include application of corrosion-inhibiting compound to the area around the flanged and shank ends of the migrated or rotated bushings, and repetitive inspections at a reduced interval. If any cracking is found, corrective actions involve replacement of the flap track with a new track. Replacement with a new track having certain part numbers eliminates the need for the repetitive inspections described previously for the replaced track.

The service bulletin also describes procedures for a terminating modification'replacement of the bushings of the forward end clevis with new bushings with a higher interference fit (including machining, performing magnetic particle inspections, and applying cadmium plating to the clevis bore and bushing). If migration or rotation of the bushings is found, but there is no cracking of the lugs, it may be necessary to do this terminating modification before further flight or at a reduced compliance time, depending on what group the airplane is listed in. The service bulletin recommends eventually doing this terminating modification on any forward end clevis for which the flap track is not replaced with a new flap track with certain part numbers, or on which the modification described in Boeing Service Bulletin 747–57–2231, Revision 2, has not been done. Doing the terminating modification eliminates the need for the repetitive inspections described previously.

Doing the actions specified in Boeing Service Bulletin 747–57–2307, Revision 1, is intended to adequately address the identified unsafe condition.

Explanation of Change to Requirements of Existing AD

Paragraph (a) of the existing AD requires visual inspections of the forward end clevis lugs of the flap tracks for cracking. Under the heading ''Restatement of Requirements of AD 90–24–09,'' we have revised paragraph (a) of this proposed AD to specify that the required inspection is considered to be a ''detailed'' inspection. Note 2 of this proposed AD defines such an inspection.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–24–09 to continue to require inspections of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track, if necessary. The proposed AD also would require the actions specified in Boeing Service Bulletin 747–57–2307, Revision 1, described previously, except as discussed below. Doing a modification according to Boeing Service Bulletin 747–57–2231, Revision 2; or Boeing Service Bulletin 747–57–2307, Revision 1; would terminate the requirements of this proposed AD.

Difference Between Proposed AD and Service Bulletin

Certain compliance times in the proposed AD would differ from those specified in Boeing Service Bulletin 747–57–2307, Revision 1, as explained below.

For certain airplanes not inspected previously, the service bulletin specifies an inspection threshold of 8 years after airplane delivery or 30,000 [total] flight hours, whichever occurs sooner. However, for these same airplanes, paragraph (e)(2)(i) of this proposed AD specifies an inspection threshold of 8 years after the earlier of the date of issuance of the ORIGINAL Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness. This decision is based on our determination that ''date of delivery'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

For airplanes not inspected previously that are near or over the threshold specified above, the service bulletin specifies a compliance time of 300 or 1,200 flight cycles after the issue date of the service bulletin, depending on the airplane's configuration. However, for all airplanes not inspected previously, paragraph (e)(2)(ii) of the proposed AD specifies a compliance time of the earlier of 300 flight cycles or 120 days after the effective date of the AD. This decision is based on new data received by the FAA that indicate that inspecting within 1,200 flight cycles may not provide an adequate level of safety. In light of these new data, we find a compliance time of 300 flight cycles or 120 days after the effective date of the AD, whichever occurs first, for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 1,002 airplanes of the affected design in the worldwide fleet. The FAA estimates that 219 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 90–24–09 take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane, per inspection cycle.

The new inspections that are proposed in this AD action would take

approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the newly proposed inspections on U.S. operators is estimated to be $26,280, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6815 (55 FR 48228, November 20, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–55–AD. Supersedes AD 90–24–09, Amendment 39–6815.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes; as listed in Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002; 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 (k)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and fracture of the forward end clevis of the flap track, which could result in reduced structural capability of the flap and reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 90–24–09

Initial Inspection

(a) For airplanes listed in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990: Perform a detailed inspection of the forward end clevis lugs of the flap tracks for evidence of cracking, according to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, and according to the following schedule:

(1) For airplanes listed in Group 1 in the service bulletin: Perform the inspection at flap track positions 1 through 8 within the next 30 days after December 5, 1990 (the effective date of AD 90–24–09, amendment 39–6815).

(2) For airplanes listed in Group 2 in the service bulletin: Perform the inspection at flap track positions 1, 2, 7, and 8 prior to the later of the following:

(i) Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

(ii) Within 120 days after December 5, 1990.

(3) For airplanes listed in Group 3 in the service bulletin: Perform the inspection at flap track positions 1 through 8 prior to the later of the following:

(i) Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

(ii) Within 120 days after December 5, 1990.

Flap Track Replacement

(b) If cracking is found during any inspection required by paragraph (a) of this AD, replace the flap track prior to further flight, according to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990.

Repetitive Inspections

(c) If no cracking is found during any inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 300 flight cycles for Group 1 airplanes, and 1,200 flight cycles for Group 2 and Group 3 airplanes, until paragraph (d), (e), or (i) of this AD has been done.

Optional Terminating Action

(d) For airplanes listed in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990: Accomplishment of the modification of the forward end clevis lugs of the flap tracks as specified in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, constitutes terminating action for the requirements of paragraphs (a), (c), (e), and (i) of this AD.

New Requirements of this AD

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Detailed Inspections

(e) At the applicable compliance time specified in paragraph (e)(1) or (e)(2) of this AD, perform detailed inspections for evidence of rotation or migration of the bushings (including cracked or missing sealant around the bushing flange, or a gap between the bushing flange and the lug face) or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, according to Part 1 of the Work Instructions in Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002.

(1) For airplanes inspected before the effective date of this AD according to paragraph (a) of this AD: Do the inspection in paragraph (e) of this AD at the time specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD, as applicable. Doing this inspection terminates the requirements of paragraph (c) of this AD.

(i) For airplanes listed in Group 1 of Boeing Service Bulletin 747–57–2231, Revision 2:

Inspect within 300 flight cycles after the most recent inspection per paragraph (a) or (c) of this AD.

(ii) For airplanes listed in Group 2 or 3 of Boeing Service Bulletin 747–57–2231, Revision 2: Inspect within 1,200 flight cycles after the most recent inspection per paragraph (a) or (c) of this AD.

(2) For airplanes NOT inspected before the effective date of this AD according to paragraph (a) of this AD: Do the inspection in paragraph (e) of this AD at the time specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD, whichever occurs later. This terminates the requirement to do paragraph (a) of this AD.

(i) Within 8 years after the EARLIER of the date of issuance of the ORIGINAL Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, or before the accumulation of 30,000 total flight hours, whichever occurs first.

(ii) Within 300 flight cycles or 120 days after the effective date of this AD, whichever occurs first.

Repetitive Inspections

(f) If no evidence of migration or rotation of the bushings or cracking of the lugs is found during the inspection required by paragraph (e) of this AD: Repeat the inspections at the applicable repetitive interval specified in Figure 1 of Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002, until paragraph (d) or (i) of this AD has been done.

Corrective Actions and Repetitive Inspections

(g) If evidence of migration or rotation of the bushings is found during any inspection required by paragraph (e) or (f) of this AD, but NO cracking is found: Do paragraph (g)(1) or (g)(2) of this AD, as applicable, according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002.

(1) For airplanes listed in Group 1 in the service bulletin and flap track numbers 3 and 6 on airplanes listed in Group 2 of the service bulletin: Before further flight, do the terminating modification in paragraph (i) of this AD, as specified in paragraph (i)(2) of this AD.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: Before further flight, apply corrosion-inhibiting compound according to the service bulletin, and do paragraphs (g)(2)(i) and (g)(2)(ii) of this AD at the intervals specified in those paragraphs, until paragraph (d) or (i) of this AD is done. Do paragraph (i) of this AD at the applicable time specified in paragraph (i)(2) of this AD.

(i) Repeat the inspections in paragraph (e) of this AD at the intervals specified in Figure 1 of the service bulletin.

(ii) Apply corrosion-inhibiting compound according to the service bulletin at intervals not to exceed 200 flight cycles.

Replacement of Flap Track

(h) If any cracking is found during any inspection required by paragraph (e), (f), or (g)(2)(i) of this AD: Before further flight, replace the cracked flap track with a new flap track, according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. Replacement with a new flap track having a part number listed in the ''New Part Number'' column of the table under paragraph 2.E. of the service bulletin constitutes terminating action for the requirements of this AD for the replaced track.

Terminating Modification

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Do all actions (including but not limited to machining, performing magnetic particle inspections, and applying cadmium plating to the clevis bore and bushing) associated with replacing the bushings of the forward end clevis with new bushings with a higher interference fit on flap tracks 1, 2, 3, 4, 5, 6, 7, and 8; as applicable; according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. This replacement terminates the requirements of this AD.

(1) If no evidence of migration or rotation of the bushings or cracking of the lugs is found during any inspection required by paragraph (e) or (f) of this AD: Do the replacement within 8 years after the effective date of this AD.

(2) If any evidence of bushing migration or rotation is found during any inspection required by paragraph (e) or (f) of this AD: Do the replacement at the applicable time specified in Figure 1 of the service bulletin.

Credit for Actions According to Previous Revision of Service Bulletin

(j) Inspections, corrective actions, and terminating action done before the effective date of this AD according to Boeing Service Bulletin 747–57–2307, dated July 29, 1999, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(k)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously according to AD 90–24–09, amendment 39–6815, are approved as alternative methods of compliance with paragraphs (a), (b), (c), and (d) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30349 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–326–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–400, –500, –600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–400, –500, –600, –700, and –800 series airplanes. This proposal would require modification of the wiring to the windshield wiper motors in the flight compartment and nose wheel well areas. For certain airplanes, this proposal also provides for optional replacement of the windshield wiper motor/converters in the flight compartment. This action is necessary to prevent a reduction in flight crew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–326–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain

''Docket No. 2001–NM–326–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this 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 2001–NM–326–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. 2001–NM–326–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of windshield motors stalling during flight on certain Boeing Model 737 series airplanes. In a number of incidents, the windshield wipers of both the pilot and first officer stalled. Stalling of the wiper motors was attributed to inadequate torque, caused by insufficient electrical current to the motor due to undersized wires to the windshield wiper motors. In addition, there have been reports of loss of windshield wiper blade load, which can lead to flutter of the windshield wiper arm and inability to clear the windshield. Such conditions could result in a reduction in flight crew visibility during heavy precipitation and a period of substantial crew workload, and consequent damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletins 737–30A1049, dated June 1, 2000 (for Model 737–600, –700, and –800 series airplanes); and 737–30A1052, dated October 12, 2000 (for Model 737–400 and –500 series airplanes). The service bulletins describe procedures for modification of the wiring to the windshield wiper motor in the flight compartment and nose wheel well areas, as applicable. The modification specified in service bulletin 737–30A1049 includes changing wire bundles W0018, W2108, W2208, W2653, and W5506 in the flight compartment, and W2175 and W5506 above the nose wheel well area; reducing the blade force of the windshield wipers to between 3.5 and 4.5 pounds; and doing an operational test of the windshield wiper system. The modification specified in Service Bulletin 737–30A1052 includes changing wire bundles W0018, W0036, W0504, and W0544 in the flight compartment; reducing the blade force of the windshield wipers to between 3.5 and 4.5 pounds; and doing an operational test of the windshield wiper system.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

We also have reviewed and approved Boeing Service Bulletin 737–30–1054, dated May 9, 2002 (for Model 737–600, –700, –700C, –800, and –900 series airplanes). The service bulletin describes procedures for replacing the windshield wiper motor/converters in the flight compartment; increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system. Replacement of the motor/converters will support an increase in blade load, which will eliminate the flutter of the windshield wiper arms. The service bulletin recommends prior or concurrent accomplishment of Service Bulletin 737–30A1049.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the wiring to the windshield wiper motors in the flight compartment and nose wheel well areas. For certain airplanes, this proposal also provides for optional replacement of the windshield wiper motor/converters in the flight compartment. The modification would be required to be accomplished in accordance with Service Bulletins 737–30A1049, and 737–30A1052, as applicable, except as discussed below.

Differences Between Proposed AD and Service Information

The Boeing service bulletins listed below differ from the proposed AD in the compliance times specified for accomplishment of the proposed modification.

- 737–30A1052 recommends that the modification of the wiring to the windshield wiper motors be done as soon as manpower and facilities are available.
- 737–30A1049 recommends that the modification of the left-side wiring be done within 90 days of receipt of the service bulletin, and the modification of the right-side wiring at the next 5,000-hour maintenance interval.

We find that we must ensure that the necessary modification is completed in a timely manner. Therefore, this proposed AD would require modification of the windshield wiper motors within 18 months after the effective date of this AD.

Cost Impact

There are approximately 483 airplanes of the affected design in the worldwide fleet. The FAA estimates that 162 Model 737–600, –700, and –800 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 15 work hours per airplane to accomplish the proposed wiring modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $145,800, or $900 per airplane.

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

Should an operator elect to do the replacement of the wiper motor/converters, it would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Parts cost would be minimal. Based on these figures, the cost impact of the replacement proposed by this AD is estimated to be $180 per airplane.

Currently, there are no affected Model 737–400 or –500 series airplanes on the U.S. Register. However, should an airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this proposed modification would be $1,200 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–326–AD.

Applicability: Model 737–400 and –500 series airplanes as listed in Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000; and Model 737–600, –700, and –800 series airplanes as listed in Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in flight crew visibility due to stalled wiper motors during heavy precipitation and a period of substantial crew workload, which could result in damage to the airplane structure and injury to flight crew, passengers, or ground personnel during final approach for landing; accomplish the following:

Modification

(a) For all airplanes, within 18 months after the effective date of this AD: Modify the wiring to the left and right windshield wiper motors in the flight compartment and nose wheel well areas, as applicable (including changing certain wire bundles, reducing the windshield wiper blade force to between 3.5 and 4.5 pounds, and doing an operational test of the windshield wiper system), per Boeing Alert Service Bulletin 737–30A1052, dated October 12, 2000 (for Model 737–400 and –500 series airplanes); or Boeing Alert Service Bulletin 737–30A1049, dated June 1, 2000 (for Model 737–600, –700, and –800 series airplanes); as applicable.

Optional Replacement

(b) For Model 737–600, –700, and –800 series airplanes: Replace the left and right windshield wiper motor/converters in the flight compartment (including increasing the blade force of the windshield wipers to between 6.5 and 7.5 pounds; and doing an operational test of the windshield wiper system), per Boeing Service Bulletin 737–30–1054, dated May 9, 2002. Paragraph (a) of this AD must be done prior to or concurrent with this paragraph. Replacement of the motor/converters will support an increase in blade load, which will eliminate the flutter of the windshield wiper arms.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30348 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes; Model DHC–8–201 and –202 Airplanes; and Model DHC–8–301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier airplanes. This proposal would require replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers. This action is necessary to prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–109–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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

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 2001–NM–109–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. 2001–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an elevator trim problem was detected on a Model DHC–8–100 series airplane due to a broken or missing elevator stop bumper. Investigation revealed that the damaged elevator was bent into the elevator spring tab, which resulted in the trim problem. Further investigation revealed that a broken or missing elevator stop bumper could lead to elevator over-travel and damage to the elevator trailing edge if the elevator impacts the top portion of the rudder. The damaged elevator could then cause the spring tab to jam.

As a result of these findings, we informed Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, that an unsafe condition may exist on Bombardier Model DHC–8 series airplanes. The subject components on certain Bombardier Model DHC–8–200 and –300 series airplanes are identical to those on the affected Model DHC–8–100 series airplane. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

Bombardier has issued service information that describes procedures for replacing the left and right upper and lower elevator stop bumpers. The following table lists the service information for the specified airplane models:

Model DHC–8 series airplanes—	Product support manuals (PSMs)—	de Havilland Inc. Temporary Revisions (TRs), Task Nos. 2730/22, all dated November 6, 2000, of the Airworthiness Limitations Lists (AWLs) of the DHC–8 Maintenance Program Manual—
–100	PSM 1–8–7	TR AWL–77
–200	PSM 1–82–7	TR AWL 2–20
–300	PSM 1–83–7	TR AWL 3–84

Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition.

TCCA classified this service information as mandatory and issued Canadian airworthiness directive CF–2001–08, dated February 7, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Between the Proposed Rule and Canadian AD/Service Information

Operators should note the following differences:

- Although the Canadian airworthiness directive includes Bombardier Model DHC–8–314 airplanes, the applicability of this proposed rule does not include that airplane model, because it is not included on the most recent type certificate data sheet for the affected models. In addition, TCCA has confirmed that Model DHC–8–314 airplanes are not certified for operation in the United States.
- The Canadian airworthiness directive only specifies ''replacing'' the elevator stop bumpers, and the procedures in the previously referenced TRs only specify ''discarding'' the bumpers. However, we have determined that it is necessary for this proposed rule to require replacement of the elevator stop bumpers with new bumpers. After contacting TCCA regarding this, they have agreed that it is appropriate to specify replacement with a new bumper, provided that it has the same part number as the existing bumper. Paragraph (a) of this proposed rule specifies such replacement action.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 195 Bombardier Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; and Model DHC–8–301, –311, and –315 airplanes; of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $23,400, or $120 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 adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2001–NM–109–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 and subsequent.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) At the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, and thereafter at intervals not to exceed 12,000 flight hours or 5 years since the last replacement, whichever occurs earlier, replace the left and right upper and lower elevator stop bumpers of the horizontal stabilizer with new bumpers having the same part numbers as the existing bumpers, per the applicable service information listed in the following table:

Model DHC–8 series airplaines—	Product support manuals (PSMs)—	de Havilland Inc. temporary revisions (TRs), task Nos. 2730/22, all dated November 6, 2000, of the airplanes limitations lists (AWLs) of the DHC–8 maintenance program manual—
–100	PSM 1–8–7	TR AWL–77
–200	PSM 1–82–7	TR AWL 2–20
–300	PSM 1–83–7	TR AWL 3–84

(1) For airplanes that have accumulated 11,000 total flight hours or fewer as of the effective date of this AD: Prior to the accumulation of 12,000 total flight hours or within 5 years after the effective date of this AD, whichever occurs earlier.

(2) For airplanes that have accumulated more than 11,000 total flight hours as of the effective date of this AD: Within 1,000 flight hours or 6 months after the effective date of this AD, whichever occurs earlier.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York 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, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–08, dated February 7, 2001.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30347 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–18–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP and 800 (Including Variant U–125A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP and 800 (including variant U–125A) airplanes. This proposal would require a one-time inspection to identify the bolts installed at certain locations in the wing or fuselage, and corrective actions if necessary. This action is necessary to prevent failure of certain attachment bolts due to manufacturing discrepancies, which could result in reduced structural integrity of the airplane, and loss of system function for flaps, controls, and landing gear. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–18–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. 2001–NM–18–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 Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Senior Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

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 2001–NM–18–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.

2001–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of broken bolts found in the wing and fuselage of certain Hawker Model 800XP and 800 (including variant U–125A) airplanes. Investigation revealed inadequate control of the heat treat process during manufacture of the subject bolts. This resulted in an increased sensitivity to hydrogen embrittlement when electro-deposited cadmium plating was applied to the bolts. A bolt that incurs damage (hydrogen embrittlement) during manufacture will break in a short time after installation because of the bolt's installation preload. Intact (nonbroken) bolts currently installed on affected airplanes are considered adequate to carry the design loads. However, broken bolts could result in reduced structural integrity of the airplane, and the loss of the systems for flaps, controls, and landing gear.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletins SB 51–3408, dated October 2000, and SB 51–3426, Revision 1, dated November 2001 (for Model Hawker 800XP airplanes); and SB 51–3421, Revision 1, dated November 2001 (for Model Hawker 800 (including variant U–125A) airplanes). The service bulletins describe procedures for a one-time inspection to identify any Ravenstone Jackson DHS bolts installed at certain locations in the wing and fuselage, a one-time ultrasonic inspection of those bolts to detect breakage, and replacement of any broken bolt with an acceptable new bolt identified in the service bulletins. Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously. The proposed AD would also require that operators report inspection findings of broken bolts to the FAA.

Cost Impact

There are approximately 104 airplanes of the affected design in the worldwide fleet. The FAA estimates that 76 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 44 or 600 work hours per airplane (depending on configuration) to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,640 or $36,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, the FAA has been advised that the actions specified in this proposed AD have already been accomplished on a number of airplanes that are subject to this AD. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be reduced. 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. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket 2001–NM–18–AD.

Applicability: Model Hawker 800XP and 800 (including variant U–125A) airplanes, certificated in any category, serial numbers 258287 through 258390, excluding the following serial numbers:

258289
258291
258292
258293
258294
258295
258301
258303
258310
258312
258313
258315
258321
258336
258343

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain attachment bolts due to manufacturing discrepancies,

which could result in reduced structural integrity of the airplane, and loss of system function for flaps, controls, and landing gear, accomplish the following:

Inspection for Ravenstone Jackson Bolts

(a) Perform a general visual inspection to identify the type of bolts installed at specified locations of the wing and fuselage, in accordance with paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5), as applicable, of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) For Model Hawker 800XP airplanes identified in the effectivity of Raytheon Service Bulletin SB 51–3408, dated October 2000: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin.

(2) For Model Hawker 800XP airplanes identified in the effectivity of Raytheon Service Bulletin SB 51–3426, Revision 1, dated November 2001: Inspect within 18 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3426, dated December 2000, is acceptable for compliance with the inspection requirements only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

(3) For Model Hawker 800 (including variant U–125A) airplanes identified as Group A airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, dated December 2000, is acceptable for compliance with this inspection requirement for Group A airplanes.

(4) For Model Hawker 800 (including variant U–125A) airplanes identified as Group B airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001: Inspect within 18 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, dated December 2000, is acceptable for compliance with the inspection requirement only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

(5) For Model Hawker 800 (including variant U–125A) airplanes identified as Group C airplanes in Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001: Inspect within 12 months after the effective date of this AD in accordance with the service bulletin. Inspection before the effective date of this AD in accordance with Raytheon Service Bulletin SB 51–3421, dated December 2000, is acceptable for compliance with the inspection requirement only for those locations identified in the original service bulletin; this AD requires inspections at additional locations in accordance with Revision 1 of the service bulletin.

Inspection for Broken Bolts

(b) For any discrepant bolt (any Ravenstone Jackson DHS bolt or any bolt that cannot be identified) found during the inspection required by paragraph (a) of this AD: Before further flight following detection of the discrepant bolt, perform an ultrasonic inspection to determine if the bolt is broken, in accordance with the applicable service bulletin identified in paragraph (a) of this AD. Replace any broken bolt with a new bolt before further flight, in accordance with the applicable service bulletin.

Reporting Requirement

(c) If any broken bolt is found during the inspection specified in paragraph (b) of this AD: Send an inspection report at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD to the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; fax (316) 946–4407. The report must include the inspection results, a description of all discrepancies found, and the airplane serial number. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

Part Installation

(d) As of the effective date of this AD, no person may install on any airplane a Ravenstone Jackson DHS bolt having a batch number identified in paragraph 3.B. of Raytheon Service Bulletin SB 51–3426, Revision 1, dated November 2001; paragraph 3.A. Raytheon Service Bulletin SB 51–3421, Revision 1, dated November 2001; or paragraph 2.B. of Raytheon Service Bulletin SB 51–3408, dated October 2000.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Issued in Renton, Washington, on November 22, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30346 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–27]

Proposed Establishment of Class D Airspace; Shaw AFB, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Shaw AFB, SC. Shaw Radar Approach Control (RAPCON) is closed daily from 0330 UTC to 1100 UTC. Shaw AFB Airport Traffic Control Tower (ATCT) is open continuously. Therefore, when the RAPCON is closed Class D airspace must be established for the ATCT. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the airport.

DATES: Comments must be received on or before January 2, 2003.

ADDRESSES: Send comments to the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–27, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–27.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive pubic contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Shaw AFB, SC. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation 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 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 August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Shaw AFB, SC [NEW]

Shaw AFB, SC

(Lat. 33°58′23″ N, long. 80°28′22″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the Shaw AFB, excluding that airspace contained within Restricted Area R–6002 when it is in use. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 21, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–30328 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–16]

Proposed Establishment of Class E Airspace, Richfield, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Richfield Municipal Airport, Richfield, UT. A newly developed Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) at the Richfield Municipal Airport has made this action necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Richfield Municipal Airport, Richfield, UT.

DATES: Comments must be received on or before January 16, 2003.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–ANM–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above 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 NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA NPRM proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace around Richfield Municipal Airport at Richfield, UT. A Newly developed RNAV approach procedure at the Richfield Municipal Airport has made this proposal necessary because aircraft using RNAV require additional airspace to complete the maneuver. This proposal would promote safe flight operations under IFR at the Richfield Municipal Airport and between the terminal and en route transition stages.

This new RNAV SIAP and the area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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 11013; 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 the Federal Aviation Administration Order 7400.9k, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700-feet or More Above the Surface of the Earth

* * * * *

ANM UT E5 Richfield, UT [New]

Richfield Municipal Airport, UT
(Lat. 38°44′11″N., long. 112°05′56″W.)

That airspace extending upward from 700-feet above the surface within the 7.5-mile radius of the Richfield Municipal Airport; and that airspace extending upward from 1,200-feet above the surface bounded by a line beginning at lat. 39°24′30″N., long, 112°27′41″W.; to lat. 39°16′00″N., long. 112°00′00″W.; to lat. 39°42′00″N., long. 110°54′00″W.; to lat. 39°42′00″N., long. 110°54′00″W.; to lat. 39°27′00″N., long. 110°46′00″W.; to lat. 39°03′00″N., long. 111°30′00″W., to lat. 38°32′00″N., long. 110°42′00″W.; to lat. 38°20′00″N., long. 110°48′00″W., to lat. 38°52′00″N., long. 111°47′00″W., to lat. 38°16′40″N., long. 112°36′40″W., to lat. 38°29′00″N., long. 112°53′00″W., to lat. 39°11′30″N., long. 112°34′00″W.; thence to the point of origin; and excluding that airspace within Federal airways and the Price, UT, Huntington, UT, Milford, UT, and Delta, UT Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on November 20, 2002.

Raul C. Trevino,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–30327 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–12]

Proposed Establishment of Class E Airspace; Moundridge, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Moundridge, KS. An Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17 ORIGINAL Standard Instrument Approach Procedure (SIAP) and an RNAV (GPS) RWY 35 ORIGINAL SIAP have been

developed to serve Moundridge Municipal Airport, Moundridge, KS. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing these approaches.

DATES: Comments for inclusion in the Rules Docket must be received on or before February 15, 2003.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket Number 02–ACE–12, Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ACE–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received 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 the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Central Region, Room 506, DOT Regional Headquarters Building, 901 Locust, Kansas City, MO 64106, 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, 901 Locust, Kansas City, MO 64106. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Moundridge, KS by creating controlled airspace for Moundridge Municipal Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designated as extending upward from 700 feet above the surface of the earth 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 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 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

ACE MO E5 Moundridge, KS

Moundridge Municipal Airport, KS
(Lat. 38°12′25″ N., long. 97°30′11″ W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5-mile radius of Moundridge Municipal Airport.

* * * * *

Issued in Kansas City, MO, on November 15, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 02–30334 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

Customs Service Field Organization; Fargo, North Dakota

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to Customs field organization by establishing a new port of entry at Fargo, North Dakota. The new port of entry would include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which is currently operated as a user-fee airport, and a portion of Clay County in Minnesota. This change will assist the Customs Service in its continuing efforts to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before January 31, 2003.

ADDRESSES: Written comments may be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Richard L. Balaban, Mission Support, Office of Field Operations, (202) 927–0031.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing efforts to provide better service to carriers, importers, and the general public, Customs is proposing to amend § 101.3(b)(1) of the Customs Regulations (19 CFR 101.3(b)(1)) by establishing a new port of entry at Fargo, North Dakota. The new port of entry would include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which currently operates and is listed as a user-fee airport at § 122.15(b) of the Customs Regulations (19 CFR 122.15(b)). A portion of Clay County in Minnesota would also be part of the proposed port. This proposed change of status for Hector International Airport from a user fee airport to being included within the boundaries of a port of entry would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

Port of Entry Criteria

The criteria considered by Customs in determining whether to establish a port of entry are found in T.D. 82–37 (47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, Customs will evaluate whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service at an existing location. Specifically, Customs will consider if the proposed port of entry location can:

(1) Demonstrate that the benefits to be derived justify the Federal Government expense involved;

(2) Except in the case of land border ports, be serviced by at least two major modes of transportation (rail, air, water, or highway); and

(3) Except in the case of land border ports, have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius).

In addition, at least one of the following actual or potential workload criteria (minimum number of transactions per year) must be met in the area to be serviced by the proposed port of entry:

(1) 15,000 international air passengers;

(2) 2,500 (formal) consumption entries, with the applicant location committing to optimal use of electronic data input means to permit integration with any Customs system for electronic processing of entries, with no more than half of the 2,500 entries being attributed to one private party;

(3) For land border ports, 150,000 vehicles;

(4) 2,000 scheduled international aircraft arrivals (passengers and/or crew);

(5) 350 cargo vessel arrivals; or

(6) Any appropriate combination of the above.

Finally, facilities at the proposed port of entry must include, where appropriate, wharfage and anchorage adequate for oceangoing vessels in the case of a water port, cargo and passenger facilities, warehouse space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas, and other space as necessary for regular Customs operations.

In certain cases, where the potential workload at a given location shows pronounced growth, Customs will consider granting conditional port-of-entry status to the location, pending further review of the actual workload generated within the new port of entry. See T.D. 96–3 and 97–64.

Fargo's Workload Statistics

The proposal in this document to establish Fargo, North Dakota as a port of entry is based on Customs analysis of the following information:

1. Fargo is serviced by three modes of transportation:

(a) Rail (the Burlington Northern Santa Fe railroad);

(b) air (at Hector International Airport, two passenger carriers (Northwest and United Express) and five courier-delivery carriers (Air Bourne Express, Corporate Express, DHL, FED EX, and UPS); and

(c) highway (two U.S. interstate highways: I–29 and I–94);

2. The Fargo, North Dakota area has a population of approximately 175,000, with the potential to increase even further;

3. Regarding the five actual or potential workload criteria:

(a) Hector International Airport had 2,911 international air passengers for FY 2001, an increase of 61% over FY 2000;

(b) Hector International Airport had 151 formal consumption entries for FY 2001, with no single company accounting for more than half of the projected entries; and

(c) Hector International Airport had 814 scheduled international aircraft arrivals for FY 2001, an increase of 65% over FY 2000.

Customs believes that significant benefits would be provided to the North Dakota business community by creating a port of entry at Fargo and that the cost of providing the services of one full-time and one part-time Customs official would be minimal to the Federal Government.

Customs believes that the Fargo-area community is committed to making optimal use of electronic data transfer capability to permit integration with the Customs Automated Commercial System for processing entries. In addition, Customs has been informed that the Fargo-area community is developing adequate cargo and passenger facilities, that passenger areas can be secured to accommodate international arrival passenger clearance, and that there are several warehouse facilities in close proximity to Hector International Airport that are being developed for the secure storage of cargo pending inspection and release by Customs. The Fargo-area community is also committed to providing administrative office space, inspection areas, storage areas, and other space necessary for regular Customs operations and will also furnish the Customs office with necessary communications equipment such as a computer, a telephone, a facsimile machine, and computer lines as well as access to photocopiers.

Conditional Status

Based on the information above and the level and pace of development in the Fargo area, Customs believes that there is sufficient justification for the establishment of Fargo, North Dakota, as a port of entry on a conditional basis. If, after reviewing the public comments, Customs decides to create a port of entry at Fargo and terminate Hector International Airport's designation as a user-fee airport, then Customs will notify the airport of that determination in accordance with the provisions of 19 CFR 122.15(c). However, it is noted that this proposal relies on potential, rather than actual, workload figures. Therefore, even if the proposed port of entry designation is adopted as a final rule, in 1 year Customs will review the actual workload generated within the new port of entry. If that review indicates that the actual workload is below the T.D. 82–37 standards, as amended, procedures may be instituted to revoke the port of entry status. In such case, the airport may reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

Description of Proposed Port of Entry Limits

The geographical limits of the proposed Fargo port of entry would be as follows:

In Cass County, North Dakota: Northern boundary Cass County highway 20, Southern boundary U.S. Interstate 94, Western boundary U.S. Interstate 29

In Clay County, Minnesota: Northern boundary Clay County highway 22, Southern boundary U.S. Interstate 94, Eastern boundary Clay County highway 11

Proposed Amendments

If the proposed port of entry designation is adopted, the list of Customs ports of entry at § 101.3(b)(1) will be amended to add Fargo as a port of entry in North Dakota, and Hector International Airport will be deleted from the list of user-fee airports at § 122.15(b).

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). Further, matters involving agency management and organization are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

Robert C. Bonner,

Commissioner of Customs.

Approved: November 25, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–30356 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 122 and 123

RIN 1515–AC73

Private Aircraft Programs: Establishment of the General Aviation Telephonic Entry (GATE) Program and Revisions to the Overflight Program

AGENCY: Customs Service, Treasury.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document informs the public that Customs has decided to withdraw its proposal to both establish a regulatory framework for the General Aviation Telephonic Entry (GATE) Program and revise the Overflight Program regulations. The withdrawal of the proposed rulemaking is based on Customs reconsideration of all aircraft entry procedures since the events of September 11, 2001.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Tritt, Passenger Processing, Office of Field Operations; telephone (202) 927–4434.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2001, Customs published a document in the **Federal Register** (66 FR 40649) proposing to amend the Customs Regulations pertaining to private aircraft programs. The amendments proposed to establish the General Aviation Telephonic Entry (GATE) Program—a voluntary program that was designed to facilitate Customs processing of certain pre-qualified frequent travelers on pre-registered general aviation aircraft arriving in the United States directly from Canada.

The amendments also proposed to revise certain aspects of the Overflight Program—a voluntary program that exempts certain private aircraft arriving in the continental United States via certain areas south of the United States from the special landing requirement applicable to such aircraft. The proposed revisions of the Overflight Program would have modified the application process to standardize and streamline the information required and provide for centralized processing of requests for overflight privileges.

Comments on the proposed amendment to the Customs Regulations were solicited for 60 days.

Six comments were received in response to this proposal. All of the comments were favorable to the private aircraft programs, but certain clarifications were requested.

The GATE Program had been operated on a test basis and allowed participating aircraft to report its arrival information to Customs telephonically and exempted to some degree participating frequent travelers in compliance with the program's requirements from the general Customs requirements concerning entry into the United States. On September 11, 2001, the GATE Program was indefinitely suspended following the terrorist attacks on the United States. On August 3, 2002, the program was discontinued. Consistent

with the discontinuation of the GATE test, Customs has determined not to proceed with establishing the program in the regulations.

Regarding the proposed revisions to the Overflight Program, Customs has carefully considered the comments received and further reviewed the matter. Taking into consideration the enhanced security concerns following the events of September 11, 2001, Customs has concluded that the proposed amendments concerning the Overflight Program must be further revised concerning advance notice of arrival issues. Customs anticipates issuing a new proposal in the near future regarding changes to the Overflight Program. In accordance with the above discussion, Customs is withdrawing the proposal it published August 3, 2001.

Robert C. Bonner,

Commissioner of Customs.

Approved: November 25, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–30357 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–095]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing the notice of proposed rulemaking governing the operation of the Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey. The bridge repair project for the Monmouth County highway bridge was cancelled. This action withdraws the notice of proposed rulemaking and closes the docket.

ADDRESSES: Documents indicated in this preamble are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION: On July 12, 2001, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (66 FR 36527) entitled Drawbridge Operation Regulations, Shrewsbury River, New Jersey. That NPRM, Coast Guard docket (CGD01–01–095), requested public comment regarding the proposal to temporarily change the drawbridge operation regulations that govern the Monmouth County highway. The purpose of the rulemaking was to facilitate bridge maintenance repairs scheduled to be performed during the winter of 2001–2002. No comments were received in response to the NPRM.

The repair project and proposed temporary operating schedule were subsequently cancelled for 2001–2002, due to unresolved contractual issues between the bridge owner and the contractor.

The bridge owner submitted a new request to the Coast Guard to temporarily change the drawbridge operation regulations for the Monmouth County highway bridge in order to facilitate the bridge maintenance previously scheduled for the winter of 2001–2002.

The Coast Guard published a temporary final rule under a new Coast Guard docket number (CGD01–02–122) on November 6, 2002, (67 FR 67549) entitled Drawbridge Operation Regulations Shrewsbury River, New Jersey, to facilitate the bridge repair work scheduled to be performed during the winter of 2002–2003.

The notice of proposed rulemaking (CGD01–01–095) published on July 12, 2001, is no longer necessary. The notice of proposed rulemaking is withdrawn and the docket is closed.

Dated: November 15, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–30436 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–016]

RIN 2115–AE84

Regulated Navigation Area; Olympic View EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a permanent regulated navigation area on a portion of Commencement Bay, Tacoma, Washington. This regulated navigation area would be used to preserve the integrity of a clean sediment cap placed over the seabed as part of the remediation process at the Olympic View Environmental Protection Agency (EPA) superfund cleanup site. This regulated navigation area would prohibit activities that would disturb the seabed, such as anchoring, dredging, spudding, laying cable or other disturbance of the bottom. It would not affect transit or navigation of the area.

DATES: Comments must reach the Coast Guard on or before January 31, 2003.

ADDRESSES: You may mail comments to U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134, or deliver them to room 523 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (206) 217–6232. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address and times.

FOR FURTHER INFORMATION CONTACT: MST2 C.R. Petersen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names, addresses, identify this rulemaking (CGD13–02–016) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it is determined that the

opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

Background and Purpose

The Olympic View Superfund Site is located between the eastern boundary of the Thea Foss Waterway and the western boundary of the Middle Waterway of Commencement Bay, Washington. The site includes property owned and or leased by the now closed Puget Sound Plywood Company, contaminated sediments in Commencement Bay, and other upland sources of contamination. The site is approximately 12.4 acres in size and includes 10.6 acres of intertidal and shallow subtidal marine aquatic land. An area of 2.2 acres of marine sediments is contaminated within the site.

Part of the remediation process for this site consists of covering the contaminated sediments with a layer of clean medium to course grained sand approximately one-meter (3-feet) thick. This cap is used to isolate contaminants and limit their vertical migration and release into the water column. The cap will also limit the potential for marine organisms to reach the contaminated sediment.

Discussion of Proposed Rules

This is to be a permanent regulation restricting activities such as anchoring, salvage or dredging, which would disturb the sediment cap covering the contaminated seabed. The regulation would not affect normal transit or navigation of the area. The Olympic View Restoration Area is located offshore of the peninsula between the Thea Foss and Middle Waterways in Commencement Bay, Tacoma, Washington. The sediment cap includes approximately 480 feet of shoreline extending approximately 420 feet into the bay. This area is relatively unprotected and is rarely utilized as an anchorage.

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 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the rule would encompass a small area that should not impact commercial or recreational traffic. The Olympic View Resource Area does not appear to have any viable industrial or commercial use. Moreover, and any land or water use on the site that would be at odds with the regulated navigation area (RNA) would likely be restricted through the site's designation by the City of Tacoma as a Natural Resource Damage Assessment (NRDA) settlement site, pursuant to a Consent Decree between the City of Tacoma and the Natural Resource Trustees. Furthermore, on May 24, 2000, the State Commissioner of Public Lands established the project area as part of an environmental reserve under RCW 79.68.060. This designation removes the site from potential development or commercial leasing. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The zone would not have a significant economic impact due to its small area. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final 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 (Public Law 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 the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

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 Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This 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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

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

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1311 to read as follows:

§ 165.1311 Olympic View Resource Area, Tacoma, WA.

(a) *Regulated area.* The following area is a regulated navigation area: that portion of Commencement Bay bounded by a line beginning at: 47°15′40.19753″ N, 122°26′09.27617″ W; thence to 47°15′42.21070″ N, 122°26′10.65290″ W; thence to 47°15′41.84696″ N, 122° 26′11.80062″ W; thence to 47°15′45.57725″ N, 122°26′14.35173″ W; thence to 47°15′53.06020″ N, 122°26′06.61366″ W; thence to 47°15′46.74493″ N, 122°26′09.27617″ W; thence returning along the shoreline to the point of origin. [Datum NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the seabed in the designated regulated navigation area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port, Puget Sound, upon advice from the U.S. EPA Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if it is determined that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests should be submitted in triplicate, to facilitate review by U.S. EPA, Coast Guard, and Washington State Agencies. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Olympic View Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: November 5, 2002.

E.M. Brown,

Rear Admiral, U.S. Coast Guard, 13th District Commander.

[FR Doc. 02–30435 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH154–1; FRL–7415–3]

Approval and Promulgation of Implementation Plans; Ohio Particulate Matter

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing action on a variety of revisions to particulate matter regulations submitted by Ohio on July 18, 2000. USEPA is proposing to approve revisions to the form of opacity limits for utility and steel mill storage piles and roadways. USEPA is also proposing to approve formalization of existing requirements for continuous emission monitoring for certain types of facilities, criteria for the state to issue equivalent visible emission limits, and revised limits for stationary internal combustion engines. USEPA is proposing to disapprove authority for revising emission limits for Ford Motor's Cleveland Casting Plant via Title V permit modifications.

DATES: Written comments on this proposed rule must arrive on or before January 2, 2003.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: This document is organized as follows:

I. Background
II. Revisions to Opacity Limits for Utilities
III. Revisions to Opacity Limits for Steel Companies
IV. Criteria for State-Issued Visible Emissions Limits
V. Revisions to Limits via Title V Permit
VI. Other Submittal Elements
VII. Summary of USEPA Action
VIII. Administrative Requirements

I. Background

Ohio adopted major revisions to its particulate matter regulations in 1991, addressing requirements of the Clean Air Act amendments of 1977 and 1990. Ohio has submitted and USEPA has approved those regulations. (See 59 FR 27464, May 27, 1994, and 61 FR 29662, June 12, 1996) However, several companies appealed those regulations to the state Environmental Review Board. As a result of lengthy discussions aimed at resolving these appeals, Ohio adopted an assortment of revisions to its particulate matter regulations on December 17, 1997. Ohio submitted the revised regulations to USEPA on July 18, 2000.

The submitted regulations reflect several significant revisions to prior particulate matter regulations. First, Ohio has redesigned the limits on visible emissions from roadways and storage pile operations at utility storage piles. Second, Ohio has similarly redesigned the visible emission limits for roadways and storage piles at iron and steel facilities. Third, Ohio has established criteria for determining the appropriate visible emissions limit for cases where a source meets its mass emission limit but cannot comply with the standard visible emissions limit. These revisions are intended to provide objective criteria by which the state can establish alternate visible emission limits without need for State Implementation Plan (SIP) review by USEPA. Fourth, Ohio adopted provisions by which Ford could modify its limits via amendments to its Title V permit. Ohio further made a variety of other revisions, including adoption of a rule requiring continuous emission monitoring systems (CEMS) that are already required in permits, updating the form and content of the limits for stationary internal combustion engines, updating the rule on contingency measures, and removing an appendix that provided guidance to state permit writers. Finally, Ohio has modified the limits for several facilities in Cuyahoga County (the Cleveland area), including Ford, LTV, and General Chemical.

Based on discussions with USEPA, Ohio is conducting a further assessment of whether the revised limits in Cuyahoga County suffice to assure attainment of the annual particulate matter standard. USEPA is deferring action on these revisions pending receipt of this further assessment. The remaining elements of Ohio's submittal are addressed in today's action.

II. Revisions to Opacity Limits for Utilities

A consortium of utility companies requested a variety of revisions to limitations applicable to fugitive emissions from their coal storage piles. The previous state rule included in the current SIP limited visible emissions to 13 minutes per hour. The revised rule limits opacity from material handling operations to 20 percent opacity, assessed as a 3-minute average. The revised rule sets a separate limit for vehicle operations on coal piles (not including vehicle exhaust), also set at 20 percent opacity as a 3-minute average. The revised rule retains the 13 minutes per hour visible emissions limit for wind erosion off storage piles, the same limit for unpaved roads, and a 6 minutes per hour visible emissions limit for paved roads.

The revised rules also amend certain aspects of the methods by which opacity readings are taken. Observations for material handling at utility coal piles are to be taken ''where the fugitive dust plume is distinctly separate from the falling material and from the surface of the pile.'' Observations of opacity from vehicles moving on coal piles are to be taken at or above the top of the vehicle and at least one vehicle length from the rear of the vehicle, so as to be outside the immediate wake of the vehicle.

USEPA views these revised limits as having approximately the same stringency as the previous limits. All of these facilities are in areas attaining the air quality standards for particles nominally 10 microns and smaller in aerodynamic diameter (PM_{10}), and so both the prior limits and the revised limits are intended only to assure fairly modest precautions to avoid excess fugitive emissions. While opacity observations both at or above vehicle height and at least one vehicle length away will be lower than opacity observations at more typical observation points (about a meter above ground), USEPA nevertheless anticipates that this limit will require a similar level of control as was expected under the previous limit. USEPA also views as reasonable the provision to avoid observing visible emissions where these observations can be confounded by falling material or the surface of the pile. Therefore, USEPA believes that the proposed revisions to limits for fugitive emissions from utility coal piles given in Rule 3745–17–07(B)(7) are approvable.

Ohio also revised the test method for observing visible emissions on utility roadways and parking areas. The revised rule, in Rule 3745–17–03(B)(4)(d), states that observations of visible emissions on roadways and parking areas are to be taken at a fixed location at a height four feet above ground. In most contexts, USEPA rejects observing visible emissions at a fixed location, requiring instead that each observation be taken wherever the plume is densest. However, since a roadway dictates a fixed path for vehicles, thus preventing circumvention by vehicles taking variable paths on the roadway, and since the distribution of emissions along the road will not change from vehicle traverse to vehicle traverse, USEPA accepts this test method feature for this particular source type.

III. Revisions to Opacity Limits for Steel Companies

Ohio's revised Rule 3745–17–07, specifically new provisions in 3745–17–07(B)(8), specify revised opacity limits for Ohio steel companies that resemble some of the revised limits for utilities. The limit for material handling operations is the same 20 percent opacity limit based on the same 3-minute average method. For wind erosion, while the rules for utilities retain the prior limit of 13 minutes of visible emissions per hour, the revised rules subject wind erosion at steel plants to a limit of 10 percent opacity as a 3-minute average.

The limits for fugitive emissions from vehicle operations are based on a new test method originally used by Illinois. In this method, opacity readings are initiated when a vehicle passes the observer, with follow-up readings taken 5 and 10 seconds later. These 3 readings are taken for each of 4 vehicle passes. The average of these 12 readings must not exceed 10 percent. This 10 percent limitation applies both to vehicles traversing storage piles and to vehicles traveling on plant roadways and parking areas.

USEPA supports use of the Illinois method, which focuses opacity readings on the times emissions are occurring and thus is not unduly affected by the number of vehicles that pass by. Although limited information exists as to the emission levels required by for example a 10 percent opacity limit under this method, USEPA's judgment is that this limit requires a similar control level as the previous limit of 13 minutes of visible emissions per hour. USEPA also believes that the other limits being applied to fugitive dust from iron and steel facilities in Rule 3745–17–07(B)(8) are also at least approximately equivalent to the prior limits.

Unlike most of Ohio's steel mills, two mills are in areas that were previously designated nonattainment. In such areas, the state must show that control requirements for relevant source suffice to assure attainment. Ohio's rule changes alter the control requirements for one of these mills, specifically LTV Steel's Cleveland Works facilities. As noted previously, Ohio is conducting a further evaluation of the impact of various Cleveland area limit revisions, and USEPA is deferring action on these changes pending this further evaluation.

Ohio also changed the limitations in Rule 3745–17–13 (E) and (F) governing Wheeling-Pittsburgh Steel, replacing the visible emission limitations applicable to fugitive dust with detailed requirements for the work practices the company must undertake to limit fugitive dust. USEPA views the work practice requirements given in the new Appendix A to Rule 3745–17–13 as likely to achieve approximately the same level of control as was required by the previous visible emission limitations. No other changes were made to the limitations applicable to Wheeling-Pittsburgh Steel. Therefore, USEPA believes that the revisions for Wheeling-Pittsburgh Steel are approvable without any further attainment demonstration.

IV. Criteria for State-Issued Visible Emissions Limits

The current SIP provides the option for sources to justify source-specific stack opacity limits in lieu of the standard stack opacity limit. The standard stack opacity limit supplements mass emission limits by providing an additional means of requiring effective emission control. However, some sources can meet applicable mass emission limits and yet cannot meet the standard stack opacity limit. For these sources, the SIP provides the option for the source to demonstrate that an alternative opacity limit corresponds to compliance with the mass emission limit, or more precisely that compliance with the alternative opacity limit suffices to indicate compliance with the mass emission limit. Ohio labels this an equivalent visible emission limit.

In the current SIP, when the State concludes that an equivalent visible emission limit is warranted, the State must submit a source-specific request with suitable justification to USEPA. In the revised rules, Ohio has given itself the authority to establish federally enforceable equivalent visible emission limits without requiring USEPA review, based on detailed criteria inserted into the rules. USEPA may approve the revised rules only if these criteria would lead Ohio to establish the same equivalent visible emission limit that USEPA would establish.

The prerequisites for equivalent visible emission limits are given in Rule 3745–17–07(C). The source must demonstrate compliance with its mass emission limit. The source must observe opacity during the mass emissions test. The source must be ''operated and maintained so as to minimize the opacity of the emissions during the [mass emissions] test.'' An equivalent visible emission limit may be established only if opacity exceeds the standard opacity limits despite satisfaction of these requirements.

If the source satisfies these prerequisites, Ohio must then follow the detailed procedures in Engineering Guide numbers 13 and 15 (versions effective June 20, 1997) as referenced in Rule 3745–17–07(C)(4) to determine the numerical value of the equivalent visible emission limit. In cases where the average of three emission test runs shows compliance with mass emission limits despite one or two of these runs exceeding the emission limit, an equivalent visible emission limit may be derived only from test runs that show emissions at or below the emission limit. Since the general opacity limit has two parts, equivalent visible emission limits may have two parts as well. Specifically, the general opacity limit requires 6-minute average opacity values to be at or below 20 percent, except for one 6-minute average opacity that may be as high as 60 percent. Equivalent visible emission limits may be set in lieu of either or both of these general limits. If any 6-minute average opacity exceeds 60 percent, despite compliance with the mass emission limit and minimization of opacity, the higher value may be set as a once-per-hour 6-minute average opacity limit. If any hour's second highest 6-minute average opacity exceeds 20 percent, again despite compliance with the mass emission limit and minimization of opacity, the highest second highest 6-minute average opacity value would be set as a limit on the second highest 6-minute average opacity.

USEPA follows essentially the same criteria and procedures in setting equivalent visible emission limits for new source performance standards pursuant to 40 Code of Federal Regulations part 60.11(e) (40 CFR 60.11(e)). If a source subject to a new source performance standard in 40 CFR part 60 cannot meet an applicable opacity limit, it may petition USEPA for an equivalent visible emission limit. Under 40 CFR 60.11(e)(7), ''[USEPA] will grant such a petition upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by [USEPA], and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.'' Under 40 CFR 60.11(e)(8), USEPA sets an equivalent visible emission limit at the maximum level that is consistent with compliance with the mass emission limit.

Ohio's criteria for setting equivalent visible emission limits closely parallel USEPA's criteria in 40 CFR 60.11(e). Ohio has an explicit prerequisite that affected facility and associated air pollution control equipment was operated and maintained in a manner so as to minimize the opacity. Rule 3745–17–07(C)(3)(a) dictates that the performance tests must be conducted in accordance with conditions and procedures accepted by Ohio. Although Ohio's rule does not have an explicit prerequisite of the facility and control equipment being incapable of being adjusted or operated to meet the opacity limits, USEPA views this prerequisite as part of the prerequisite for minimizing emissions. Thus, if in USEPA's judgment the facility could meet the general opacity limits through adjustments or changes in operation of the facility and/or control equipment, USEPA would conclude that the source has failed the prerequisite for operating the facility and control equipment so as to minimize opacity.

USEPA thus concludes that Ohio imposes the same prerequisites for granting equivalent visible emission limits as USEPA. Further, Ohio has provided specific procedures by which their equivalent visible emission limits would be set at appropriate levels. Therefore, USEPA believes that it is appropriate to authorize Ohio to issue equivalent visible emission limits according to these criteria without source-specific USEPA review.

V. Revisions to Limits via Title V Permit

In Rule 3745–17–12(I)(50), Ohio authorizes use of Title V permits to establish an alternative set of emission limits at Ford Motor Company's Cleveland Casting Plant. This paragraph identifies several elements of procedure for the state to follow, much of which reflects standard Title V procedures for

permit modifications. Ohio must give USEPA 45 days' notice of the proposed Title V permit modifications. Ohio shall not issue the permit modifications if USEPA objects to the permit modification, unless and until USEPA's objection is resolved. Ford Motor Company must provide a demonstration using modeling consistent with USEPA's modeling guidelines that the alternative set of limits assures attainment of the air quality standards for PM10. Once the alternative set of limits are in effect in issued permit modifications, Ford no longer needs to comply with the superseded limits in Rule 3745–17–12(I).

Rule 3745–17–12(I)(50) also provides the option of amending Ford's emission limitations via new source permit issued under Rule 3745–31–02. In accordance with new source permitting procedures, USEPA and other interested parties would have 30 days to comment, and permit issuance would not be contingent on USEPA objections being resolved. Although new source permits are issued only if at least one emission unit is newly constructed or modified, such permits may also amend the limitations for other, existing and unmodified units. Ordinarily, such limitations supplement and do not supersede any SIP limits that apply to the units. However, in this case, Rule 3745–17–12(I)(50) provides that the new source permit limits would supersede the SIP limits, and Ford's Cleveland Casting Plant need not comply with the limits in the SIP so long as it complies with the limits in the new source permit.

Ohio also added Rule 3745–17–12(I)(51). This paragraph states that once a permit has been issued in accordance with Rule 3745–17–12(I)(50) that amends the requirements applicable to Ford, Ohio shall revise Rule 3745–17–12(I) to become consistent with the revised control strategy.

USEPA believes that the Clean Air Act does not authorize these revisions. Section 504 in Title V of the Clean Air Act provides that permits required under Title V must include provisions ''as are necessary to assure compliance with applicable requirements of [the Clean Air Act], including the requirements of the applicable implementation plan.'' That is, these permits must assure compliance with the existing implementation plan. The permits may not change the implementation plan or assure compliance with an alternative set of provisions that fail in any way to assure compliance with the existing implementation plan.

If a state wishes to revise its implementation plan, it must pursue the revisions in accordance with section 110 in Title I of the Clean Air Act, entitled ''Implementation Plans.'' Section 110 includes detailed criteria and a detailed review process for state implementation plan revisions. Congress clearly designed a process involving substantial USEPA oversight of revisions to SIPs, specifically providing USEPA with a much longer time for review of SIPs than for Title V permits. The first step in review of implementation plan revisions is a review for completeness, including whether the state has provided adequate technical information to judge the merits of the revision; no counterpart to this step is provided in USEPA's review of Title V permits. Section 110(k) then grants USEPA 12 months to review proposed revisions to implementation plans, in stark contrast to the 45 days for USEPA review of proposed Title V permits. Finally, state implementation plans under section 110 remain unchanged unless USEPA takes affirmative action approving revisions to the plan, whereas Title V permits take effect in the absence of USEPA raising timely objections to the permit. Thus, the provision in Ohio's Rule 3745–17–12(I)(50) for using the Title V permit process to change emission limits that are at the core of Ohio's implementation plan for meeting the PM10 standard in the Cleveland area is clearly contrary to the structure and provisions of the Clean Air Act.

Rule 3745–17–12(I)(50) is also contrary to USEPA's regulations addressing the contents of Title V permits and their relationship to state implementation plans. Regulations for Title V permits in 40 CFR 70.1 define ''applicable requirements'' as, among other things, ''[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act''. The first and foremost elements of Title V permit content, as described in 40 CFR 70.6(a)(1), are provisions to ''assure compliance with all applicable requirements''. Neither here nor elsewhere in 40 CFR part 70 does USEPA authorize a Title V permit to modify applicable requirements.

In contrast, 40 CFR part 51 has extensive guidance on revisions to implementation plans. Appendix V to 40 CFR part 51 defines criteria for judging whether a submittal is complete. As stated in 40 CFR 51.103, ''[r]evisions of a plan * * * will not be considered part of an applicable plan until such revisions have been approved by [USEPA] in accordance with this part.''

Importantly, with the exception of periodic monitoring to assure compliance, neither 40 CFR part 70 nor the Title V of the Clean Air Act give a permitting authority the authority to create new requirements through a Title V permit. In some cases, USEPA allows permitting authorities to include in Title V permits conditions that differ from but are equivalent to streamlined applicable requirements. USEPA has issued white papers addressing this possibility. However, these white papers do not offer the option of altering the core requirement of any individual applicable requirement, even if a case is made that a relaxation for one applicable requirement is compensated for by tightening another applicable requirement. Such proposals for net equivalent limits must be submitted to USEPA as requests for state implementation plan revisions subject to review under Title I of the Clean Air Act and 40 CFR part 51.

Rule 3745–17–12(I)(50) authorizes changes to limitations through new source permits as well as through Title V permits. This approach is also not authorized in the Clean Air Act or in applicable regulations. New source permits, like Title V permits, do not satisfy the procedural requirements for state implementation plan review. For this reason, limits imposed in new source permits on new or existing sources are supplemental to and do not supersede existing SIP limits. Neither the Clean Air Act nor USEPA regulations authorize a new source permit to allow noncompliance with a SIP limitation on any emission unit. Consequently, USEPA believes that Rule 3745–17–12(I)(50) must be disapproved.

Rule 3745–17–12(I)(51) states simply that any alternative limitations established by permit under Rule 3745–17–12(I)(50) must be incorporated into Ohio regulations in Rule 3745–17–12(I). While USEPA does not object to this particular provision, USEPA believes that this paragraph has no effect because no alternative limits may be established under Rule 3745–17–12(I)(50). For this reason, and because paragraph (I)(51) is closely tied to paragraph (I)(50), USEPA believes it most appropriate to disapprove both paragraphs.

VI. Other Submittal Elements

In addition to the revisions requested by industry appellants of Ohio's rules, Ohio also made four revisions that might be considered corrections to their rules. These revisions include adoption of a rule requiring continuous emission monitoring systems (CEMS) that are

already required in permits, updating the form and content of the limits for stationary internal combustion engines, updating the rule on contingency measures, and removing an appendix that provides guidance to state permit writers.

Rule 3745–17–03(C) requires facilities subject to 40 CFR 51 Appendix P to operate, maintain, and submit periodic results from CEMS. In general terms, Appendix P requires CEMS at large boilers, fluid catalytic cracking units (at refineries), nitric acid plants, and sulfuric acid plants. Ohio previously satisfied this requirement by submitting state operating permits for each affected facility mandating CEMS. USEPA approval of these permits is codified at 40 CFR 52.1870(c)(88). These permits have now expired. USEPA believes that Rule 3745–17–03(C) provides for satisfaction of the requirements of Appendix P on a more permanent basis. In conjunction with approving this rule, USEPA intends to remove the codification of its approval of the now expired permits.

Ohio modified both the criteria for differentiating large and small stationary internal combustion engines (defined in paragraphs (B)(23) and (B)(24) of Rule 3745–17–01) and the emission limits applicable to each (specified in Rule 3745–17–11(B)(5)). These revisions parallel the changes in the source characteristics that USEPA recommends using in evaluating emissions from this source type. These revisions should not affect the level of control of these sources and thus should not have any significant effect on emissions from this source category. Therefore, USEPA believes these revisions are acceptable.

Rule 3745–17–14 identifies sources to provide contingency measures and provides criteria for implementing these measures if needed to attain particulate matter standards. Ohio used the measures identified by the sources to develop the contingency plan required under Clean Air Act section 172(c)(9), which USEPA approved on May 6, 1996, at 61 FR 20139. The approved plan reflected measures for only a subset of the sources in Rule 3745–17–14, since other sources listed in this rule were unable to identify suitable contingency measures. Ohio's recent revisions to Rule 3745–17–14(A) delete these extraneous sources from the listing in Rule 3745–17–14 and more generally bring the requirements for identification of measures into conformance with the set of measures actually identified and incorporated into the approved contingency plan. These rule revisions do not in any way change the stringency, triggering process, or other features of the existing contingency plan. Therefore, USEPA believes these revisions are acceptable.

Finally, Ohio revised its Rule 3745–17–14 to remove guidance contained as Appendix B to this rule concerning criteria for particulate matter sources to be eligible for registration status rather than requiring permits to operate. USEPA has not previously approved Appendix B, and Appendix B is not necessary to meet any Clean Air Act requirement. Therefore, USEPA has no objection to Ohio rescinding this appendix, and USEPA need not take any action for this appendix to remain as not part of Ohio's SIP.

VII. Summary of USEPA Action

USEPA is proposing action on most elements of Ohio's particulate matter SIP revisions submitted July 18, 2000. USEPA is proposing to approve revisions to limitations in Rule 3745–17–07 on fugitive dust emissions for utilities and steelmaking facilities and the associated revisions to test methods in Rule 3745–17–03, with one exception. This exception is that USEPA is deferring action on the revisions of limitations for Ford Motor in Rule 3745–17–07(B)(9) and (B)(10), in conjunction with USEPA's deferral of action on various limit revisions for Cleveland area sources.

USEPA is proposing to approve Rule 3745–17–03(C), which requires that sources subject to Appendix P of 40 CFR 51 install, satisfactorily operate, and report results from continuous emission monitoring systems. In conjunction with this action, USEPA is proposing to remove from the SIP the now-expired permits that Ohio previously submitted to satisfy Appendix P. USEPA is proposing to approve revisions to Rule 3745–17–04, requiring immediate compliance with the newly adopted limitations, except that USEPA is deferring action on compliance dates associated with Cleveland area limitations pending action on the limits themselves. USEPA is proposing to approve revisions in Rule 3745–17–01 and 3745–17–11 to limits for stationary internal combustion engines. USEPA is proposing to approve replacement of fugitive emission limitations in Rule 3745–17–13 for the Wheeling-Pittsburgh Steel Company with requirements that the company follow specified practices to limit fugitive emissions. USEPA is proposing to approve revisions to Rule 3745–17–14 that bring this rule into conformance with the approved contingency plan and that remove a guidance statement that was not previously part of the SIP.

USEPA is proposing to disapprove Rule 3745–17–12(I)(50) and 3745–17–12(I)(51), which would allow Ohio to incorporate a revised set of emission limits for Ford Motor Company's Cleveland Casting Plant into either a Title V permit or a new source permit. USEPA proposes to conclude that this type of revision to applicable limitations must be subject to the review process under section 110 of the Clean Air Act for revisions to state implementation plans. Finally, USEPA is deferring action on revisions in Rules 3745–17–08, 3745–17–11, and 3745–17–12 that alter the control strategy for meeting the PM10 standards in Cuyahoga County, pending further analysis of whether these revisions continue to assure attainment of the annual PM10 standard.

Final disapproval of the above paragraphs of Rule 3745–17–12(I) would not start any sanctions clock. This submittal was not needed to meet any provision of the Clean Air Act. Disapproval of these paragraphs would simply prevent the addition of these paragraphs to Ohio's state implementation plan and would not constitute a plan deficiency that under section 179 of the Clean Air Act would need to be remedied to avoid sanctions.

VIII. Administrative Requirements

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 approve 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 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve state rules implementing a Federal standard, 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA'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), USEPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, 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. This proposed 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.*).

List of Subjects in 40 CFR Part 52

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

Dated: November 15, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–30468 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7415–5]

Notice of Data Availability; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Additional Information on the Colitag™ Method

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of data availability—supplemental information.

SUMMARY: On March 7, 2002, the Environmental Protection Agency (EPA) published ''Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for Aeromonas; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Proposed Rule.'' In this proposed rule, EPA sought comments on the proposed promulgation of multiple industry-developed methods, one of which was the Colitag™ method, a ''Test for Detection and Identification of Coliforms and *E. coli* Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations.'' This method was proposed for the analysis of total coliforms and *E. coli* in finished drinking water samples. After the close of the public comment period on the March 7 proposed rule, EPA received additional information from CPI International, developers of Colitag™, relevant to the performance of the method. Such information (herein after collectively referred to as ''additional information'') includes supplemental data as well as a re-evaluation of previously reported data included in the public record that supported the proposed approval of Colitag™. EPA is using today's action to invite comments on this additional information.

DATES: EPA must receive public comment, in writing, by January 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0031. Follow the detailed instructions as provided in section I of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Herb Brass, Technical Support Center, Standards and Risk Management Division, Office of Ground Water and Drinking Water, Environmental Protection Agency, Mail Stop 140, 26 W. Martin Luther King Drive, Cincinnati, OH, PH: (513) 569–7926. E-mail: *brass.herb@epa.gov.* For general information and copies of this document, contact the Safe Drinking Water Hotline at (800) 426–4791. The hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4:30 p.m. eastern standard time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0031. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., eastern standard time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket materials, please call (202) 566–1744 to schedule an appointment.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,''

then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. The Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic copies must be submitted in WP5.1 or higher, or ASCII file format file, avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number OW–2002–0031. Comments will also be accepted on disks in WP 5.1 or higher, or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

a. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Do not send duplicate electronic and paper comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0031. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. E-mail. Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW–2002–0031. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies (including attachments) plus the original of your comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0031.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, Environmental Protection Agency, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0031. Such deliveries are only accepted during the Docket's normal hours of operation, as identified in 1.A.1.

C. 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 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 your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Colitag™ Combination Method for Detection of Total Coliform Bacteria and E. Coli in Drinking Water

The Safe Drinking Water Act (SDWA), as amended in 1996, requires USEPA to

promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412; (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401(1)(A); (42 U.S.C. 300f(1)(A)). According to SDWA section 1401 (1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures.'' In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. USEPA's promulgation of analytical methods is authorized under these sections as well as the general rulemaking authority in SDWA section 1450(a); (42 U.S.C. 300j–9(a)).

On March 7, 2002, EPA published ''Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for Aeromonas; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Proposed Rule.'' (67 FR 10532, March 7, 2002). In this proposed rule, EPA sought comments on the proposed promulgation of multiple industry-developed methods, one of which was the Colitag™ method, a ''Test for Detection and Identification of Coliforms and *E. coli* Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations.'' This method was proposed for the analysis of finished drinking water samples.

After the close of the public comment period on the March 7 proposed rule, EPA received additional information from CPI International, developers of Colitag™, relevant to the performance of the method. This information included data from two additional studies and a re-evaluation of data in the original record associated with the March 7 proposal. Because this additional information serves to supplement the data included in the public record that supported the proposed rule (Docket No. W–01–13), and because the data are relevant to a decision on whether to promulgate Colitag™, EPA is using today's action to invite comments on this additional information.

The additional information concerns the results of comparability studies that evaluated the equivalence of Colitag™ to approved reference methods. A key aspect of the studies included the comparison between the proposed and reference methods for measurement of chlorine-stressed total coliforms and *E. coli.* Detection of chlorine stressed bacteria in chlorinated distribution system water is important, and selective media are tested to determine that their selectivity does not inhibit recovery of stressed organisms. The degree of chlorine stress is represented as ''log reduction'' (comparing organism counts before and after exposure to chlorine).

Data originally included in Docket No. W–01–13 (in support of the March 7, 2002 proposed rule) for the Colitag™ method reported log reductions ranging from 0.7 to 4.5 for total coliforms, and 1 to 2.0 for *E. coli.* On July 29, 2002, CPI provided information to EPA showing that a re-evaluation of the raw data significantly changed the values for the log reduction for the Colitag™ comparability study. Such re-evaluation was based on a measurement (using membrane filter analysis) of bacteria density in the source/effluent water used in the studies; a dilution factor, accounting for the addition of drinking water to the source/effluent water; and a measurement (again using membrane filter analysis) of bacterial density following chlorine stressing of the diluted source/effluent water:

Log reduction = $\log_{10}$ [(M_{source}/DF)/($M_{chlorinated} \times$ CF)], where:

M_{source} = original measurement of bacteria density in the source/effluent water;

DF = dilution factor associated with the addition of tap water to the source water;

$M_{chlorinated}$ = measurement of bacteria density following chlorine stressing

CF = adjustment factor accounting for dilution by the chlorine solution

The original and re-evaluated data for total coliforms and *E. coli* using this approach are given in Tables 1 and 2, respectively. They show that for total coliforms, the corrected log reduction ranged from 1.9 to 3.4. For *E. coli*, the log reduction ranged from 1.6 to 3.4.

The figures originally reported by CPI (and originally included in Docket No. W–01–13) were not based on the calculation above but were instead based on a membrane filter analysis of the diluted source water. EPA experts in microbiological analytical methods have reviewed the two approaches to determining bacterial density in the diluted source water (*i.e.*, measurement by membrane filter analysis of the diluted source water, versus calculation based on the dilution factor and a measurement of the source water prior to dilution) and have concluded that the latter approach is sound and provides consistency with previous method evaluations by EPA.

CPI has also provided supplemental technical information, from two additional studies, for the Agency's consideration. This supplemental information, provided to EPA on July 29, 2002, may be found in Docket No. OW–2002–0031. The first of the two supplemental studies conducted by CPI was performed with Richmond Field Station primary wastewater influent. In three of three dilutions with a 4.3 log reduction of bacteria, Colitag™ performed as well as or better than the reference method for detecting *E. coli* at 44.5° C. In the second supplemental study conducted by CPI, using the same primary wastewater influent, and with a 3.4 log reduction from chlorine stress, Colitag™ again performed as well as or better than the reference method at 44.5° C.

EPA is requesting public comment on the additional information presented in this notice, relative to the Agency's March 2002 proposed promulgation of the Colitag™ method. Comments should be submitted only on the additional information presented in this notice and in Docket No. OW–2002–0031. EPA is not reconsidering any other drinking water issue in this notice nor will EPA respond to any comments on other issues. Comments should be limited to the additional information (described herein and found in Docket No. OW–2002–0031) and its applicability to the Agency's consideration of the Colitag™ method.

TABLE 1.—CHLORINE STRESS REDUCTION, ORIGINAL AND CORRECTED DATA FOR TOTAL COLIFORMS

Sample ID	Sample source	Source water CFU measurement/100 mL (M_{source})	Dilution factor (DF)	Post-chlorine CFU measurement/100 mL ($M_{chlorinated}$)	Chlorine dilution adjustment factor (CF)	Corrected log reduction	Original log reduction
982084A	Millbrae, CA	1,400,000	1000	6	2	2.1	1.8–2.1
982305A	Millbrae, CA	30,000,000	1000	6	2	3.4	4.5
990025A	Jacksonville, FL	11,000,000	500	7	2	3.2	3.3
990052A	Schaumberg, IL	1,000,000	1250	2	2	2.3	2
990095A	Watertown, WI	16,000,000	7000	2	2	2.8	3.3
990217A	Mission, KS	5,000,000	600	7	2	2.8	1.2
990273A	Salem, OR	2,000,000	800	7	2	2.3	2.1
990438A	Ames, IA	2,000,000	13,000	1	2	1.9	1
990442A	Mission, KS	14,000,000	9000	2	2	2.6	1.4
990443A	Liberty, MO	9,000,000	8000	2	2	2.4	0.7

TABLE 2.—CHLORINE STRESS REDUCTION, ORIGINAL AND CORRECTED DATA FOR E. COLI

Sample ID	Sample source	Source water CFU measurement/100 mL (M_{source})	Dilution factor (DF)	Post-chlorine CFU measurement/100 mL ($M_{chlorinated}$)	Chlorine dilution adjustment factor (CF)	Corrected log reduction	Original log reduction
982084A	Millbrae, CA	230,000	1000	3	2	1.6	1.6
982305A	Millbrae, CA	11,000,000	1000	2	2	3.4	NA
990025A	Jacksonville, FL	700,000	500	1	2	2.8	NA
990052A	Schaumberg, IL	1,000,000	1250	1	2	2.6	2
990095A	Watertown, WI	NA	3000	7	2	NA	1.7
990217A	Mission, KS	4,000,000	800	4	2	2.8	1.4
990273A	Salem, OR	1,000,000	80	5	2	3.1	1.9
990438A	Ames, IA	1,000,000	1000	1	2	2.7	1
990442A	Mission, KS	3,000,000	1000	1	2	3.2	1
990443A	Liberty, MO	2,000,000	1000	1	2	3.0	1

Dated: November 25, 2002.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 02–30467 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 451

[FRL–7415–6]

RIN 2040–AD55

Extension of Comment Period for Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA proposed effluent limitations guidelines and standards for the Concentrated Aquatic Animals Production (CAAP) Category on September 12, 2002. The proposed regulations would apply to discharges from certain facilities in the CAAP Category that grow, contain or produce aquatic animals above 100,000 pounds. EPA is extending the comment period by approximately six weeks. The comment period will now close on January 27, 2003. EPA has carefully considered the court-ordered promulgation date in making the decision to extend the comment period for this rulemaking.

DATES: Comments regarding the proposed rule will be accepted on or before January 27, 2003.

ADDRESSES: Send written comments to W–02–01, Ms. Marta E. Jordan, Engineering and Analysis Division (4303T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. For hand-deliveries or Federal Express, please send comments to Ms. Marta E. Jordan, Office of Water, Engineering and Analysis Division, Room 6233M, 1301 Constitution Avenue, NW., 6th Floor, Connecting Wing, Washington, DC 20460. EPA requests an original and three copies of your written comments and enclosures (including copies of references). Comments may be sent by email to the following e-mail address: *aquaticanimals@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Marta E. Jordan, Engineering and Analysis Division (4303T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone (202) 566–1049, fax (202) 566–1053 or E-Mail *jordan.marta@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA proposed effluent limitations guidelines and standards for the CAAP Category on September 12, 2002, *see* 67 FR 57871. The proposed regulation would apply to producers of aquatic animals which produce at least 100,000 pounds of animals per year in one of three specific production systems. EPA proposed to establish requirements for the production of aquatic animals in flow through, recirculating, and net pen systems. EPA proposes to establish numeric limitations for Total Suspended Solids (TSS) in the wastewater discharged from flow through and recirculating systems. EPA also proposes to require the development and implementation of Best Management Practices (BMPs) to

control the discharge of pollutants from flow through, recirculating and net pens systems. EPA described the bases for these requirements in section VIII of the preamble to the proposed regulation (67 FR 57895).

EPA held three public meetings to provide an overview of the proposed rule and opportunities for the regulated community and other interested parties to ask questions on issues pertaining to the proposed rule.

EPA received several requests to extend the comment period to allow more time to address the issues on which EPA solicited public comment. The requests for an extension pointed out that this is a very busy season for a large portion of this industry. Many sectors are involved in harvest through the fall months. EPA agrees that many producers may need more time to develop comments to the proposal. The comment period for the proposed rule is extended until January 27, 2003.

EPA is scheduled to take final action on effluent limitations guidelines and new source performance standards for this industry by June 2004. EPA is using its best efforts to comply with this deadline and expects to meet the schedule even with this extension of the comment period.

Dated: November 25, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–30466 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 764

[OPPT–2002–0006; FRL–7183–9]

RIN 2070–AC17

Acrylamide and N-methylolacrylamide Grouts; Withdrawal of Proposed Ban

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is hereby withdrawing a proposed rule that would have prohibited the manufacture, importation, distribution, and use of acrylamide and N-methylolacrylamide (NMA) grouts. In 1991, EPA proposed the rule in order to protect grouters from neurotoxic and carcinogenic risks arising from significant dermal and inhalation exposure to the acrylamide and NMA in these grouts. EPA found that grouters were exposed when using these grouts, even while wearing the best practical personal protective equipment (PPE) available at the time the rule was proposed. EPA has found that there is now affordable PPE that provides adequate protection from exposure to the acrylamide and NMA in these grouts. EPA has determined that as long as appropriate PPE is used during grouting operations, it is no longer necessary to prohibit the use of these grouts to protect the health of grouters.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John Bowser, Office of Pollution Prevention and Toxics, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8082; e-mail address: bowser.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, distribute in commerce, or use acrylamide or N-methylolacrylamide (NMA) grout. Potentially affected categories and entities may include, but are not limited to:

- Chemical manufacturers or importers (NAICS code 32519), e.g., persons who manufacture (defined by statute to include import) acrylamide or NMA grout.
- Chemical processors (NAICS code 32519), e.g., persons who process acrylamide or NMA grout.
- Chemical distributers (NAICS code 42269), e.g., persons who distribute acrylamide or NMA grout in commerce.
- Municipalities (NAICS code 22132), e.g., persons who use acrylamide or NMA grout for sealing sewer lines and manholes, and for structural water control and geotechnical grouting.
- Grouters and sewer rehabilitators (NAICS code 23491), e.g., persons who use acrylamide or NMA grout for sealing sewer lines and manholes, and for structural water control and geotechnical grouting.

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 in this unit 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 applies to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0006. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744. The telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

II. Background

A. What Action Did the Agency Propose to Take?

In 1991, EPA proposed to prohibit the manufacture, distribution in commerce, and use of acrylamide grout (56 FR 49863, October 2, 1991) (FRL–3767–7). In addition, EPA proposed to prohibit all uses of NMA grout, except its use for

sewer line repair. EPA proposed to ban that use 3 years following promulgation. EPA proposed that action because, based on the information available to EPA at that time, EPA determined that it was necessary to protect grouters (i.e., the individuals who routinely use acrylamide and NMA grouts in the workplace) from the neurotoxic and carcinogenic risks arising from significant exposures to the acrylamide and NMA present in these grouts. EPA found that workers experienced significant exposure even while wearing personal protective equipment (PPE) (Ref. 1). For more information on acrylamide and NMA grouts and their uses, see Unit II. of the preamble to the proposed rule. For more information on the health effects of acrylamide and NMA, see Unit III. of the preamble to the proposed rule. EPA issued the proposed rule under the authority of sections 6(a) and 8(a) of TSCA. EPA based its action on its determination that the use of acrylamide and NMA grouts presented an unreasonable risk of injury to human health, and that a prohibition of their manufacture, distribution in commerce, and use, was the least burdensome action available to protect adequately against these risks.

B. What Grouting Processes Were Covered by the Proposed Rule?

Grout is injected into and around concrete, rock, and soil to strengthen its mass and restrict the flow of water. Following application, the grout solidifies into a stiff, impervious gel.

Sewer rehabilitation is the major use of acrylamide and NMA grouts. Sewer rehabilitation is discussed in this preamble as two separate activities: sewer line sealing and manhole sealing. Both activities seal cracks, holes, and joints in order to suppress infiltration of rainwater, nonpoint source run-off, and ground water into sewer systems. Preventing these inflows reduces demand on sewage treatment capacity and wastewater treatment costs.

Sewer line sealing entails sealing main and lateral sewer line pipes and joints using remotely operated equipment including closed-circuit video cameras, an inflatable packer, and a grout delivery system. The video camera is inserted into a sewer line and slowly pulled through, transmitting images of the interior of the pipe to a worker stationed at a control board inside a service truck. The worker operates the packer from inside the truck to deliver the grout to seal cracks and defective joints in the interior wall. The grout is forcibly injected and flows through the crevices into the surrounding soil and ''gels,'' thereby sealing the fissures and preventing water infiltration.

Manhole sealing is accomplished manually by a worker using a hand-held device to inject grout into holes that have been drilled into the sides of the manhole.

C. How are Workers Exposed to Acrylamide and NMA Grouts?

The following information is drawn from EPA's ''Assessment of Airborne Exposure and Dermal Contact to Acrylamide During Chemical Grouting Operations''; ''Regulatory Impact Analysis of the TSCA Section 6 Final Rule for Acrylamide Grout''; and ''Economic Analysis of a Proposed Ban on Chemical Grouts Containing Acrylamide and N-methylolacrylamide,'' and the related Addendums (Refs. 1, 2, 3, 4, and 5). Monitoring of acrylamide grouting operations conducted in 1987 by EPA at four grouting sites, as well as the inherent nature of sewer grouting work, established that workers were being dermally exposed to acrylamide despite the use of PPE recommended at the time. A subsequent field evaluation of acrylamide grouting operations by the Occupational Safety and Health Administration (OSHA) (Ref. 6) also confirmed the potential occurrence of significant exposures for workers using the same recommended PPE. The following two sections describe exposures experienced in different applications. Dermal exposures were invariably the primary concern.

1. *Dermal exposure*—a. *Manhole sealing*. Sealing manholes presents the greatest opportunity for dermal exposures because it is performed with hand-held injection devices in tightly confined areas for extended periods. Workers engaged in this process must be protected from exposures to liquid acrylamide grout resulting from runoff and splashes. Opportunities for exposure to liquid grout also occur during mixing, gel testing, equipment disassembly, and clean up.

In the 1987 study, EPA measured dermal exposures of workers who were sealing manholes while using the PPE recommended at the time, including disposable Tyvek® coveralls, eye goggles, half-mask air purifying respirators, and rubber gloves. Workers sealing manholes experienced dermal exposure ranging from 2.6 to 5.0 milligrams/hour (mg/h).

b. *Sewer line sealing*. Sewer line sealing generates less of an opportunity for dermal exposures because it is done with closed-circuit video cameras and remotely controlled grout delivery systems, so that little or no exposures occur during application. As with manhole sealing, however, dermal contact can occur during mixing, gel testing, equipment disassembly, and clean up.

EPA's 1987 monitoring study found dermal exposure levels in this application ranging from 0.61 to 1.8 mg/h--less than one-third the level experienced sealing manholes.

c. *Effectiveness of Tyvek® protective coveralls*. In the 1987 study, acrylamide was found on dermal exposure monitoring pads placed inside the Tyvek® protective coveralls and against the skin of workers engaged in both sewer line and manhole sealing activities. This finding indicates that Tyvek® coveralls are not an effective barrier to acrylamide.

2. *Inhalation exposure*. Inhalation exposure to acrylamide and NMA can occur during mixing, application, equipment disassembly, and clean up. It may also occur when water from spilled solutions evaporates, and the remaining dry powder becomes airborne. In EPA's 1987 field study, monitored inhalation exposures to acrylamide ranged from one-fifth to one-twentieth of measured dermal exposures. There was little variation in inhalation exposures between sealing manholes and sealing sewer lines; both applications generated virtually identical air concentrations. Eight-hour time-weighted average (TWA) exposures within the breathing zones of workers ranged from 0.008 to 0.12 mg/m^3. Three of the breathing zone samples exceeded the American Conference of Governmental Industrial Hygienist's (ACGIH) Threshold Limit Value (TLV), and the National Institute of Occupational Safety and Health Recommended Exposure Limit (NIOSH REL) of 0.03 mg/m^3, although none exceeded the current 0.3 mg/m^3 OSHA permissible exposure limit (PEL).

D. What is the Role of PPE in Protecting Workers?

Based on the 1987 field study described above, the Agency concluded that even under the best of circumstances--in which informed and motivated workers were properly using the best practical PPE and practices available at the time the study was conducted--acrylamide exposures would remain unacceptably high. In 2001, while preparing to promulgate the proposed rule, EPA examined current data on PPE for use with acrylamide and NMA grout to determine what equipment is currently in use and whether equipment is available that can provide effective and affordable protection for workers (Refs. 7, 8, 9, 10, 11, 12, 13, and 14). EPA found that

effective and affordable equipment is now available, although it is not yet in general use by grouting workers.

1. *PPE currently being used with acrylamide grout may not be effective.* In the fall of 2001, EPA conducted a telephone survey to determine what kind of protective equipment was being used by acrylamide grout applicators (Ref. 14). EPA found that the most common type of PPE used to prevent dermal exposure during acrylamide grouting operations was a combination of Tyvek® coveralls and gloves. Latex, nitrile, and rubber were the most frequently reported glove types. This type of PPE is the same as was being recommended and used in 1987 when EPA conducted its field study (Ref. 1). In the EPA field study, dermal exposure monitoring pads were placed under the Tyvek® coveralls, directly against the skin of the workers. In every case, acrylamide was found on the dermal exposure monitoring pads at the end of the workday. This finding indicates that acrylamide penetrated the Tyvek®.

a. *Concerns regarding the use of Tyvek® suits for dermal protection from acrylamide grout.* The following information is drawn from EPA documentation (Ref. 7). Tyvek® is a proprietary, porous non-woven polyethylene fabric designed for disposable use as protection against exposure to dry particulate matter, not liquids. Because Tyvek® is a porous fabric, the most important factor in determining its effectiveness as a barrier to a liquid is the ability of the liquid to penetrate the pores in the fabric. The ability of a liquid to penetrate the pores is affected, in part, by the total amount of force exerted on the liquid on the outer surface of the suit and by the surface tension of the liquid. If enough pressure is applied to liquid on the outer surface of Tyvek®, it can push the liquid through, e.g., kneeling down while wearing a suit with acrylamide on the outer surface of the suit could put enough pressure on the acrylamide to push it through the suit.

In general, the lower the surface tension of a liquid, the easier it is for it to pass through the pores of the fabric. Surface tension causes a liquid to tend to contract to the smallest area possible. In other words, a liquid with a high surface tension would tend to form droplets on the surface of another material. Low surface tension liquids on the other hand tend to spread out over the surface. Liquids with sufficiently low surface tension can pass through the pores without the application of external pressure. EPA has not been able to find empirical data on the surface tension of aqueous acrylamide solutions such as liquid acrylamide grout. EPA estimates, however, that the surface tension of an aqueous acrylamide solution is well below the level at which the manufacturer of Tyvek® says liquids are likely to penetrate the fabric.

The amount of liquid that gets on the fabric is also important, particularly if the liquid has a low surface tension. When a porous fabric such as Tyvek® comes in contact with enough low surface tension liquid, it can readily become saturated, even if the liquid is in a mist form when it makes initial contact with the fabric. Saturation of protective clothing such as a Tyvek® suit may actually increase the potential for dermal exposure, because it can hold the liquid against the skin longer than would have occurred otherwise.

Another concern involves the construction of Tyvek® suits. The seams of these suits are not generally sealed to prevent penetration by liquids. Liquids can pass through gaps in the seams of such a garment regardless of their ability to pass through the pores of the fabric. This is particularly true of liquids which have low viscosity, such as uncured acrylamide grout. Low viscosity fluids flow easily, and have the ability to penetrate cracks and crevices such as the seams of an unsealed garment.

The only way to be sure of the effectiveness of Tyvek® against any liquid is to test the fabric against the liquid. EPA is unaware of any such tests of Tyvek® against aqueous acrylamide solutions in general, or acrylamide grout in particular, although in the 1987 field study, acrylamide was found on dermal exposure pads worn inside Tyvek® protective overalls. The manufacturer of Tyvek® does not claim that it is an effective barrier against liquid acrylamide solutions. While it is possible that PPE made with Tyvek® may be effective in some situations for use with certain liquid chemicals, it appears unlikely that PPE made with Tyvek® will be an effective barrier against aqueous acrylamide solutions.

b. *Concerns regarding the use of latex, nitrile, and generic ''rubber'' gloves with acrylamide grout.* The following information is drawn from EPA documentation (Ref. 7). EPA believes that gloves should provide an effective barrier to acrylamide for a full work shift (at least 8 hours) to be considered acceptable for use in acrylamide grouting operations. A supplier of nitrile gloves reports that its 15 mil thick nitrile gloves are effective for at least 8 hours of exposure to acrylamide (Ref. 9). Nitrile gloves that are too thin may not provide adequate protection against uncured acrylamide grout over an 8–hour period. Certain types of rubber gloves may be acceptable for protection against uncured acrylamide grout, but other types may not be. For example, it is likely that natural rubber, or latex will not be effective for protection against uncured acrylamide grout, while butyl rubber is more likely to provide adequate protection. Only testing of the individual material and selected gauge will determine its effectiveness against uncured acrylamide grout.

2. *Effective and affordable PPE for acrylamide is now available.* An affordable and effective PPE combination for protection against dermal exposure to acrylamide during grouting operations would be a PPE product such as a Tychem® SL suit, along with nitrile gloves of an appropriate thickness (Ref. 7). Tychem® SL is a nonporous laminate of Tyvek® and Saranex® 23P film (Ref. 11). It is designed to serve as a barrier to liquids and vapors. It is a widely available material and has been tested by an independent laboratory and shown to provide an effective barrier to acrylamide for 8 hours.

3. *PPE for NMA.* NMA grout is a chemical mixture consisting of about 90% NMA monomer and small amounts of acrylamide, formaldehyde, and methylene bisacrylamide. In EPA's judgement, the structural properties of NMA grout and acrylamide grout are sufficiently similar that materials that provide an effective barrier against acrylamide are likely to provide an effective barrier to NMA (Ref. 15).

E. Is the Use of Acrylamide Grout Related to the Finding of Acrylamide in Cooked Food?

Earlier this year, the Swedish National Food Administration reported that it had found acrylamide in certain foods (Refs. 19, 20, and 21). Government agencies in Great Britain, Norway, and Switzerland subsequently reported similar findings (Refs. 22, 23, 24, 25, 26, and 27). Detection of acrylamide in foods has also been confirmed by the U.S. Food and Drug Administration (FDA) (www.cfsan.fda.gov). Acrylamide was detected in fried and baked foods, but not in raw or boiled foods, leading the researchers to conclude that acrylamide is formed during the cooking process and is not present prior to cooking. The absence of acrylamide in uncooked foods indicates that environmental contamination from the use of acrylamide grout is not the source of the acrylamide. FDA is working with other government agencies to coordinate research related to assessment of risk from exposure to acrylamide. FDA is also investigating the mechanisms by

which acrylamide is formed during the cooking process, and what steps can be taken to minimize its formation. EPA has no evidence or reason to believe that use of acrylamide grout is in any way related to the acrylamide found in foods after cooking.

III. What Action is the Agency Taking Today?

A. Withdrawal of the Proposed Rule

EPA is withdrawing the 1991 proposal to ban the manufacture, importation, distribution, and use of acrylamide and NMA grouts. This action reflects the Agency's conclusion that affordable and effective PPE is now available, and that workers who properly use such equipment can be adequately protected while using acrylamide and NMA grouts. The Agency no longer believes that it is necessary to ban acrylamide and NMA grouts to protect workers.

B. Rationale for Withdrawal of the Proposed Rule

The 1991 proposed rule was based in large part on the determination that, even when grouters used the best practical protective equipment and techniques available at the time of the proposal, they were still exposed to potentially significant levels of acrylamide and NMA. Given the advancements in protective equipment and techniques that have occurred since the 1991 proposed rule was issued, EPA has determined that effective and affordable means of protecting grouters are now available without banning the use of acrylamide or NMA.

On January 24, 2002, EPA met with the National Association of Sewer Service Companies (NASSCO), and Avanti International Incorporated, the sole supplier of acrylamide and NMA grouts in the United States (Ref. 16). EPA informed them of its findings concerning the inadequacies of the PPE currently in general use in the industry and of the existence of more suitable PPE. At the meeting NASSCO and Avanti International expressed general agreement with EPA's findings and pledged to take measures to incorporate the new information into their product stewardship and worker safety programs.

Following the meeting, Avanti International modified its Safe Operating Practices Program (SOPP) manual (Refs. 17, 18, and 28). The revised manual recommends that employees who may be exposed to acrylamide grout use protective clothing made from materials such as Tychem® SL which have been shown to be effective in laboratory tests with acrylamide. The revised SOPP also recommends that workers wear chemical resistant boots and gloves that have been shown to be effective against acrylamide, and use full face respirators with P100/organic vapor cartridges. The revised SOPP includes a checklist of appropriate housekeeping procedures for workers to follow when handling acrylamide grout. Avanti International has also developed a program that addresses safe handling and mixing of chemical grouts, including demonstrations of the recommended PPE and acrylamide grout mixing/handling procedures (Ref. 28).

NASSCO stated that it has decided to develop an industry standard guideline (ISG) on safe operating procedures for the use of acrylamide grout (Refs. 17 and 18). The ISG is expected to adopt the recommendations on PPE contained in Avanti International's SOPP. NASSCO also stated that its guideline on safe operating procedures would be referenced in a baseline standard for the application of chemical grouts being developed by the American Society for Testing and Materials (ASTM).

EPA welcomes these voluntary commitments by industry to improve worker safety for grouters. EPA expects that as Avanti International and NASSCO introduce and fully implement their revised programs, the use of effective PPE and adherence to improved work practices will become standard practice throughout the industry. EPA believes that the best way to provide safety information to users of NMA and acrylamide grouts is for grout suppliers to provide the information to their customers through material safety data sheets (MSDSs), training programs and other product stewardship efforts.

In view of the existence of affordable and effective PPE, and the expectation that it will be generally adopted by the grouting industry, EPA believes that it is not necessary at this time to promulgate the proposed rule to protect grouting workers. EPA will continue to follow Avanti International's and NASSCO's efforts and to encourage them to make appropriate modifications to their worker safety programs. EPA will monitor measures taken to protect workers in all sectors of the grouting industry. If EPA determines that workers are not being protected from exposure to acrylamide or NMA, it will reassess the issue to determine whether further action is necessary.

IV. References

The official record for this action has been established under docket ID number OPPT–2002–0006. Other documents relevant to this action can be found in docket OPPTS–62089, which is the docket for the proposed ban on acrylamide and NMA. References identified below by a number starting with OPPTS–62089 are located in the docket for the proposed ban. Unit I.B. describes the official record and how you can access the public version of the official record. The following is a listing of the documents that have been placed in the official record for this action:

1. USEPA, OTS, EED, FSB. ''Assessment of Airborne Exposure and Dermal Contact to Acrylamide During Chemical Grouting Operations.'' (OPPTS–62089–B1–004) EPA 560/ 5–87–009. July 1987.

2. USEPA, OTS, ETD, RIB. ''Regulatory Impact Analysis of the TSCA Section 6 Final Rule for Acrylamide Grout.'' (OPPTS–62089–B1–209) March 31, 1995.

3. USEPA, OTS, ETD, RIB. ''Economic Analysis of a Proposed Ban on Chemical Grouts Containing Acrylamide and N-methylolacrylamide.'' (OPPTS–62089–B1–001) November 1990.

4. USEPA, OTS, ETD, RIB. ''Economic Analysis of a Proposed Ban on Chemical Grouts Containing Acrylamide and N-methylolacrylamide; Addendum.'' (OPPTS–62089–B1–003) July 1991.

5. USEPA, OTS, ETD, RIB. ''Economic Analysis of the TSCA Section 6 Final Rule for Acrylamide Grout; Addendum.'' (OPPTS–62089–B1–221) June 1999.

6. DOL, OSHA. ''Evaluation of Acrylamide Sewer Grouting Operations.'' Salt Lake Technical Center Report No. 91-102. (OPPTS–62089–B1–222) January 25, 1991.

7. USEPA, OPPT. ''Personal Protective Equipment (PPE) Recommendations and Documentation for Acrylamide Grout '' with attachments by Faraci, J., 2002.

8. Fax with attachments from Glenna Jordan, of E.I. du Pont de Nemours and Company, Inc. to Jennifer Faraci of EPA, OPPT. July 9, 2001.

9. Sol-Vex® gloves. Web Page from Ansell Occupational Healthcare Product Catalog http://www.ansell-edmont.com. Ansell Occupational Healthcare. July 10, 2001.

10. Tyvek® Spunbonded Olefin. Material Safety Data Sheet. http://www.Tyvek®protectiveapprl.com/products/msds/msdssarn.htm. E.I. du Pont de Nemours and Company, Inc. July 19, 2001.

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15. USEPA, OPPT. ''N-Methylolacrylamide (NMA) PPE'' by Blouin, J.J. February 8, 2002.

16. Meeting summary and attachments from National Association of Sewer Service Companies. (NASSCO)/EPA meeting. January 24, 2001.

17. Letter with attachments from Lynn L. Bergeson, Bergeson & Campbell, P.C. to William H. Sanders, Director, Office of Pollution Prevention and Toxics, EPA. February 11, 2002.

18. Letter with attachment from Lynn L. Bergeson, Bergeson & Campbell, P.C. to William H. Sanders, Director, Office of Pollution Prevention and Toxics, EPA. March 22, 2002.

19. Acrylamide is Formed During the Preparation of Food and Occurs in Many Foodstuffs. http://192.71.90.8/engakrylpressmeddelande.htm. Swedish National Food Administration. April 24, 2002.

20. Summary--Acrylamide in Heat Processed Foods. http://192.71.90.8/engakrylsammanfattning.htm. Swedish National Food Administration. April 24, 2002.

21. Analytical Methodology and Survey Results for Acrylamide in Foods. http://192.71.90.8/engakrylanalysresultat.htm. Swedish National Food Administration. April 24, 2002.

22. Study Confirms Acrylamide in Food. http://www.food.gov.uk/news/newsarchive/65268. Food Standards Agency. May 17, 2002.

23. Food Standards Agency Study of Acrylamide in Food Background Information & Research Findings Press Briefing 17.05.02. Food Standards Agency. May 17, 2002.

24. Food Standards Agency Acrylamide Study: Your Questions Answered. http://www.food.gov.uk/multimedia/webpage/acrylamide_study_faq/. Food Standards Agency. May 17, 2002.

25. Food Standards Agency Study Shows Acrylamide in Food. http://www.food.gov.uk/news/pressreleases/acrylamide_study_infood. Food Standards Agency. May 17, 2002.

26. Results of Acrylamide in Thirty Norwegian Food Samples. http://www.snt.no/nytt/tema/image/akrylamid/engakrylanalysresultat.htm. Norwegian Food Control Authority.

27. Informations de l'Office Fédéral de la santé publique. http://www.bag.admin.ch/dienste/medien/2002/f/02053129.htm. Swiss Federal Office of Public Health. May 31, 2002.

28. Letter with attachments from Lynn L. Bergeson, Bergeson & Campbell, P.C. to Charles M. Auer, Director, Office of Pollution Prevention and Toxics. EPA. September 10, 2002.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 764

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: November 15, 2002.

Christine T. Whitman,

Administrator.

[FR Doc. 02–30470 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 73

RIN 0920–AA08

Possession, Use, and Transfer of Select Agents and Toxins; Notice of Public Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of public meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces a public meeting on Possession, Use and Transfer of Select Agents and Toxins.

DATES: December 16, 2002, 9 a.m.—12 p.m. and 1:30 p.m.—4 p.m.

ADDRESSES: The meeting will be held at the Wilbur J. Cohen Building/Voice of America Building in the Cohen Auditorium. While open to the public, seating capacity may be limited.

The Wilbur J. Cohen Building/Voice of America Building is located at 330 Independence Avenue SW, Washington, DC, 20201. No parking is available at the Cohen Building. The nearest Metro stop is Federal Center SW.

FOR FURTHER INFORMATION CONTACT: Minh Thomas, Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, MS E–79, Atlanta, Georgia 30333, phone (404) 498–2259.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public meeting to obtain comment on 42 CFR Part 73, Interim Final Rule for Select Agents. On June 12, 2002, the President signed Public Law 107–188, Public Health Safety and Bioterrorism Preparedness and Response Act of 2002. The Act specifies that both the Department of Health and Human Services and the Department of Agriculture will issue their Interim Final Rule implementing the Act on or before 180 days of enactment. DHHS will issue its Interim Final Rule on or about December 9, 2002, and USDA will issue its Interim Final Rule on or about December 9, 2002. These rules will describe implementation of the Act.

Matters to be Considered: The meeting will begin with an overview of the DHHS Interim Final Rule, followed by an overview of the USDA Interim Final Rule. The Department of Justice has also been invited to provide an overview of the personnel requirements specified by the Act. A public comment period will follow the presentations. Each individual or group making public comment will be limited to a total time of 2 minutes.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to Tony Johnson, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, MS C–19, Atlanta, Georgia 30333, phone (404) 639–0100.

Procedure: Any member of the public who wishes to submit oral or written comments at the meeting should contact Angie Frey, Select Agent Program, Centers for Disease Control and Prevention at (404) 498–2272 on or before December 12, 2002. Written comments received by CDC on or before December 12, 2002 will be provided at the meeting. Submit written comments to Select Agent Program, ATTN: Comment for Public Meeting, Centers for Disease Control and Prevention, 1600 Clifton Road, MS E–79, Atlanta, Georgia 30333. Each individual or group wishing to make oral comment will be limited to a total of 2 minutes. Persons attending this meeting are advised that

the agency is not responsible for providing access to electrical outlets.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 24, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–30381 Filed 11–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI81

Endangered and Threatened Wildlife and Plants; Endangered Status for the Dugong in the Republic of Palau

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the United States Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of the population of dugong, *Dugong dugon*, in the Republic of Palau as endangered under the Endangered Species Act of 1973, as amended. We are re-opening the comment period to request additional information and comments from the public regarding the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in the final rule.

DATES: We will accept public comments until March 3, 2003.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203, or by fax, 703–358–2276, or by e-mail, *Scientificauthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address. You may obtain copies of the proposed rule from the above address.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *Scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The dugong, an aquatic, herbivorous mammal, is currently listed under the Endangered Species Act as endangered throughout its entire range, except in the Republic of Palau. It is classified as Vulnerable by The World Conservation Union (IUCN, 2000), and all populations of dugong are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The dugong has a large range that covers approximately 37 countries and territories. It is believed that Palauan waters support one of the most isolated populations of dugong in the world. The closest dugong populations are 800 km to the south and 850 km to the west. In both of these areas, dugongs are under threat from human exploitation, and it is unlikely that the Palauan population is supplemented by recruitment from either of these areas. Surveys have been conducted in these waters in 1978, 1983, and 1991. The number of dugongs sighted in the 1991 survey was lower than in the previous two surveys, which suggests a reduction in the number of dugongs in Palauan waters. The major threat to this species in Palau is poaching (UNEP, 2002).

Prior to the enactment of the Endangered Species Act, species were afforded protection through the Endangered Species Conservation Act of 1969. Under this Act, the Service prepared two lists: a ''Native'' and ''Foreign'' list. Originally, dugong was included in the ''Foreign'' list of protected species. When the Endangered Species Act became effective in 1973, it supplanted the Endangered Species Conservation Act of 1969. The ''Foreign'' and ''Native'' lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When this happened, the dugong was listed as endangered throughout its entire range.

When the lists were combined, the United Nations Trust Territory of the Pacific Islands (Republic of Palau) was under the jurisdiction of the United States. Section 4(b)(5) of the Endangered Species Act requires that notice of proposed regulations be given to affected States in which the species occurs. The U.S. population of dugong was included on the list without prior notice to the Republic of Palau. Therefore in 1988, the Service amended the Code of Federal Regulations to exclude the U.S. population from the listing. The Republic of Palau was then formally notified and the proposed rule was published in 1993 to extend Endangered status to the dugong population in Palau (58 FR 41688, August 5, 1993). This would then result in the species being classified as endangered throughout its entire range, as intended by the original listing. However, this rule was never finalized, and we are reopening the comment period to allow all interested parties to submit additional information and written comments to be considered by the Service. You may obtain a copy of the 1993 proposed rule by contacting the address listed in **ADDRESSES.**

Public Comments Solicited

We will accept written comments and information during this re-opened comment period from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the dugong in the Republic of Palau;

(2) Additional information concerning the range, distribution, and population size of the dugong in the Republic of Palau;

(3) Current planned activities in the Republic of Palau and their possible impacts on this species.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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 comment in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

UNEP (United Nations Environment Program). 2002. *Dugong. Status Report and Action Plans for Countries and Territories*. UNEP Early Warning and Assessment Report Series.

Hilton-Taylor, C. (Compiler) (2000). *2000 IUCN Red List of Threatened Species*. IUCN, Gland, Switzerland and Cambridge, UK. Xviii + 61 pp.

Author

The primary author of this notice is Eleanora Babij, Division of Scientific Authority, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 2002.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–30297 Filed 11–29–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 231
Monday, December 2, 2002

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The following persons are members of the Performance Review Board for 2002.

Members: Arnold J. Haiman, Chair, Adrienne R. Rish, SES Member, Franklin C. Moore, SES Member, James E. Painter, SES Member, Jessalyn L. Pendarvis, SES Member.

FOR FURTHER INFORMATION CONTACT: Dan Stoll, 202–712–1076.

Dated: November 22, 2002.

Irma Marshall,

Acting Chief, M/HR/EM.

[FR Doc. 02–30226 Filed 11–29–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho; Meadows Slope Wildland Fire Protection Project

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare the Meadows Slope Wildland Fire Protection Project EIS. The proposed action in the EIS is to create and maintain a half-mile fuelbreak on National Forest System lands to reduce the risk of damage to rural homes, private property, and National Forest resources from wildland fires. The Payette National Forest invites written comments and suggestions on the scope of the analysis and the issues to address. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision-making process so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Comments need to be received by January 6, 2003.

ADDRESSES: Send written comments to Kimberly A. Brandel, District Ranger, New Meadows Ranger District, Payette National Forest, P.O. Box J, New Meadows, Idaho 83654.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Suzanne Acton, Interdisciplinary Team Leader, at the above address, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: The Meadows Slope project area is located in the Sixmile-Threemile, Lower Goose, Little Creek, Little Goose Creek, Middle North Fork Payette River, and Payette Lake sub-watersheds on the New Meadows and McCall Ranger Districts. It is about four miles east of New Meadows and three miles northwest of McCall, and approximately 6,480 acres in size. The purpose and need for this activity is to (1) reduce crown fire risk, (2) reduce forest fuel loading, and (3) reduce risk to life, property, natural resources, and suppression resources on National Forest System lands surrounding the Timber Ridge, Rock Flat, King's Pine, and Crescent Rim Subdivisions, and additional private developments adjacent to the project area.

The proposed action includes a variety of activities to meet the purpose and need. (1) Harvest timber on approximately 4,736 acres, producing approximately 24.9 million board feet (MMBF), using tractor and skyline logging systems. The silvicultural method used would be free thinning with reserve shelterwood/seed tree. (2) Hand pile and burn approximately 852 acres within Riparian Habitat Conservation Areas. (3) Conduct no immediate treatment on approximately 892 acres. (4) Salvage dead and dying timber killed by fir engraver beetle and other pests or weakened due to light, water, or nutrient competition which may increase the fire potential within the project area. (5) Restore 164 acres of unproductive soil to improve soil productivity by obliterating roads, skid trails and/or landings in order to meet the 1988 Forest Plan Standard for total soil resource commitment (TSRC). (6) Improve approximately 21.0 miles of road to provide access for fuelbreak activities. (7) Ensure desired species composition by planting and/or natural regeneration of fire-tolerant Douglas-fir, ponderosa pine, and western larch seedlings on 947 acres following fuelbreak activities. (8) Treat harvest-generated fuels on approximately 4,736 acres. Treatments would include machine piling and burning (excavator piling would be used where slopes exceed 35 percent); broadcast burning; and/or yarding tops. (9) Monitor and treat noxious weeds, if created, within the fuelbreak area. A total of 6,480 acres would be treated with this proposed action. This proposed action would require three one-time, site-specific, non-significant amendments to the Payette National Forest Plan for 5th-year planted tree stocking levels, elk habitat effectiveness, and retention of Visual Quality Objectives.

Preliminary issues for this project include effects on water quality, soil productivity, wildlife habitat, recreation, access management, visual quality, and fish habitat.

A range of reasonable alternatives will be considered. The no-action alternative will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternatives developed that meet the purpose and need and address major issues identified during scoping. Alternatives may have different amounts, locations, and types of project activities.

Comments received in response to this notice, including names and addresses of those who comment, will be part of the project record and available for public review.

The Forest Service is seeking information and comments from other Federal, State, and local agencies; Tribal governments; organizations; and individuals who may be interested in or affected by the proposed action. This input will be used in preparation of the EIS.

Comments will be appreciated throughout the analysis process. The draft EIS will be filed with the Environmental Protection Agency (EPA) and is anticipated to be available for public review by fall 2003. The comment period on the draft EIS will be 45 days. It is important that those interested in the management of the Payette National Forest participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1002 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45-day comment period ends on the draft EIS, the Forest Service will analyze comments received and address them in the final EIS. The final EIS is scheduled to be completed in 2004. The Responsible Official is the Payette National Forest Supervisor. The decision will be documented, including the rationale for the decision, in a Record of Decision (ROD). The decision will be subject to review under the Forest Service Appeal Regulations at 36 CFR part 215.

Dated: November 22, 2002.

Mark Madrid,

Forest Supervisor.

[FR Doc. 02–30379 Filed 11–29–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the New Jersey Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4 p.m. on Tuesday, December 3, 2002, at the New Jersey State House, Room One, 125 W. State Street, Trenton, New Jersey 08625. The purpose of the planning meeting with briefing is to (1) review the status of current activity, (2) plan new projects, and (3) receive briefings from invited speakers on civil rights developments in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Leanna Y. Brown, 973–635–8660 or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30398 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 1 p.m. on Wednesday, December 4, 2002, at the GSA Conference Center, Conference Room E, Javits Building, 26 Federal Place, New York, New York 10278. The purpose of the meeting is to provide orientation for new Committee members and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30394 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12:45 p.m. on Wednesday, December 11, 2002, at the Main Capitol Building, Room 8E–A (East Wing), Harrisburg, PA 17120. The Committee will hold a press conference to promote the dissemination of its report Barriers Facing Minority and Women Owned Businesses in Pennsylvania, released in Philadelphia in August 2002. The Committee will also hold a briefing session with community representatives, state and local officials, and minority and women owned business owners to discuss issues raised in the report that are unique to the Harrisburg/York area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, 202–376–7533, *mpentino@usccr.gov*, (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30395 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Utah Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8:30 p.m. on Thursday, December 12, 2002, at the Horizonte School, 1234 S. Main Street, Salt Lake City, Utah 84101. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, November 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–30396 Filed 11–29–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 112602B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Bluefin Tuna Dealer Reporting Package.

Form Number(s): NOAA Form 88–144.

OMB Approval Number: 0648–0239.

Type of Request: Regular submission.

Burden Hours: 526.

Number of Respondents: 575.

Average Hours Per Response: 2 minutes for an Atlantic daily landing report; 15 minutes for an Atlantic biweekly report; 8 minutes for a Pacific biweekly report; and 10 minutes for tagging a tuna, labeling a container, and recording a tag number.

Needs and Uses: The purpose of this collection-of-information is to comply with U.S. obligations under the Magnuson-Stevens Fishery Conservation and Management Act (16. U.S.C. 1801 *et.seq.*) and the Atlantic Tunas Convention Act (ATCA—16 U.S.C. 971 *et. seq.*). The ATCA requires the Secretary of Commerce to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The information collected under this clearance serves three purposes: (1) provides stock assessment and research information, (2) monitors landings so the country quota will not be exceeded, and (3) verifies Atlantic and Pacific bluefin tuna export shipments in conjunction with the Bluefin Tuna Statistical Document program. Requirements include a landing report, if certain large tuna are caught, bi-weekly reports, and tagging/labeling of fish and containers.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion, bi-weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@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 20503.

Dated: November 25, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30457 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of December 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings Period	
Argentina: Honey, A–357–812	5/11/01–11/30/02
Brazil:	
Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602	12/1/01–11/30/02
Silicomanganese, A–351–824	12/1/01–11/30/02
Chile: Certain Preserved Mushrooms, A–337–804	12/1/01–11/30/02
India:	
Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	5/3/01–11/30/02

	Period
Stainless Steel Wire Rod, A–533–808	12/1/01–11/30/02
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products, A–560–812	5/3/01–11/30/02
Japan:	
Drafting Machines and Parts Thereof, A–588–811	12/1/01–11/30/02
Polychloroprene Rubber, A–588–046	12/1/01–11/30/02
P.C. Steel Wire Strand, A–588–068	12/1/01–11/30/02
Welded Large Diameter Line Pipe, A–588–857	6/27/01–11/30/02
Republic of Korea: Welded ASTM A–312 Stainless Steel Pipe, A–580–810	12/1/01–11/30/02
Taiwan:	
Carbon Steel Butt-Weld Pipe Fittings, A–583–605	12/1/01–11/30/02
Porcelain-On-Steel Cooking Ware, A–583–508	12/1/01–11/30/02
Welded ASTM A–312 Stainless Steel Pipe, A–583–815	12/1/01–11/30/02
The People's Republic of China:	
Cased Pencils, A–570–827	12/1/01–11/30/02
Porcelain-on-Steel Cooking Ware, A–570–506	12/1/01–11/30/02
Silicomanganese, A–570–828	12/1/01–11/30/02
Countervailing Duty Proceedings	
Argentina: Honey, C–357–813	1/1/01–12/31/01
India: Certain Hot-Rolled Carbon Steel Flat Products, C–533–821	1/1/01–12/31/01
Indonesia: Certain Hot-Rolled Carbon Steel Flat Products, C–560–813	1/1/01–12/31/01
Thailand: Certain Hot-Rolled Carbon Steel Flat Products, C–549–818	1/1/01–12/31/01
Suspension Agreements	
None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 2002. If the Department does not receive, by the last day of December 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 26, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–30459 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Young at (202) 482–6397, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue: (1) The preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a

maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 20, 2001, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 2000 to June 30, 2001 (66 FR 43570). On August 7, 2002, and August 9, 2002, the Department issued the preliminary results of certain pasta from Turkey (67 FR 51194) and Italy (67 FR 51827), respectively. The final results are currently due no later than December 5, 2002, for Turkey and December 9, 2002, for Italy.

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of these reviews within the original time limits, for reasons stated in the Decision Memorandum from Melissa Skinner to Bernard Carreau, dated November 22, 2003, which is on file in the Central Records Unit, B–099 of the main Commerce Building. Therefore, we are extending the final results deadlines in each of the above-referenced reviews until February 3, 2003.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 25, 2002.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–30460 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke Export Trade Certificate of Review No. 84–00022.

SUMMARY: On September 5, 1984, the Secretary of Commerce issued an Export Trade Certificate of Review to Great Agassiz Basin Export Trading Company, Inc. Because this certificate holder has failed to file an annual report as required by law the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Great Agassiz Basin Export Trading Company, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325. Pursuant to this authority, a Certificate of Review was issued on September 5, 1984 to Great Agassiz Basin Export Trading Company, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Great Agassiz Basin Export Trading Company, Inc., on August 26, 2002, a letter containing annual report questions with a reminder that its annual report was due on October 20, 2002. An additional reminder was sent on November 7, 2002. The Department has received no written response to any of these letters.

On November 25, 2002, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify Great Agassiz Basin Export Trading Company, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 25, 2002.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–30362 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''ACertificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free

number) or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–6A003.''

The Association for the Administration of Rice Quotas, Inc.'s original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998), and previously amended on June 4, 1998 (63 FR 31738, June 10, 1998); September 25, 1998 (63 FR 53013, October 2, 1998); June 1, 2000 (65 FR 36410, June 8, 2000); April 5, 2001 (66 FR 21368, April 30, 2001); and February 5, 2002 (67 FR 7357, February 19, 2002). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc. (AARQ), c/o David Van Oss of Riviana Foods Inc., 2777 Allen Parkway, Houston, Texas 77019.

Contact: M. Jean Anderson, Esq., Counsel to Applicant, Telephone: (202) 682–7217.

Application No.: 97–6A003.

Date Deemed Submitted: November 19, 2002.

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 C.F.R. § 325.2(l) (2002)): JIT Products, Inc., Davis, California; Nidera, Inc., Stamford, Connecticut (a subsidiary of Nidera Handelscompagnie BV (Netherlands)); and Sunshine Rice, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.).

2. Delete the following companies as Members of the Certificate: Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division; and Liberty Rice Mill, Inc., Kaplan, Louisiana.

3. Change the listing of the following Members: ''CAL PAC Investments, LLC dba California Pacific Rice Milling, Woodland, California'' should be amended to read ''Gold River Mills, LLC dba California Pacific Rice Milling, Woodland, California;'' ''Incomar Texas Ltd., and its subsidiary, Gulf Rice Arkansas, LLC, Houston, Texas'' should be amended to read ''Gulf Rice Arkansas, LLC (subsidiary of Ansera Marketing, Inc.), Houston, Texas;'' ''PS International, Ltd., Durham, North Carolina'' should be amended to read ''PS International, Ltd., Chapel Hill, North Carolina;'' ''Texana Rice, Inc., Houston, Texas'' should be amended to read ''Texana Rice Inc., Louise, Texas;'' ''The Connell Company, Berkeley Heights, New Jersey'' should be amended to read ''The Connell Company for the activities of itself, its subsidiary, Connell (Taiwan) Ltd., and its two divisions, Connell Rice & Sugar Co. and Connell International Company, Berkeley Heights, New Jersey;'' and ''Uncle Ben's, Inc., Houston, Texas'' should be amended to read ''Uncle Ben's Inc., Greenville, Mississippi.''

Dated: November 25, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–30415 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program for Fiscal Years 2000 and 2001

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Oceanic Administration's (NOAA) Damage Assessment and Restoration Program (DARP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal years (FY) 2000 and 2001. The indirect cost rates for these fiscal years and dates of implementation are provided in this notice. More information on these rates and the DARP policy can be found at the DARP Web site at: *http://www.darp.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193; (FAX: 301–713–4387; e-mail: *Eli.Reinharz@noaa.gov*), or Linda Burlington, 301–713–1217 (FAX: 301–713–1229; e-mail: *Linda.B.Burlington@noaa.gov*).

SUPPLEMENTARY INFORMATION: The mission of the DARP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) The NOAA DARP consists of three component organizations: the Damage Assessment Center (DAC) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds

recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARP is required to account for and report the full costs of its programs and activities. Further, the DARP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARP's Indirect Cost Effort

In December 1998, the DARP hired the public accounting firm Rubino & McGeehin, Chartered (R&M), to: evaluate the cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARP. A **Federal Register** notice on R&M's effort, their assessment of the DARP's cost accounting system and practice, and their determination respecting the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611). The notice and report by R&M can also be found on the DARP Web site at: *http://www.darp.noaa.gov.*

R&M continued its assessment of DARP's indirect cost rate system and structure for FYs 2000 and 2001. As in the prior years, R&M concluded that the cost accounting system and allocation practices of the DARP component organizations are consistent with Federal accounting requirements. R&M also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. The indirect costs rates that R&M computed for each of the three DARP component organizations were further assessed as being fair and equitable. A report on R&M's recent assessment of the DARP's cost accounting system and recommended cost rate structure can also be found on the DARP Web site at: *http://www.darp.noaa.gov.*

The DARP's Indirect Cost Rates and Policies

The DARP will apply the indirect cost rates for FY 2000 and 2001 as recommended by R&M for each of the DARP component organizations as provided in the following table:

DARP Component organization	Fiscal years (percent)	
	2000	2001
Damage Assessment Center (DAC)	198.54	217.27
Restoration Center (RC)	219.60	257.79
General Counsel for Natural Resources (GCNR	270.10	239.24

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2000 and 2001 revised rates identified in the above table will be applied to all damage assessment and restoration case costs for the respective fiscal year periods. The FY 2000 rate is effective as of May 16, 2002. The FY 2001 rate is effective as of September 30, 2002. DARP will use FY 2001 indirect cost rates for future fiscal years until year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARP indirect cost rate policies and procedures approved as of October 18, 2000 and published in the **Federal Register** on December 7, 2000 (65 FR 76611) remain in effect except as updated by this notice.

Dated: November 22, 2002.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–30416 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112502E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc VMS Committee will hold a meeting, which is open to the public.

DATES: The meeting will convene at 8:30 a.m. on Wednesday, December 18, 2002, and adjourn when business for the day is completed.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, (503) 820–2280.Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council, (503) 820–2280.

SUPPLEMENTARY INFORMATION: At its November 2002 meeting, the Council recommended the implementation of a pilot VMS program for West Coast groundfish fisheries. The primary purpose of the meeting is to review the Council recommendations and develop draft language for a proposed regulatory package.

Although non-emergency issues not contained in the meeting agenda may come before the Ad Hoc VMS Committee for discussion, those issues may not be the subject of formal Ad Hoc VMS Committee action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Ad Hoc VMS Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: November 25, 2002.

Richard W. Surdi,

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

[FR Doc. 02–30456 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112502D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting/public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will meet on December 16, 2002, at 2 p.m.

ADDRESSES: The Council meeting will be held via telephone conference call at the Council offices, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: (808)522-8220; fax: (808) 522-8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: The agenda during the Council meeting will include the items listed here:

1. Pelagic Fisheries

Consideration of new provisions for turtle conservation measures for pelagic vessels in the Western Pacific.

In 2002, the Western Pacific Council developed a regulatory framework adjustment to the Pelagic Fisheries Management Plan (PFMP) which was intended to minimize interactions with and harm to sea turtles. These measures stemmed from the non- discretionary Reasonable and Prudent Measures contained in a Endangered Species Act Biological Opinion published by the NMFS in 2001. Although primarily intended for the Hawaii longline fishery, these measures included provisions for all pelagic fisheries under the jurisdiction of the Council. The measures included requirements for small troll and handline vessels to carry bolt cutters and line clippers, to remove hooks and fishing line from any turtles caught while fishing. A new Biological Opinion for pelagic fisheries in the Western Pacific was completed on November 15, 2002. The new Opinion states that in the event of interaction with a sea turtle, operators of vessels using handline and trolling fishing gears to target Pacific pelagic management unit species in waters of the U.S. Western Pacific Exclusive Economic Zone, must handle the sea turtle in a manner to minimize injury and promote post-hooking survival as previously published in the Code of Federal Regulations (CFR 660.32 (c) and (d)). The Council will consider whether initial action is required to adjust the WPFMC regulatory requirements, in order to be consistent with the language in the new Biological Opinion. A public hearing will be held to give the public opportunity to comment before the Council takes action on this agenda item.

2. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522- 8220 (voice) or 808-522-8226 (fax), at least 5 days prior to the meeting date.

Dated: November 25, 2002.

Richard W. Surdi,

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

[FR Doc. 02–30455 Filed 11–29–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of September 16, 2002 (67 FR 58357), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of a collection of information associated with the procurement of goods and services. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The Commission's procurement activities are governed by the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 *et seq.*). That law requires the Commission to procure goods and services under conditions most advantageous to the government, considering cost and other factors. Forms used by the Commission request persons who quote, propose, or bid on contracts with the agency to provide information about costs or prices of goods and services to be supplied; specifications of goods and descriptions of services to be supplied; specifications of goods and descriptions of services to be delivered; competence of the offeror to provide the goods or services; and other information about the offeror, such as the size of the firm and whether it is minority owned.

The Commission uses the information provided by bidders to determine the reasonableness of prices and costs and the responsiveness of potential contractors to undertake the work involved so that all bids may be awarded in accordance with Federal Procurement laws.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Information Collection Associated with Procurement of Goods and Services.

Type of request: Extension of approval without change.

General description of respondents: Persons and firms providing bids, proposals, and quotations to the Commission for goods and services.

Estimated number of respondents: 2,539.

Estimated average number of hours per respondent: 5.58 per year.

Estimated number of hours for all respondents: 14,174 per year.

Estimated cost of collection for all respondents: $558,714 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by January 2, 2003 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and

Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: November 22, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–30314 Filed 11–29–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@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 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: November 25, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: State Eligibility Plan Under Part B of the Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 57. Burden Hours: 570.

Abstract: State educational agencies were required to submit State Plans to the U.S. Department of Education in order to receive funds under Part B of the Individuals with Disabilities Education Act (IDEA). Each State now has a State Plan on file with the Department. Any policies and procedures that are currently on file that are consistent with the 1997 amendments to IDEA remain in effect, unless the Secretary or the State determine the need for a change.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2156. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30364 Filed 11–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice has been issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada and Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 180,038 kg of U.S.-origin natural uranium hexafluoride, 121,706 kg of which is uranium, from the Cameco Corporation, Ontario, Canada to Urenco Capenhurst, England. The material, which is now located at Cameco Corp., Port Hope, Ontario, will be transferred to Urenco for enrichment. Upon completion of the enrichment, the material will be retransferred to Commonwealth Edison Company, Downers Grove, Illinois for use as fuel. The uranium hexafluoride was originally obtained by the Cameco Corp. from Power Resources, Inc. pursuant to export license number XSOU8744.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the National Nuclear Security Administration.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 02–30410 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41713 entitled ''Regional Carbon Sequestration Partnerships''. This solicitation will support the Department of Energy's Carbon Sequestration Program by promoting the development of a framework and infrastructure necessary for the validation, demonstration and wide-scale deployment of carbon sequestration technologies. This initiative directly supports the President's Global Climate Change Initiative (GCCI) goal of reducing greenhouse gas intensity by 18% by 2012 and to ensure that a suite of commercially-ready sequestration technologies are available for the 2012 technology assessment mandated by the GCCI. The DOE will call for applications and select multiple Regional Partnerships to receive financial assistance awards that would be chartered to evaluate options and potential opportunities for regional CO_2 storage and capture, CO_2 transport, regulatory permitting, communication and outreach, public acceptance, monitoring and verification requirements, and environmental efficacy of sequestration in their multi-state region(s). The DOE plans to fund 4–10 partnerships for a period of up to 24 months. Total Federal funding for this initiative will be $8–$10 million dollars with a non-Federal cost share of at least 20%.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Martin J. Byrnes, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236. E-mail Address: *byrnes@netl.doe.gov.* Telephone Number: 412–386–4486.

SUPPLEMENTARY INFORMATION: This notice is to inform an array of organizations including private landowners, mining and power generation industry, oil and gas industry, forest product industry, other commercial businesses, climate change and environmental special interest groups, academicians, community leaders, county/city planners, commissioners, engineers, and the general public of the availability of the Regional Carbon Sequestration Partnerships Solicitation so that these groups can begin collaboration.

1. Background Information

A. Introduction

This initiative directly supports the President's Global Climate Change Initiative (GCCI) goal of reducing greenhouse gas intensity by 18% by 2012 and will help ensure that a suite of commercially-ready sequestration technologies are available for the 2012 technology assessment mandated by the GCCI. The establishment of several Regional Carbon Sequestration Partnerships will promote the implementation of the current RD&D technology for the capture, transport, and storage of anthropogenic fossil fuel CO_2 emissions across the United States by developing regional solutions.

For sequestration to be economically acceptable, the cost and energy penalty associated with CO_2 capture must be reduced, the long-term environmental efficacy and safety of CO_2 storage must be verified, and an infrastructure amenable to sequestration must be developed. The geographical differences in fossil fuel use and sequestration sinks across the United States dictates that regional approaches will be required to address the sequestration of CO_2. Each partnership will be chartered to develop permitting requirements, initiate public acceptance, develop protocols for the application of the latest advancements in technology from the DOE Carbon Sequestration Program and other RD&D efforts, evaluate these emerging technologies on capture and storage of CO_2, and establish the monitoring, verification and accounting protocols required in the event that wide-scale deployment of sequestration technologies becomes necessary.

Regionally oriented partnerships represent an important step towards meeting these objectives. The regional diversity of CO_2 sources and storage options calls for a diverse portfolio of strategies for carbon management. Multi-partner collaborations are encouraged. A Regional Partnership may consist of academia, national laboratories, energy producers and users, non-profit organizations, and state agencies and local agencies indigenous to a specific region. The multi-state region should be based upon commonality of interests and contributions to the Partnership including the similarity of CO_2 sources and storage options. States in the multi-state region need not be contiguous.

B. The Regional Carbon Sequestration Partnerships Initiative

A two-phased approach is being pursued for this Partnership initiative. This Phase I solicitation will result in a detailed framework, conceptual design and cost information for follow-on activities in Phase II, ''Implementation and Technology Validation''. Phase II is anticipated to be a separate, open competitive solicitation as a follow-on to Phase I.

In Phase I the Regional Partnership shall as a minimum:

(1) *Define the Geographical Boundaries of the Region.* There will be several approaches for the capture, storage, and sequestration of CO_2 that will be required for the United States. For example, two sinks in the U.S. may have similar geologic characteristics but one of the two may not be suitable for sequestration because of regional conditions (*e.g.*, land use change patterns, seismic considerations, use as a drinking water aquifer). In addition, a region may have a concentration of unique CO_2 sources. These sources could use the same capture technologies and yield a significant reduction of the CO_2 emitted from a region. Regions should be defined based on similarities of CO_2 sources, sinks, permitting considerations, partners and other analogous features.

(2) *Characterize the Region.* Characterize the region relative to sources, sinks, transport, sequestration options, and existing and future infrastructure requirements. For direct sequestration approaches (*i.e.*, capture and injection of CO_2 into geologic reservoirs), partnerships are required to address all of these issues. For indirect sequestration approaches (*e.g.*, reforestation, agriculture practices), partnerships are required to identify the natural sinks and regional sources of CO_2 emissions. Information gathered during the characterization phase should be archived in a relational database and geographic information system (GIS). The GIS is essential to analyzing the costs of transport, concentration of sources, capacity of sinks, and the creation of regional carbon accounting methods/protocols.

(a) Sources identified within a region must be of collective size that CO_2 capture would significantly reduce the total emissions within the region.

Information presented should include, but are not limited to, annual emissions of CO_2, emissions of other green house gases (GHGs), and locations of large individual sources. Sources of CO_2 can include, but are not limited to, fossil fuel combustion power plants, metals manufacturing facilities, chemical processing plants, ethanol production, natural gas production and fossil fuel energy facilities.

(b) Storage options (*i.e.*, sinks) must include the predominant geologic and terrestrial sinks of the defined region. Storage options could include, but are not limited to, geologic reservoirs such as depleted oil/gas reservoirs; unmineable coal seams; saline formations; terrestrial sequestration options such as reforestation of abandoned mine lands; enhancement of unproductive lands; and modifying land management practices on lands with existing carbon stock to increase carbon content. Value-added storage options such as enhanced oil recovery, natural gas production, or growth of timber or agricultural products should be considered.

(c) Matching sources/sinks with CO_2 transportation issues must be addressed. Transport of the captured CO_2 from the source to the sink may be a significant consideration in regional greenhouse gas mitigation strategies. The Partnerships must analyze options/issues related to transport of CO_2 between sources/sinks (*e.g.,* via pipeline, tanker, *etc.*) within the region. Transport options/issues are obviously not applicable to indirect sequestration approaches such as reforestation and agricultural practices.

(3) *Identify the Most Promising Capture, Sequestration and Transport Options.* Analyze results from Paragraphs 1 & 2 above to identify the most promising regional opportunities for CO_2 capture, transport, storage and sequestration (direct or indirect) from the perspective of technical feasibility, safety, estimated cost, perceived public acceptability, CO_2 reduction potential, and environmental efficacy. Technologies assessed for direct capture of CO_2 are likely to come from the most promising options emerging from the DOE Carbon Sequestration Program or other related R&D initiatives conducted by academia and industry. This Regional Partnership initiative is not intended to be a ''technology development'' initiative. This initiative should, where possible, assess and validate the most promising emerging technology developments and if necessary, identify minor modifications required to fit the technology(s) to the regional applications. Near the conclusion of Phase I Partnership activities, these results shall be used to identify and plan small scale, regional technology validation field tests to be conducted if the Partnerships desire to participate and are selected for follow on activity in Phase II Regional Partnership Solicitation. The results from both Phase I and Phase II activities will ultimately provide prime candidate regional options for future large scale (> 1 million tonnes per year CO_2 sequestered) demonstration and deployment opportunities, unrelated to these Regional Partnership solicitations.

(4) *Identify and Address Barrier Issues for Wide-Scale Deployment.* Conduct a preliminary assessment of safety, regulatory and permitting requirements, public perception, ecosystem impacts, and other potential challenges associated with wide scale deployment of promising regional opportunities selected for CO_2 capture, transport, and storage (direct and/or indirect approaches). The technology(ies) to be evaluated will be those chosen as the most promising opportunities from Paragraph 3. Develop actions plans to overcome these challenges and begin implementing these plans where possible.

(5) *Develop Public Involvement and Education Mechanisms.* Develop public involvement and education action plans that would be applicable in overcoming the potential challenges identified in Paragraph 4 above. For example, a public involvement plan may consist of, but not limited to, public education in the form of mailing lists, public meetings, media advertising, local interviews and education programs available at libraries, schools, and local businesses.

(6) *Prepare Action Plans for Implementation and Technology Validation Activity.* Follow on action plans should be prepared related to implementation of the framework developed leading to small scale regional technology validation field tests identified in Paragraph 3 above. Relative to direct capture options from energy facilities, Partnerships are encouraged to consider cost-effective approaches that provide flexibility for assessing multiple candidate technology options, if appropriate, such as a small slip stream from existing facility. Action plans for implementing Paragraphs 4 & 5 above should address the Partnerships plans forward related to public acceptance, public involvement and education, regulatory, permitting and accounting frameworks necessary for demonstration and wide-scale deployment of the most promising greenhouse gas mitigation strategies identified from this solicitation.

DOE anticipates requiring the following information as part of the application for financial assistance:

(1) A list of participating public and private organizations, descriptions of the roles and responsibilities, and letters of intent for each partner. Regional partnerships can include industry, state and regional governments, non-profit organizations, academia, and national laboratories that collectively possess all relevant expertise and capabilities. Letters of commitment from all members of the partnership will be required with each application. Those members offering to provide cost-share are also required to provide details of that commitment.

(2) A description of the geographic region as defined by the Partnership including reasons that it should be considered (*e.g.*, concentration of particular type sources or sinks), and factors that make the proposed Partnership necessary for consideration over areas with similar sources or sinks.

(3) A description of the particular region's CO_2 sources and potential storage sites including a plan to provide detailed characterization of these sources and potential storage sites.

(4) A description of the potential aggregate amounts of greenhouse gas storage and value-added benefits (such as enhanced oil recovery, enhanced gas recovery, improved forestry/agriculture practices) that could result from the Regional Partnerships.

(5) Identification of environmental efficacy, permitting, and regulatory issues associated with carbon sequestration and any approach for resolving these challenges.

(6) An approach to developing an outreach plan to inform the public of the capabilities and economic benefits of the partnership activities and engage the public in decision-making when appropriate.

(7) A method for conducting technology transfer and information sharing on the results of the project.

Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical and organizational evaluation factors and the relative importance of each factor. Applications submitted by or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award

under this solicitation. However, these organizations may be proposed as partnership members subject to the guidelines provided in the solicitation.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, November 25, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30406 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41714 entitled ''Support of Advanced Fossil Resource Utilization Research by Historically Black Colleges and Universities and other Minority Institutions.'' The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to U.S. Historically Black Colleges and Universities (HBCU) and Other Minority Institutions (OMI) in support of innovative research and development of advanced concepts pertinent to fossil resource conversion and utilization. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a select number of applicants based on the scientific merit of the application, relevant program policy factors, and the availability of funds. Collaboration with private industry is encouraged.

DATES: The solicitation was made available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on November 21, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Angela M. Delmastro, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochran's Mill Road, Pittsburgh PA 15236, E-mail Address: *angela.delmastro@netl.doe.gov*, Telephone Number: 412–386–5038.

SUPPLEMENTARY INFORMATION: DOE anticipates issuing Financial Assistance (Grants) awards. Approximately 1.0 to 1.5 million of DOE funding is planned to award between 4 to 8 projects from this solicitation.

The intent of the Fossil Energy HBCU/OMI Program is to establish a mechanism for cooperative HBCU/OMI research and development projects; to provide faculty and student support at the institutions; to foster private sector participation and interaction with HBCU/OMIs in fossil energy research and development; to provide for the exchange of technical information and research hardware; to raise the overall level of competitiveness by the HBCU/OMIs with other institutions in the field of fossil research; and to tap a heretofore under-utilized resource by increasing the number of opportunities in the areas of science, engineering and technical management for HBCU/OMIs. The collaborative involvement of professors and students from the HBCU/OMI and the commercial sector in the development and execution of fresh new research ideas, and the establishment of linkages between the HBCU/OMI and private sector fossil energy community are essential to the success of this program and equally consistent with the goal of ensuring the U.S. a future supply of technically competent managers, scientists, engineers and technicians from a previously under-utilized resource. It will also serve to maintain and upgrade the educational, training, and research capabilities of our HBCUs/OMIs in the fields of science, engineering and technical management, and provide the talent for an improved utilization of the nation's fossil fuel resources. Therefore, the DOE's National Energy Technology Laboratory (NETL) invites HBCUs/OMIs, in collaboration with the private sector, to submit applications for innovative research and development of advanced concepts related to fossil energy utilization and conversion. The overall purpose of this collaborative effort is to improve prospective U.S. commercial capabilities, and to increase scientific and technical understanding of the chemical and physical processes involved in the conversion and utilization of fossil fuels, thereby broadening fossil resource and technology benefits to our commerce and the consumer. Thus, HBCU/OMI faculty members and their institutions, in collaboration with the private sector, are strongly encouraged to undertake fossil energy-related research and development or to continue ongoing work in this area. Pursuant to 10 CFR 600.6(b), eligibility for award under the subject solicitation is restricted to HBCUs/OMIs. Statutory authority for this Program is provided by Pub. L. 95–224, as amended by 97–258.

Once released, the solicitation will be available for downloading from the IIPS internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751, or e-mail the Help Desk personnel at IIPS *HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 19, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30407 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT15391 entitled ''Advanced and Key Oilfield Technologies for Independents.'' The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NPTO), seeks applications for cost-shared development and demonstration projects using advanced and key oilfield technologies in the United States. The proposed project should address a technical risk that results in the technology's full acceptance by the independents. The goal is to provide technical solutions to issues that are limiting domestic on-shore or off-shore oil exploration and production by independent oil producing companies while providing the same or higher levels of environmental protection expected under the law. Applications will either address: (1) Existing Fields or (2) Exploration.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Keith R. Miles, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: *miles@netl.doe.gov*, Telephone Number: 412–386–5984.

SUPPLEMENTARY INFORMATION: The goals of the Department of Energy's Fossil Energy Oil Program are derived from the National need for increased oil production as a part of the national security, requirements for Federal Lands stewardship, and increased protection of the environment. The Oil Reservoir Life Extension Program supports those goals. In addition, the program supports the National Energy Policy goals to increase domestic oil exploration through continued partnership with public and private entities and to promote enhanced oil recovery from existing wells through new technology. By providing demonstrations of new technologies and approaches that improve oil recovery and increase reserves the oil program will increase the domestic oil supply. The Department of Energy Oil Program has, through funding by Congress focused on the needs of the Nation's independent oil producers. The Administration also addressed the needs of the independent oil producer in the National Energy Policy when they recognized that, ''Small independent businesses account for 50–65% of domestic petroleum and natural gas production in the lower 48 states.'' Independent producers have rapidly moved operations into regions that were traditionally explored and operated by the major oil companies. Recently many of the Nation's independent producers placed in the ranks of the top 20 producing companies in the United States. They currently maintain 63% of the oil reserves and 62% of the oil production. They control 50% of the gas reserves and 52% of the gas production. This program builds on the successful reservoir field demonstrations in the Research with Independents program by expanding the research and demonstration opportunities for independent producers to more complex, higher risk projects. Projects selected would be mid-term projects that could impact Independent production capabilities and thus have a potential for significant impact on domestic production and proved reserves, thereby increasing energy security and supply. Mid-term projects should have results in 5–10 years. The projects should encourage other independents to adopt the use of advanced and key technologies that prove successful in the future exploration and development of domestic reserves.

Projects do not need to be limited to one area of operations. They may address multiple technologies such as exploration, drilling and completion, well stimulation, enhanced oil recovery or other operational issues. The proposed project must however address the identified problems in such a way that evaluation of the success or failure can occur and the reasons can be attributed clearly to the technology.

The two areas of interest for this solicitation are:

Area of Interest 1—Existing Fields—The projects in this area will promote the goals of the National Energy Policy to use new technology to promote enhanced oil and gas recovery in established areas of production. It addresses the technical risk associated with developing, testing and deploying an advanced or key technology under actual field conditions. This program provides the connection between the laboratory and the oilfield and applications are expected to provide documentation of the need for this technology and the problem that it will address. The program allows continued development of a technology to create evolutionary improvements in performance and then the demonstration of such improvements in actual field conditions.

Area of Interest 2—Exploration—The projects in this area target the National Energy Policy goal of advancing exploration methodologies and technologies through the partnership with the independent producers conducting exploration. The DOE will partner with independent producers and others in an effort to push the limits of standard exploration technologies and to improve them. Applications are expected to describe the overall exploration problem and propose the technical solution to the identified problem. They should address the need of the independent producer with regard to a region and show that the project provides such a solution to the problem or problems.

DOE anticipates awarding approximately four (4) or five (5) financial assistance (*i.e.*, Cooperative Agreements) with a project performance period no less than three years in length and no more than five years in length. Approximately $7.0 million of DOE funding is planned over a 3-year period for this solicitation. The proposed projects will contain a field demonstration and as such under the Energy Policy Act of 1992 a minimum of 50% cost share of the total estimated project cost is required. The maximum DOE share of an award will be $2000K.

This competitive solicitation is open to any business, educational institution or state agency and is for the benefit of domestic independent producers. Moreover, for the purposes of this solicitation, an Independent operator shall be a non-integrated company which receives most of its revenue from crude oil or natural gas production at the wellhead. Independents are exclusively in the exploration and production segment of the industry with no retail outlets, marketing or refining operations. Applications submitted by

or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–03NT15391.

(Note: The limit on participation by an M&O contractor for an individual project under this solicitation cannot exceed 25% of the total project cost).

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 22, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30408 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41716 entitled ''Gasification Technologies Fundamental Research.'' This solicitation is intended to support near-term fundamental gasification technologies research projects that are: (1) Fundamental in nature, and (2) Important for the commercial success of gasification technologies. It is anticipated that the resultant projects will provide fundamental data useful to many organizations across the industry to help move gasification technologies toward the commercial marketplace. A secondary objective is to increase university involvement with the Gasification Technologies Program to ensure the inclusion of fresh, innovative ideas in the program, and to educate future scientists and engineers in gasification technologies.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about November 27, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*.

FOR FURTHER INFORMATION CONTACT: Keith L. Carrington, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: *keith.carrington@netl.doe.gov*, Telephone Number: (304) 285–4456.

SUPPLEMENTARY INFORMATION: It is anticipated that this action will consist of a single solicitation focused on three specific topic areas. Last year, the Gasification Technologies Product Team held interviews with industry organizations to gain industry's perspective on barriers to the commercial success of gasification technologies. This resulted in a list of specific research and development areas for product team consideration. This solicitation will address some of the near-term fundamental research needs described on this industry-generated list, chosen and modified by the Gasification Technologies Product Team based on additional input from industry and the needs of the DOE Gasification Technologies Program. The following two websites contain background information on gasification technologies: *http://www.netl.doe.gov/coalpower/gasification/ & http://www.gasification.org/resource/library/library.html*. The program solicitation will focus on the following three topic areas:

1. Develop technologies to remove the barriers preventing the economic use of low ranked (sub-bituminous and lignite) coals. Examples: (a) New/improved approaches for increasing the thermal stability of dewatered lignite. (b) Process/technology to create a higher energy density feed slurry, including understanding the critical properties changed by the process in terms of feed systems.

2. Develop improved materials to increase equipment life or reliability in the gasifier and through the process to the syngas cooler inlet. The net result of the material improvement must have potential to be an economic advantage to the gasification industry. Examples: (a) Improve feed system injector materials to increase the injector life. (b) Increase the life of gasifier refractory, by creating a more robust refractory, through investigation of refractory reactivity with gasifier contaminants and techniques to improve refractory stability, etc. (c) Metal alloys/fabrication that can survive in the gasifier environment long enough to: (1) Assist the development of more robust instrumentation (current average lifetime of thermocouples is 30–45 days), or (2) Permit metal candle filter use at temperatures approaching those in the gasifier (current metal filters have an operation limit of about one year at 450 °C).

3. Develop innovative, less expensive approaches to resolve environmental and/or economic concerns with coal gasification fuel gas contaminants and combustion flue gas pollutants, including the need for ultra clean feed gas for chemical production. Examples: (a) Conduct a mercury balance on the gasification process. (b) Create an added value technology or study for solid or chemical by products such as the concentration of mercury from conventional removal system for sale, creation of a process using high purity sulfur to make a more lucrative product, etc. (c) More effective/less expensive reduction of pollutants and/or trace contaminants in the combustion flue gas. (d) New instrumentation/techniques to measure trace metal concentrations in a high-temperature, high-pressure, reducing environment.

It is anticipated that this program solicitation will result in between three (3) to six (6) awards. The period of performance for each award will range from one to three years with budget periods to be established independently based on the logical technical phases of each individual project. Based on

current planning levels, and subject to the availability of future funding, DOE expects to provide up to approximately $3,600,000 to support work under this solicitation. However, please note that due to DOE's current operation under a continuing resolution, funds are not presently available for this solicitation. Given the objective of this program to increase university involvement in the Gasification Technologies Program, a determination was made to limit recipients under this program solicitation to U.S. colleges and universities and university-affiliated research institutions. Industry collaboration will be encouraged under this program, but only through cost-share and subcontracting arrangements. Subcontracting opportunities by for-profit organizations is limited to no more than 10% of DOE funding provided under the cooperative agreement. In addition, Federal agencies and agents (*i.e.* Management and Operating (M&O) contractors and/or National Laboratories) are prohibited from proposing as a prime contractor or subcontractor under this solicitation. Cost sharing is encouraged, but not required, under the subject program solicitation.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation. However, all questions relating to the solicitation must be submitted electronically through IIPS. All responses to questions, as well as all amendments to the solicitation, will be released on the IIPS homepage.

Issued in Pittsburgh, Pennsylvania on November 20, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30409 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on December 9–10, 2002, at the Chinese State Development Planning Commission in Beijing, China.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the Chinese State Development Planning Commission, 38 Yuetannanjie, Xicheng District, Beijing, China 100824 on December 9 and 10, 2002, commencing at 9 a.m. on December 9. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's China Seminar on Oil Stocks and Emergency Response, which is scheduled to be held at the same time and location. The Agenda for the meeting is under the control of the IEA. It is expected that the IEA will adopt the following Agenda:

Monday, December 9, 2002

I. Introduction
II. Opening Remarks and Keynote Speeches
—Opening Remarks—Mr. Zhang Guobao, Vice-Chairman, SDPC
—Opening Remarks—Amb. William Ramsay, Deputy Executive Director, IEA
—China's Energy Security Challenges and Progress in Meeting Them
—Oil Emergency Challenges: Introduction and Video Presentation of a Hypothetical Disruption Scenario
III. IEA Oil Security Policies and Procedures
—Overview of IEA Oil Emergency Response Policies
—An Industry Perspective on IEA Oil Emergency Response Policies
—IEA Oil Data Reporting System and Oil Emergency Data Collection
—Oil Information and Data Collection in China
IV. Oil Disruption and Response Simulation Exercise
—Replay of the Video Presentation of a Hypothetical Disruption Scenario
—Oil Disruption and Response Simulation Exercise
—Presentation on the Lessons Learned from Previous IEA Emergency Response Simulation Exercises
—Key Points Learned from Today's Simulation Exercise
—Case Study of the U.S. Oil Disruption Simulation Model
V. IEA Members' Experience in Emergency Response
—Overview of Oil Emergency Procedures and Measures in IEA Countries
—Japan's Experience in Emergency Response
—The UK's Experience in Emergency Response

Tuesday, December 10, 2002

I. Introduction
II. IEA Experiences in Building Oil Stockholding Facilities
—German Experiences in Building the German Independent Stockholding Agency (EBV)
—Hungarian Experiences in Establishing the Crude Oil and Oil Product Stockholding Association (KKKSZ)
—Korean Experience in Building Emergency Oil Stocks by Utilization of Stocks and Facilities
—SINOPEC Experience in Building Oil Stockholding Facilities and Managing Commercial Stocks
III. Technical and Operational Aspects of Emergency Stockholding
—U.S. Experience in the Operation of the Strategic Petroleum Reserve
—Budget and Operation of a Government Stockholding Agency
—French Government Experience with the Government-Industry Relationship in the Professional Committee for Strategic Petroleum Stocks (CPSSP)
—A Major Oil Company's Experience in Managing Commercial and Strategic Oil Stocks
—CNPC/PetroChina's Experience with the Technical and Operational Aspects of Emergency and Commercial Oil Stockholding
V. Summary and Closing Remarks

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel; representatives of members of the SEQ; representatives of the Departments of Energy, Justice, and

State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, November 25, 2002.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 02–30411 Filed 11–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637–022—WA]

Public Utility District No.1 of Chelan County; Notice of Availability of Draft Environmental Assessment

November 25, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff have reviewed the application for a new license for the Lake Chelan Hydroelectric Project, an existing, operating facility located on the Chelan River near the City of Chelan, Washington. The 48-megawatt project occupies land managed by the U.S. Forest Service and the National Park Service. In the DEA, the staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Comments on the DEA should be filed by January 6, 2003. Comments should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may also 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.gov* under the ''e-Filing'' link.

Copies of the DEA can be viewed at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 02–30517 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

November 25, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 1273–009.

c. *Date Filed:* November 15, 2002.

d. *Applicant:* Parowan City.

e. *Name of Project:* Center Creek Hydroelectric Project.

f. *Location:* At the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Alden C. Robinson, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151 and/or Clark Gates II, City Manager, Parowan City, P.O. Box 576, Parowan, Utah 84761, (435) 477–3331.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–8163, *gaylord.hoisington@FERC.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 20, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site*http://www.ferc.gov* under the ''e-Filing'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing Center Creek Hydroelectric Project consists of: (1) A 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (5) an 18 to 26-inch-diameter, 18,825-foot-long steel penstock; (5) a 600-kilowatt powerhouse; and (6) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Utah State Historic Preservation Officer (SHPO), as required by section 106, National

Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance letter: February 2003.

Issue Scoping Document 1 for comments: February 2003.

Request Additional Information: April 2003.

Issue Scoping Document 2: June 2003.

Notice of application is ready for environmental analysis: June 2003.

Notice of the availability of the draft EA: September 2003.

Notice of the availability of the final EA: November 2003.

Ready for Commission's decision on the application: March 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Note: The schedule is going to vary depending upon the circumstances of the project (deficiencies, additional information, etc.). *See* Guidance for Publishing Hydro Licensing Schedules.

Magalie R. Salas,

Secretary.

[FR Doc. 02–30515 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

November 25, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2009–018.

c. *Date filed:* January 28, 1999.

d. *Applicant:* Dominion Generation.

e. *Name of Project:* Roanoke Rapids and Gaston Hydropower Project.

f. *Location:* On the Roanoke River, near the Town of Roanoke Rapids, North Carolina. The project is located in Brunswick County and Mecklenburg County Virginia, and Northampton County, Halifax County, and Warren County, North Carolina. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jim Thornton, Dominion Generation, 500 Dominion Blvd., Glenn Allen, VA 23060, telephone 804–273–3257.

i. *FERC Contact:* Ron McKitrick, telephone 770–452–3778, or e-mail *ronald.mckitrick@ferc.gov*.

j. This application has been accepted for filing and is now ready for environmental analysis.

k. *Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-Filing'' link.

l. *Description of the Project:* The Project consists of the Gaston Development and Roanoke Rapids Development located on the Roanoke River, immediately downstream from the John H. Kerr Dam and Reservoir operated by the U.S. Army Corps of Engineers.

The Gaston Development is located 34 miles downstream of Kerr Dam at river mile 145.5, and consists of: (1) A 3,600-foot-long and 105-foot-high concrete and earth dam; (2) a 550-foot-long concrete ogee spillway with 11 steel radial gates 40 feet wide by 38 feet high; (3) a 34-mile-long reservoir with a total volume of 450,000 acre-feet and surface area of 20,300 acres at a water surface elevation of 200 feet mean sea level; (4) a concrete and masonry powerhouse, service bay, and unloading bay, about 425 feet long; (6) 4 turbines (3 vertical shaft fixed blade and 1 vertical shaft Kaplan turbine) with a total installed capacity of 225 megawatts, and a maximum hydraulic capacity of 44,000 cfs, producing an average of 336,362 megawatt hours annually, and a maximum dependable capacity of 225 MWH; and (7) four 14.4-kV generators connected to two 230-kilovolt transformers; and other appurtenances.

The Roanoke Rapids Development is located 42 miles downstream of Kerr Dam at river mile 138, and consists of: (1) A 3,050-foot-long and 72-foot-high concrete gravity dam; (2) a 1,133-foot-long concrete ogee spillway with 24 spillway bays each 44 feet wide with steel gates 38 feet wide, and one skimmer bay 25 feet wide; (3) an 8-mile-long reservoir with a total volume of 77,140 acre-feet and surface area of 4,600 acres at a water surface elevation of 132 feet mean sea level; (4) a concrete and masonry powerhouse and service bay about 406 feet long; (6) 4 Kaplan turbines with a total installed capacity of 104 megawatts, and a maximum hydraulic capacity of 20,000 cfs, producing an average of 336,408 megawatt hours annually, and a maximum dependable capacity of 99 MWH; and (7) four 14.4-kV generators connected to two 110-kilovolt transformers; and other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. 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, 385.211, 385.214. 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.

The Commission directs, pursuant to section 4.34(b) of the Regulations (*see*

Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–30516 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–7]

National Advisory Council for Environmental Policy and Technology; Full Council Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the Administrator and the program office managers.

The purpose of the meeting is to develop the NACEPT Council's agenda for FY03 to support the Administrator's priorities. In addition, NACEPT will report on the work of its subcommittees.

DATES: NACEPT will hold a two day public meeting on Tuesday, December 10, 2002, from 8 a.m. to 5 p.m. and Wednesday, December 11, 2002, from 8 a.m. to 3 p.m. Due to meeting date scheduling conflicts, contractual arrangements were unavoidably delayed.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel at 10 Thomas Circle, NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, *whitt.gwen@epa.gov,* (ph) (202) 233–0090, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Council should be sent to Gwendolyn Whitt, Designated Federal Officer/NACEPT using the contact information below. The public is welcome to attend all portions of the meeting. Members of the public expecting to submit written comments and/or make brief oral statements (5-minute limit) during the public comment session are encouraged to contact Ms. Whitt by December 6, 2002.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Gwendolyn Whitt at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 25, 2002.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 02–30469 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–1]

Announcement of a Meeting of the Microbial and Disinfection Byproducts Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of meeting.

SUMMARY: Under section 10(a)(2) of Public Law 920423, ''The Federal Advisory Committee Act,'' notice is hereby given of a meeting of the Microbial and Disinfection Byproducts Advisory Committee (Committee) established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The purpose of this meeting is to provide an update to the Committee on the status of the Long Term 2 Enhanced Surface Water Treatment Rule and the Stage 2 Disinfection Byproducts Rule. The meeting will be held as a teleconference and a limited number of lines will be made available to the public. The call-in number and access code for this meeting will be provided to participants upon registration. See **FOR FURTHER INFORMATION CONTACT** in this notice for information on how to register.

DATES: The meeting will be held from 2:30 p.m. to 4:00 p.m. Eastern Time on December 13, 2002.

FOR FURTHER INFORMATION CONTACT: For registration and general information about this meeting, please contact Ms. Crystal Rodgers, Designated Federal Officer, Microbial and Disinfection Byproducts Advisory Committee, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The telephone number is 202–564–5275; e-mail is *rodgers.crystal@epa.gov.* Any person needing special accommodations for this meeting should contact Ms. Rodgers (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA) is developing the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2

Disinfection Byproducts Rule (DBPR) to provide greater protection against risks associated with microbial pathogens and disinfection byproducts in drinking water. The Committee provided consensus recommendations for the LT2ESWTR and Stage 2 DBPR in September 2000, as stated in an Agreement in Principle (65 FR 83015, December 29, 2000). In this meeting, EPA will inform the Committee regarding the status of development of the LT2ESWTR and Stage 2 DBPR.

Dated: November 25, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–30461 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7414–9]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given of the forthcoming conference call meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will discuss underground injection control with respect to the practice of hydraulic fracturing for coal-bed methane production.

DATES: The meeting will be held on December 12, 2002, from 10 a.m. to 1 p.m., Eastern Standard Time.

ADDRESSES: Council members will teleconference into Room 2123 of the EPA East building, which is physically located at 1201 Constitution Avenue, NW, Washington, DC. A limited number of additional phone lines may be available for members of the public who are outside of the Washington DC metropolitan commuting area and are unable to attend in person. Any additional teleconferencing lines that are available will be reserved on a first-come, first-serve basis by the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, submit a written statement in advance, or make arrangements to teleconference into the meeting should contact Brenda Johnson, Designated Federal Officer, National Drinking Water Advisory Council, by December 6, 2002. Ms. Johnson can be reached at (202) 564–3791; by e-mail at *johnson.brendap@epa.gov*, or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (M/C 4601M), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate a portion of the meeting for this purpose. To ensure adequate time for public involvement, oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Dated: November 25, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–30462 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0311; FRL–7283–7]

Endangered Species Protection Program Field Implementation

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Notice of proposed field implementation approach and request for comment.

SUMMARY: EPA's Office of Pesticide Programs is describing, and requesting comment on, implementation of its Endangered Species Protection Program (ESPP, or the Program). The goal of the ESPP is to carry out responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in compliance with the Endangered Species Act (ESA), while at the same time not placing unnecessary burden on agriculture and other pesticide users. This Notice describes how EPA proposes to implement its responsibilities under section 7(a)(2) of ESA by completing and upgrading County Bulletins, amending pesticide labels to reference County Bulletins, and enhancing monitoring programs.

Regulations found at 50 CFR part 402 acknowledge that there may be Federal programs for which revisions to standard regulatory processes could result in more effective and efficient coordination among Federal agencies and thus, more effective and efficient protection of listed species. As such, those regulations (50 CFR part 402) allow Federal agencies to establish alternate procedures, applicable to specific Federal programs, for satisfying the provisions of ESA section 7(a)(2). Those alternate procedures are known as counterpart regulations.

Through a separate Advance Notice of Proposed Rulemaking (ANPR) to be issued on or about the same date as this Notice, EPA, the Department of the Interior (DOI), and the Department of Commerce (DOC) are seeking public input on ways that such counterpart regulations could improve the ESA consultation process with respect to pesticide registrations. Similarly, implementing regulations under FIFRA may be revised to ensure a more effective program.

The docket for this Notice (docket identification number OPP–2002–0311) includes a summary of the current technical review and consultation approaches employed by the Agency, and the standard evaluation procedure used for ecological risk assessments. That information has been subject to public comment in the past, has been used during EPA's Interim Endangered Species Protection Program, and will continue to be used until the Agency, DOI and DOC take comment on these aspects of the Program through the ANPR and modify them as appropriate.

DATES: Comments, identified by docket ID number OPP–2002–0311, must be received on or before March 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of this Notice.

FOR FURTHER INFORMATION CONTACT: Mary Powell, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7384; fax number: (703) 308–3259; e-mail address: *powell.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: This Notice is organized into four units. Unit I. provides general information about applicability of this Notice, availability of additional information, and how to

comment on the Notice. Unit II. provides background information, including the Agency's legal authority for taking this action, the Interim ESPP, and EPA's efforts to develop this proposed field implementation approach. Unit III. describes the proposed field implementation of the ESPP, and Unit IV. provides the references cited throughout this Notice.

While the Agency seeks comments on any aspect of this Notice, it also is hoping to obtain input on certain specific aspects. Within the various units of this Notice, EPA has indicated specific issues on which the Agency is particularly interested in obtaining comment. These issues are noted within the appropriate units under a subheading of ''Specific Input Requested.'' Further, the Agency seeks comment on whether any aspect of this field implementation proposal is more appropriately addressed through the counterpart regulations that are the subject of a separate ANPR, to be published by the Agency, DOI, and DOC on or about the same date as this Notice.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to farmers; pesticide registrants; pesticide users; agricultural trade associations; public interest groups; groups involved in or interested in endangered species protection; and local, State, Tribal, U.S. Territory, and Federal government agencies. Because 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 Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0311. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number (in this case, number OPP–2002–0311) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is

EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0311. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0311. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0311.

3. By hand delivery or courier. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0311. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket 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 these suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide 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 your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number (in this case, docket ID number OPP–2002–0311) in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background Information on the Endangered Species Protection Program

A. Authority and Responsibility under FIFRA and ESA

Since 1970, EPA has had responsibility for regulating the sale, distribution and use of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). EPA has granted registrations, or licenses, to thousands of pesticides containing hundreds of active ingredients and has continuing oversight over such actions. These registrations encompass thousands of different use sites and practices across the United States.

FIFRA as amended (7 U.S.C. 135 *et seq.*) governs the regulation of pesticides in the United States. Under FIFRA, a pesticide product may be sold or distributed in the United States only if it is registered or exempted from registration by EPA. Before a product can be registered unconditionally, it must be shown, among other things, that the pesticide, when used in accordance with widespread and commonly recognized practice, will not generally cause ''unreasonable adverse effects on the environment'' (section 3(c)(5)). FIFRA defines this standard to include ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of'' the pesticide (FIFRA section (2)(bb)(1)). This is known as the FIFRA risk/benefit standard.

Amendments to FIFRA in 1988 required that in addition to the original registration decision, all pesticides first registered before November 1984 be reviewed against more up-to-date data requirements and standards, and decisions made about whether these pesticides should be ''reregistered'' (FIFRA section 4(a)). FIFRA was amended again in 1996 with enactment of the Food Quality Protection Act. FQPA put into place a new standard for assessing human dietary risk (FIFRA section 2(bb)(2)), but it did not alter the risk benefit-standard of section 2(bb)(1) for assessing ecological risk. It also required that EPA periodically review pesticide registrations (establishing a goal of such review every 15 years) to determine whether such registrations meets the requirements of the Act (FIFRA section 3(g)(1)(A)).

Congress enacted the ESA (16 U.S.C. 1531 *et seq.*) to protect and promote the recovery of animal and plant species that are threatened or in danger of becoming extinct and to ensure that the critical habitat upon which they depend is not destroyed or adversely modified. The ESA institutes certain prohibitions against ''taking'' threatened or endangered (listed) species.

Section 7(a)(1) of the ESA, 16 U.S.C. 1536(a)(1), requires Federal agencies use their authorities in furtherance of the purposes of the Act, by carrying out programs for the conservation of listed species. Public Law 100–478, October 7, 1988, amended the ESA and states that EPA should fulfill its obligation to conserve listed species, while at the same time considering the needs of agriculture and other pesticide users. Section 7(a)(2) of the ESA, 16 U.S.C. 1536, and the implementing regulations at 50 CFR part 402, further require Federal agencies to ensure that their

actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. This duty extends to licensing activities such as the registration of pesticides by EPA. In meeting the section 7(a)(2) requirement, EPA must consult with the Services regarding the effects of Agency actions on listed species. In fulfilling this requirement, Federal agencies must use the best scientific and commercial data available. The Secretary of the Interior has delegated the interagency consultation responsibilities to the U.S. Fish and Wildlife Service; the Secretary of Commerce has delegated the interagency consultation responsibilities to the National Oceanic and Atmospheric Administration.

EPA and the Services are currently engaged in a number of separate, but related activities relative to EPA's responsibilities under the ESA. First, under ESA section 7(a)(1), EPA and the Services are engaged in an ongoing Proactive Conservation Review. This review of EPA's ESPP, is intended to clarify for the Federal agencies, EPA's approach to risk assessment, criteria that indicate a listed species may be at risk, and the requirements imposed on EPA by the ESA regulations governing consultation. The review will also identify areas or issues relative to risk assessment, criteria and consultations that may require modification to ensure an effective and efficient process of consultation among EPA and the Services. While this review is conducted under ESA section 7(a)(1), the outcomes of the review will likely be used to help focus discussions on technical and science policy issues that need to be addressed in order to effectively carry out responsibilities under ESA section 7(a)(2).

As noted in the **SUMMARY** section of this Notice, EPA and the Services are also publishing an ANPR, at or about the same time as publication of this Notice. The purpose of the ANPR is to gain public input relative to the consultation, technical, and science policy issues that need to be addressed in order to effectively carry out responsibilities under ESA section 7(a)(2).

As part of the ESPP, this **Federal Register** Notice proposes a field implementation plan for putting in place any protection measures necessary to ensure EPA's compliance with ESA section 7(a)(2). This plan, once final, will be used to put in place protection measures identified through consultations with the Services. EPA may also use this implementation approach as appropriate, to put measures in place necessary to protect listed species, even in the absence of a Biological Opinion from the Services.

B. EPA's Role

1. *ESA section 7(a)(1) obligations.* As noted in Unit II.A. above, EPA has responsibilities under both section 7(a)(1) and 7(a)(2) of the ESA. Under section 7(a)(1), EPA uses its authorities to conserve listed species, in consultation with the Services. The Proactive Conservation Review discussed in Unit II.F.2. is being carried out under section 7(a)(1) of ESA. In addition, EPA has carried out a number of other activities intended to conserve listed species including: Hosting a Wb site that contains listed species fact sheets and a county-scale data base of listed species occurrences; maintaining a toll-free telephone number for public inquiries relative to pesticide use and listed species protection; and producing and disseminating educational materials for students. Additionally, EPA has worked with State agencies responsible for pesticide programs, to ensure that pesticide applicators certified by the States, receive information during their certification training, relative to endangered species protection needs.

2. *ESA section 7(a)(2) obligations.* Under section 7(a)(2) of ESA, EPA must ensure that its actions are ''not likely to jeopardize the continued existence of any'' listed species or ''result in the destruction or adverse modification of'' their designated critical habitat. In carrying out its responsibilities, EPA's challenge is how to implement FIFRA, a risk/benefit statute, in a way that ensures compliance with the requirements of the ESA mandate to protect listed species and to do so at use sites that are geographically, ecologically, agronomically, and economically diverse and changeable. EPA seeks to carry out these protections for thousands of pesticide products in ways that users can be expected to implement reliably and routinely without unnecessary burden.

The Agency is responsible for reviewing information and data to determine whether a pesticide product may be registered for a particular use. As part of that determination, the Agency assesses whether listed species or their designated critical habitat may be affected by the use of the product. If EPA determines that the action may affect a listed species, the interagency coordination regulations require the Agency to enter into a process with the Services called ''consultation'' (50 CFR 402.14). The consultation process is designed to ensure that the Agency action is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its designated critical habitat (ESA section 7(a)(2)). Following consultation, the Agency is responsible for implementing protections, if necessary, through its available authority. More information on ''may affect determinations'' and consultations may be found in Unit II.D. EPA must also ''confer'' with the Services if its actions may jeopardize the continued existence of species proposed for listing or result in destruction or adverse modification of habitat proposed for designation as critical habitat. Consultation is not necessary if EPA determines that a particular action will have ''no effect'' on listed species or designated critical habitat. (See Unit II.D.1.c. for a discusssion of ''no effect determinations.''

C. The Roles of FWS and NOAA Fisheries

DOI's U.S. Fish and Wildlife Service (FWS) administers the ESA for most species. DOC's National Marine Fisheries Service (NOAA Fisheries) administers the ESA for certain listed marine and anadromous species. Both FWS and NOAA Fisheries (jointly, the Services) enter into formal or informal consultation or conference with EPA concerning effects to listed species and species proposed for listing as well as effects on critical habitat. The consultation process is described in Unit II.D.3. below. The Services may determine whether an EPA action is likely to cause jeopardy to the continued existence of a species and if so, the Services may propose reasonable and prudent alternatives to the action to avoid jeopardy. The Services may also issue incidental take statements that authorize takings of listed species incidental to certain Federal actions.

D. Effects Determinations and Consultations

In the past, EPA has conducted a number of consultations with the Services. The Agency's experience with those has demonstrated that the agencies need to reexamine their programs to improve both the efficiency and effectiveness of consultation. EPA and the Services are currently participating in a joint Proactive Conservation Review (see Unit II.F.2.) to explore potential modifications for better integrating the FIFRA and ESA processes. The Agency, DOI and DOC are seeking public input on the consultation process and EPA's endangered species assessment

processes through a separate ANPR, to be published on or about the same date as this Notice, and intend to address these provisions through counterpart regulations. Similarly, subsequent to the ANPR, certain FIFRA regulatory processes may be reviewed for possible revisions that could make the program more efficient or effective.

While the Agency is not seeking comment on these aspects of its protection efforts through this Notice, it is including a summary of its current process for making effects determinations and consulting with the Services in Unit II.D.2. below, for purposes of providing context to the reader.

1. *Effects determinations*. To the degree possible, endangered species issues are and will be addressed within the Agency's existing processes of registration and reregistration. Concurrently, the Agency will review those pesticides that have been through reregistration and that may affect listed species, or did not undergo ESA review during reregistration.

EPA has no standard data requirements for endangered species effects determinations, beyond those normally required during registration and reregistration. However, in making such effects determinations in the past, the Agency has requested data for specific listed species concerns, and may continue to do so in the future. As the Proactive Conservation Review and ANPR move forward (see Unit II.F.2.), and as EPA begins to meld the process for making these determinations into existing registration and reregistration activities, the Agency may revisit the necessity for identifying data requirements specific to listed species.

The potential of a pesticide to directly affect any particular species is based on two factors: The toxicity of the chemical to the species, and exposure. The latter includes the estimated environmental concentrations (EECs) that would result from labeled use of a pesticide and the potential for actual exposure of the species of concern to those EECs. Direct effects may be in either of two broad categories: Acute effects or chronic effects, including both lethal and sublethal effects. Species may also be affected indirectly through modification of their habitat or through effects on their food supply. EPA relies on a wide range of environmental data to assess the potential effects of pesticides on listed species. These data include toxicological studies, laboratory and field studies of the fate and transport of pesticides, mathematical fate and transport models, and field studies monitoring pesticide concentrations and adverse effects to non-target organisms.

a. *Acute lethal and sublethal effects*. Acute data are derived from toxicity tests with lethality as the primary endpoint. The standard acute tests submitted for pesticide registration also include analysis of observable sublethal effects. For example, a typical acute test for a fish will include concentrations that cause no mortality and often no observable sublethal effects, as well as concentrations that would cause 100% mortality. Sublethal effects may or may not be observed at concentrations below that which cause 100% mortality. Where sublethal effects are observed, the Agency includes such information in its assessment of whether a pesticide may affect a listed species. The effects at test concentrations can be used to statistically predict the effects likely to occur at various pesticide concentrations; a well-done test can even be extrapolated to concentrations below those tested (or above the test concentrations, if the highest concentration did not produce 100% mortality).

b. *Chronic lethal and sublethal effects*. Potential chronic effects of a pesticide can be evaluated based on several types of tests and conducted on one of several possible species, depending on the listed species of interest. For example, chronic tests for a listed bird could be conducted on the mallard or bobwhite quail, whereas such tests for a listed estuarine species would be conducted on mysid shrimp. Chronic tests primarily evaluate the potential for reproductive effects and effects on the offspring. Other observed sublethal effects are also required to be reported. An abbreviated chronic test is usually the first chronic test conducted and will indicate the likelihood of reproductive or chronic effects at relevant concentrations. If such effects are found, then a full life-cycle test will generally be required. If the nature of the chemical is such that reproductive effects are expected, the abbreviated test may be skipped in favor of the full life-cycle test. These chronic tests are designed to determine a ''no observable effect level'' (NOEL) and a ''lowest observable effect level'' (LOEL).

c. *Assessment*. EPA typically evaluates the potential of a pesticide to affect listed species by conducting a screening level assessment and, if necessary, a species-specific assessment. During the screening level assessment process, the Agency generally does not determine whether in fact any specific threatened or endangered species may be affected by the pesticide, but merely whether a concern would exist if a threatened or endangered species were exposed to the EECs, given the toxicity of the specific pesticide to the species. The screening steps start out very conservative and become more refined with each step. EPA determines that there is ''no effect'' on listed species if, at any step in the screening level assessment, no Levels of Concern (LOCs) are exceeded. After EPA performs all the available steps in the screening level assessment, a pesticide may still exceed the Agency's LOCs for listed species (see Unit II.D.1.d.). The Agency will then conduct a species-specific assessment to make effects determinations for individual listed species and their designated critical habitat. Units II.D.1.d. through II.D.1.g. provide an example of this process for aquatic species. Similar steps are undertaken for terrestrial species.

d. *Screening level assessment*. EPA begins its screening level assessments by conducting a basic ecological risk assessment that uses available data and generally conservative assumptions to establish the EEC. EPA then uses increasingly specific methods and data and more refined exposure models to refine the EEC of the pesticide. Where available, EPA may also use field monitoring data for a variety of purposes. At each screening step, the more refined EEC is compared to the toxicity of the pesticide active ingredient to determine whether the pesticide exceeds LOCs established for listed aquatic and terrestrial species. EPA's Standard Evaluation Procedure for Ecological Risk Assessment (June, 1986. EPA-540/9-85-001) provides that LOCs are exceeded for acute effects on listed species when the EEC of a pesticide is greater than 1/20th the LC_{50} for appropriate aquatic species or 1/10th the LC_{50} or LD_{50} for appropriate terrestrial species. Thus, under current practices, the LOCs for listed species incorporate an extra level of protection that is not used in the LOCs for other non-target species. (LC_{50} is the statistically derived estimate of concentration expected to cause 50% lethality. LD_{50} is the statistically derived estimate of oral dose expected to result in 50% lethality.) LOCs are exceeded for chronic and/or reproductive effects when the EEC exceeds the NOEL in appropriate studies.

In the first step of EPA's screening level assessment, the Agency uses a quantitative comparison between the default EEC and the toxicity of the chemical. A default EEC is based on application rates from pesticide labels and on extremely conservative assumptions of movement of the pesticide to water rather than on actual

chemical fate and transport data. Toxicity values for the pesticide are taken from data submitted by pesticide registrants to support their registration request. The application rate is determined from pesticide labels. EPA then compares the toxicity values with the default EEC to determine whether the pesticide exceeds EPA's endangered species LOCs. If no LOCs are exceeded, the pesticide has ''no effect'' on listed species and the analysis ends. However, if an LOC is exceeded, EPA may proceed to the next screening step to refine its assessment.

In this next step, the Agency refines its ecological risk assessment by running the GENEEC (generic EEC) model with a variety of inputs on application methods and rates, and chemical fate and transport data to calculate the EEC. Running this model provides a more refined EEC for comparison with the toxicity data. Again, if an endangered species' LOC is exceeded at this step, EPA may proceed to the next step to further refine its assessment. If the model described below is not available for the particular use scenario being evaluated, EPA would typically move to a species-specific assessment as described in Unit II.D.1.e. below.

In the next step, the Agency uses a much more sophisticated model the Pesticide Root Zone Model-Exposure Analysis Modeling System (PRZM/EXAMS) to calculate more refined EECs. This model includes more chemical fate and transport data, and it involves selecting a use site (e.g., wheat or apples) scenario and modifying the scenario to reflect the nature of the pesticide use. These scenarios are based upon actual field data on crop location, extent to which the crop is grown, soil characteristics, climate, etc. Use site scenarios exist only for major and a few minor crops, and would need to be developed to run this model for other crops. If an endangered species LOC is exceeded at this step, a species-specific assessment is conducted.

e. *Species-specific assessment*. To conduct a species-specific assessment, EPA takes the basic quantitative information from its screening level assessment developed for all non-target organisms and puts that information in context for individual listed species and their locations. Important ecological parameters such as stream flow rates and soil types, pesticide use information, the geographic relationship between specific pesticide uses and species locations, and biological requirements and behavioral aspects of the particular species are typically considered. Where reliable, published data are not available, information for such parameters is typically obtained through contacts with knowledgeable experts, including extension agents, crop advisors, resource specialists, and watershed experts. These steps enable the Agency to refine its generic assessment into one specific to individual listed species and their designated critical habitat. If LOCs are exceeded after this analysis, the Agency may work with the registrant to determine whether sufficient protection measures can be incorporated into the registration or reregistration to achieve a no-effect determination. Only if those efforts are unsuccessful will EPA declare a ''may affect determination.''

f. *Use of field monitoring in assessing risks*. Field monitoring data can supplement modeling and provide a more direct means to assess whether species may be exposed to the pesticide at a level sufficient to cause an effect, if the monitoring program was designed or is appropriate for this purpose. For example, using monitoring data where water samples are obtained one time per quarter year does not necessarily provide information from which exposure levels can be determined, although data can alert EPA to locations where pesticide exposure may be occurring to trigger further assessment or analysis. However, even in cases where appropriately designed monitoring was conducted, EPA would still typically conduct exposure modeling when field monitoring data do not exist for all species locations, and EPA would still typically conduct a species-specific assessment, as described in Unit II.D.1.e. above, to determine whether a particular species may be exposed to the monitored levels of the pesticide.

In summary, EPA typically evaluates the potential of a pesticide to affect listed species by conducting increasingly refined screening level assessments, and, if necessary, a final species-specific assessment.

2. *Consultation procedures*. Service regulations provide for two types of consultations once a ''may affect determination'' has been made.

a. *Informal consultation*. Informal consultation is an option available to an action agency (in this case EPA) to assist the action agency in determining whether formal consultation is required. During this process, the Services can suggest modifications to an EPA action to avoid the likelihood of adverse effects to a listed species or its designated critical habitat. The informal consultation process is completed with a written concurrence by the Services with EPA's determination that its action is ''not likely to adversely affect'' listed species or designated critical habitat. If the Services do not concur with EPA's finding of ''not likely to adversely affect,'' then formal consultation must be initiated.

b. *Formal consultation*. Formal consultation is required if the Agency determines that a pesticide may affect or is likely to adversely affect a listed species or critical habitat. In this case, EPA makes a written request for formal consultation with the Services on a particular Agency action (i.e., a pesticide registered for a specific use).

Basically, a consultation package consists of EPA's assessment of the potential for a listed species or designated critical habitat to be adversely affected by the registration of a particular pesticide. More specifically, the package includes a description of the action under consideration, areas that may be affected, listed species or critical habitats at issue, a description of the manner in which the action may affect any listed species or critical habitat, and an analysis of cumulative effects and any relevant reports. The consultation package must use the best scientific and commercial data available.

In response, the Services develop and provide to EPA a Biological Opinion, which provides the Services' opinion on whether the use of the pesticide in question is ''likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat'' (50 CFR 402.14(g)).

If a Biological Opinion concludes that an action is likely to jeopardize a listed species or adversely modify its designated critical habitat, then the Biological Opinion will include ''reasonable and prudent alternatives,'' if any, that EPA may undertake to avoid the likelihood of jeopardy to the species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives (50 CFR 402.02) are actions that:

(1) The consulting agency is capable of implementing under its authority and jurisdiction.

(2) Allow the agency action to be implemented in a manner consistent with its intended purpose.

(3) Are economically and technologically feasible.

(4) Are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

Biological Opinions will frequently include information for use in implementing protections. For those few species that the Services determine are

subject to collection threats, the Services generally will encourage development of alternative protections, such as landowner agreements (see Unit II.E.3.b. for more information on landowner agreements).

Biological Opinions may also include an ''incidental take statement.'' For listed species, to ''take'' means ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (ESA section 3). Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity (50 CFR 402.02). Incidental take statements specify, among other things, the amount or extent of any anticipated incidental taking (e.g., the number of individuals) and the ''reasonable and prudent measures'' needed to minimize the impact of such a taking. The Biological Opinion may contain reasonable and prudent measures to reduce the impact of incidental take, even if no jeopardy to the listed species is found. If the amount or extent of taking specified in the incidental take statement is exceeded, EPA must reinitiate formal consultation (50 CFR 402.16(a)). The incidental take statement also conveys to the action agency, any applicant to the agency, and any users of the product an exemption from the take prohibitions of the ESA, provided that the action is implemented in a manner consistent with the reasonable and prudent measures included with the incidental take statement (ESA section 7(o)(2)).

Reinitiation of consultation must occur if new information reveals effects of the action that may affect listed species or critical habitat in a manner or extent not previously considered; if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the Biological Opinion; or if a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

E. Initial Efforts at Program Implementation

EPA's past efforts to carry out its responsibilities under FIFRA and ESA fall into three areas: Assessment and consultation; implementation of protections; and an interim Program that relies on education, cooperation and public outreach.

1. *Assessment and consultation.* EPA has been consulting with FWS on endangered species issues since 1977, and has used a variety of approaches to these consultations. The various approaches yielded variable results in terms of efficiency, effectiveness at addressing potential risk to a given species, and equity among pesticide registrants and equity among pesticide users.

a. *''Case-by-case'' consultations.* In more than 80 instances, the Agency has assessed the potential effects of a pesticide on all listed species, across all proposed uses of a single pesticide. The benefit to this approach to consultation (one pesticide, all proposed uses) is that it is comprehensive as to the agency action and manageable since it involves a single pesticide. The major drawbacks to this approach resulted from use limitations being proposed for a specific pesticide while competing pesticides that may also pose risks to species had not yet been reviewed.

b. *''Cluster'' consultations.* In order to mitigate the potential inequity to competing registrants from the case-by-case approach, the Agency engaged the FWS in several ''cluster'' consultations. These consultations were based on an assessment of all pesticides registered for use on certain crops. For example, in the ''cotton cluster'' EPA assessed and consulted as appropriate on any pesticide registered for use on cotton. By approaching assessment and consultation in this manner, the Agency alleviated the potential inequity of case-by-case consultations since competitive products for the same use were assessed at the same time. However, this approach carried with it certain other problems. The consultations resulting from this approach were much larger and more complex. At the request of the FWS, EPA reinitiated consultation on portions of these ''clusters'' to address newly listed species and obtain ''incidental take'' statements. The resulting reinitiation encompassed certain uses of 112 pesticides that had the potential to affect one or more of 165 different listed species. For both the original consultations and the reinitiation, the statutory time frame provided for the Services to complete a Biological Opinion proved difficult to meet. This approach, while eliminating the inequity among pesticide registrants, created a potential inequity among pesticide users. In these cluster consultations, a pesticide was assessed for one crop, but not for other crops for which it was registered. If the assessed crop was grown adjacent to the unassessed crop, growers of the one crop could face use limitations while growers of the other did not.

c. *''Species-based'' consultations.* A third approach to assessment and consultation was intended to ensure that a species was completely addressed at once. This ''species-based'' approach was used to request formal consultation for 31 pesticides. Under this approach, the Agency and the Services identified the species most vulnerable to effects from exposure to pesticides; identified all the pesticides to which that species might be exposed; and identified all other species that might be exposed to those uses of these pesticides. The Agency's consultation would encompass any combination of these factors that produced a ''may affect determination.'' Because of the diversity of uses of these pesticides and the large number of species potentially affected, it was necessary to divide the consultation into two parts. FWS has completed part I. EPA asked FWS to suspend work on part II while EPA and the Services undertake the ESA Section 7(a)(1) Proactive Conservation Review to facilitate the overall consultation process (see Unit II.F.2. for more information on the Proactive Conservation Review). The benefits of this approach appear to be that a particular species would be protected from all pesticide exposures with a potential to harm the species, at one time. However, because of the complexity of these assessments, the time necessary to identify protections is protracted significantly.

2. *Implementation of protections.* In the past, EPA has proposed several approaches for implementing an endangered species protection program (53 FR 7716, March 9, 1988; 54 FR 27984, July 3, 1989). Under these previous proposals, product labels would have been amended, where necessary, to instruct users to follow specific use limitations. These limitations would have been described in County Bulletins developed by EPA to protect listed species in their area. Bulletins would contain general information about the ESPP, a map of the county depicting areas in which limitations applied, and a table indicating the particular use limitations for specific pesticides in specific areas of the county. States and Tribes would have had the option to initiate and propose to EPA alternative plans for protecting listed species in their area. If EPA deemed these plans to be feasible, and the Services deemed them protective of the species, EPA would adopt the provisions of the plan as the Federal requirements for that State or Tribe.

Other elements of implementation would have included public participation, to include the opportunity for comment on the maps and County Bulletins and State-initiated plans (Unit III.F.).

Moving forward with a final program implementation scheme did not seem feasible at those earlier points in the history of the program's development. There remained significant issues with potential resulting inequities and resource implications created by the variety of priority setting schemes for assessment and consultation. There also was concern that County Bulletins, enforceable under FIFRA misuse provisions, did not provide sufficient flexibility for pesticide applicators to exercise judgement based on local conditions, to protect listed species in ways that posed the least burden. Consequently, EPA decided, for the interim, to maintain its case-by-case approach to assessment and consultation and to conduct a voluntary ESPP to protect listed species and their habitats. As part of this interim program, EPA has undertaken a number of activities designed to address efficiency, effectiveness and equity issues and to develop an improved ESPP implementation plan.

3. *Interim program*. The interim ESPP relies on education, cooperation and public outreach to achieve its goals. The interim ESPP involves the voluntary participation of States and pesticide users, typically through the use of Interim Pamphlets as described below. Some States also have participated in the program by developing and piloting State-initiated plans to protect listed species within that State. Key components of the interim ESPP include:

a. *Distributing Interim Pamphlets*. These Pamphlets, which are precursors to the County Bulletins, were developed for voluntary use during the Interim ESPP to encourage the protection of listed species. Based largely on Biological Opinions, the Pamphlets include the name of the species of concern, a table of the pesticides that may harm that species, a description of the use limitations necessary to protect the species, and a county-level map showing the geographic areas associated with these use limitations. The type of map and level of detail depends in part on the sensitivity of the listed species to other factors, such as collection. (See Unit III.B. for distribution procedures and more information on County Bulletins.)

b. *Developing State- and Tribe-specific approaches*. Several States have developed alternative approaches to protecting certain listed species during the Interim Program. For example, Minnesota and Wisconsin have succeeded in protecting listed plants by developing landowner agreements with private individuals. These agreements identify protective measures specific to the geographic area involved in the agreement and are made with FWS and the appropriate State agencies.

California has put a program in place whereby use of particular pesticides requires a State permit, the provisions of which take into account the proximity of use to a listed species. Still others have proceeded under the general direction of the Agency's Interim Program but have developed alternatives to county mapping that better communicate protection measures to their citizens.

F. Development of this Implementation Proposal

In developing this implementation proposal, EPA considered information and comments from a number of sources. Those sources included public comments submitted in response to past proposals and other information described below.

1. *EPA initiatives*. EPA has been working on the technical aspects of the ESPP. These efforts include collecting additional data on species biology and habitat locations, agricultural crop and other pesticide use locations, and pesticide toxicity and exposure. In certain cases, additional research was conducted that specifically provided data needed to address risks to listed species. Examples include studies on herbicide effects on cacti, and effects of insecticide use on terrestrial snails.

As required by Public Law 100–478, October 7, 1988, EPA completed and submitted a report to Congress titled ''Report to Congress on the Endangered Species Protection Program as it Relates to Pesticide Regulatory Activities.'' The report describes the joint efforts by EPA, USDA, and FWS to determine the effects of pesticide use on listed species. It also summarizes EPA's efforts to communicate use limitations to pesticide users, to determine alternatives to outright prohibitions, to develop and distribute accurate maps of use limitation areas related to listed species, and to improve communications among EPA, USDA, and FWS.

2. *Proactive Conservation Review*. In a joint effort with the Services, the Agency has undertaken a Proactive Conservation Review, authorized under ESA section 7(a)(1). EPA and the Services are analyzing the processes EPA uses to determine whether a pesticide may affect a listed species and to assess generic mitigation measures. The Services and EPA have agreed to explore issues relative to five specific areas: (1) EPA's test methodologies, (2) environmental exposure assessment processes, (3) risk assessments, (4) conservation measures, and (5) follow-up to EPA action to ensure continuing protection and conservation of listed species. One product of the Proactive Conservation Review will be a handbook setting forth the processes and procedures that will be followed by EPA, NOAA Fisheries and FWS relative to species conservation, pesticide consultations, and protection measures for listed species deemed to be potentially affected by pesticide exposure.

3. *EPA Regional programs*. EPA Regional offices continue to act as liaisons with State lead agencies (SLAs) for pesticide regulatory activities, Tribes and U.S. territories; train State representatives in the ESPP; distribute program materials; contribute to the development of educational and outreach materials; and work closely with States in developing State-initiated plans.

4. *State efforts*. To ensure that the county maps delineating the pesticide use limitation areas are precise and reflect the result of assessments that were based on currently occupied habitat, EPA has continued to work with the States, FWS, and USDA in developing, reviewing and revising the maps. Opportunity also has been provided for their comment on the specific pesticide use limitations for individual species.

State involvement varies, but review usually includes participation by the SLA responsible for pesticide programs at the State level (usually the State Department of Agriculture), State heritage and conservation agencies, the pesticide coordinator for pesticide applicator certification and training, and others. EPA has encouraged the States to include a balanced role for representatives of non-government environmental groups and the pesticide user community as well.

States continue to play an active role in other aspects of the ESPP. Their efforts include developing State-initiated plans, incorporating endangered species modules into pesticide applicator certification and training programs, refining species location information, and providing input on the future directions of the ESPP and ways to achieve program goals more effectively.

5. *National partners' workshops*. As EPA began to revitalize the ESPP, three national workshops were held (in 1997, 1999 and 2001). The purpose of these workshops was to seek input on future directions of the ESPP and on ways to achieve goals more effectively. These workshops resulted in the formulation

of the framework for this final program proposal.

At the heart of each of these workshops was the discussion of a range of practical, nuts-and-bolts solutions for furthering endangered species protection consistent with the ESA. A few dominant themes were apparent throughout: To better protect threatened and endangered species, everyone involved needs to communicate better; to share information, data and resources; and to identify and focus on priorities to make better use of limited resources. While the use of technology to foster endangered species protection is crucial, consideration must also be given to non-technological alternatives and innovative practices (see Unit III.E.3.b. for some examples).

III. The Endangered Species Protection Program - Field Implementation Proposal

EPA's implementation proposal is based on two goals. The first is to provide appropriate protection to listed species and their habitats from potential harm due to pesticide use. The second is to avoid placing unnecessary burden on pesticide users and agriculture.

The following sections describe the elements of EPA's proposed approach to implementing endangered species protections under existing ESA regulations. These elements include: Scope, approach to reviewing pesticides, completing and upgrading County Bulletins, amending pesticide labels to reference County Bulletins, enhancing monitoring programs, compliance and enforcement, and public participation. Finally, this section describes the role of States and Tribes in the Program, implementation timing, and program maintenance.

A. Scope of the ESPP

All pesticide products for which EPA makes a ''may affect'' determination may be subject to the ESPP.

1. *Indoor products determination.* EPA has determined that pesticide products bearing label directions only for use indoors, and where the applied pesticide remains indoors, will not result in exposure to listed species. Therefore, these products will have ''no effect'' on listed species and generally would not be subject to the ESPP. Indoor use includes application within transport vehicles and within any structure with enclosed walls and a roof, such as buildings, greenhouses, outbuildings, etc.

This ''no effect'' determination would not apply to a pesticide that is applied indoors, but could expose outdoor environments (such as pesticides applied in cooling towers or used as cattle dips). Whether these products result in a ''may affect'' determination will be assessed on a case-by-case basis. If a ''may affect'' determination is made for these products, they would be subject to the ESPP.

2. *Public health emergencies.* Under section 18 of FIFRA (40 CFR part 166), a State or Federal public health agency may request that EPA grant an emergency exemption from pesticide registration requirements for a public health emergency if the State or Federal agency can demonstrate that:

a. An emergency, non-routine condition exists that requires the use of a pesticide.

b. Effective registered pesticides or alternative practices are not available or economically or environmentally feasible.

c. The situation will present significant risks to human health.

Public health emergencies, verified by State or Federal public health authorities, include situations in which:

(1) A pest outbreak poses a significant risk to human health or in which the elements for disease outbreak (i.e., virus activity, large population of disease vectors either present or pending, or others) are demonstrated to be in place and prompt action is required to avert an actual disease outbreak, and

(2) An actual disease outbreak is in progress and immediate action is essential to arrest the outbreak.

In the latter case, a crisis exemption under section 18 may be appropriate, which allows a Federal or State agency to authorize the emergency use of a pesticide if its use is critical and enough time is not available for EPA to receive and complete a review of the specific request for a public health exemption. Consultations on emergency actions are conducted in accordance with Service regulations found at 50 CFR 402.05.

Generally, in accordance with the ESA, EPA does not authorize use of a pesticide under section 18 if that pesticide will jeopardize a listed species or adversely modify critical habitat. However, if no practical alternative control measures are available, during a public health emergency, a public health exemption under section 18 may be sought for the use of a pesticide that was found to jeopardize listed species or adversely modify its critical habitat.

Specific Input Requested - Public Health Emergencies

- Is the above section 18 approach the appropriate mechanism to address potential intersections of public health and listed species protections?
- Should actions relative to public health emergencies require consultation with the Services, and if so, should it be an emergency consultation?
- What specific alternatives might be appropriate? How do these alternatives allow the appropriate weighing and balancing of public health and listed species protection?

3. *Review of pesticides.* To the degree possible, endangered species issues will be addressed within the Agency's existing review processes of registration and reregistration so that when a registration or reregistration decision is made, it fully addresses issues relative to listed species protection. Concurrently, the Agency will begin a process to review those pesticides that have been through reregistration review and were found potentially to affect listed species or their critical habitat, or where the potential for effects on listed species or their critical habitat was not considered. This does not limit EPA's ability to make changes in its technical approach nor in its data requirements. EPA and the Services are seeking input relative to the technical and consultation aspects of the program through an ANPR.

EPA attempted several different approaches to prioritizing reviews in the past (see Unit II.E.a. through II.E.c.), each resulting in a different set of issues and each more or less effective in differing ways. EPA's proposed approach of addressing potential effect to listed species on a chemical-by-chemical basis, is not without issues. With any approach, EPA believes the best way to address the issues is to develop a technical and consultation process that allows the Federal Government to make appropriate decisions in a timely manner. By focusing our internal processes to address listed species concerns during registration and reregistration where possible, and by identifying and implementing improvements in the technical aspects of review and in the consultation processes, EPA believes many of the issues resulting from a chemical-by-chemical approach to review will be resolved.

4. *Effect determinations and consultations.* EPA's technical review policies (Unit II.D.) and the Services' technical information and analysis requirements under the ESA section 7 consultation regulations currently form the analytical and procedural bases of EPA's Interim Endangered Species Protection Program. As noted in Unit II.F.2., EPA is engaged in a Proactive Conservation Review with the Services under ESA section 7(a)(1) to analyze, among other things, the processes EPA uses to determine whether a pesticide may affect a listed species. Further, EPA

and the Services will be taking comment through an ANPR on options for counterpart regulations that could amend the existing ESA and FIFRA regulatory regimes in a manner that improves consultations on pesticide actions. Until these efforts are finalized, EPA's current procedures and the Services' existing regulations at 50 CFR part 402 will continue to form the analytical and procedural bases of the ESPP.

B. Completing and Upgrading County Bulletins

The Interim Pamphlets (Unit II.E.3.) have been the centerpiece of the ESPP. As a top priority, EPA will update existing Pamphlets to reflect all current Biological Opinions, including the identified species of concern, a table of pesticides that may harm those species, and current use limitations to protect listed species. EPA will then convert these Pamphlets to County Bulletins. The Agency will continue to provide access to the Bulletins through its home page on the Internet (*www.epa.gov/espp*) and improve the distribution network.

The Bulletins will be developed by EPA in cooperation with the Services, USDA, States and Tribes. EPA will generally determine appropriate use limitations and recommendations in the Bulletins by reviewing results of ESA section 7 consultations and any other relevant information that addresses the needs of the listed species. The Bulletins will only be maintained and issued for counties for which protection measures have been deemed necessary. Bulletins will:

1. Identify the species of concern.
2. Name the pesticides that may harm the listed species.
3. Provide a description of the protection measures necessary to protect the species. Where species or habitat descriptions are helpful or necessary to identify use limitations, EPA will also include this information.
4. Contain a county map showing the geographic area associated with the protection measures, depending on the sensitivity of the species to other factors such as collection. Typically, maps will show a shaded area indicating the area where pesticide use should be modified to protect that species. Within shaded areas on the maps, the specific protection measures will be identified for the pesticide and the species being protected.

To ensure precision, EPA has been working with other Federal agencies and the States in revising the maps and the tables of pesticide use. EPA will develop draft maps and tables of pesticide use limitations and send them to the States, Services, and USDA for review as EPA updates the information for the County Bulletins, or as completion of consultations results in EPA's decision to include additional pesticides or species, or delete currently included pesticides or species. Based on comments from Federal agencies, States and Tribes during the review process, EPA will work with the commenters to resolve any problems and to make any necessary revisions to the Bulletins.

EPA also is working on making the maps easier to use. For example, EPA has been exploring various mapping formats in attempting to convey information to pesticide users most effectively. In some cases, township-range-section designation may be the best way to delineate the habitat of a species, while in other situations, local landmarks such as roads or streams may work more effectively.

The Bulletins also will contain a printing date to indicate the date the Bulletin was issued. As new information becomes available and a Bulletin is revised, EPA will issue a new, revised Bulletin with a new printing date. This Bulletin will supersede the Bulletin previously issued, as identified by the new printing date. EPA will review the County Bulletins as necessary, but generally will not update them more than once annually.

Specific Input Requested - County Bulletins

County Bulletins will be the main basis for conveying information to pesticide users. The Agency is particularly interested in comment on various aspects of these documents as detailed below. (To facilitate comment, an Interim Pamphlet may be printed from the Web site at *www.epa.gov/espp/usa-map.htm*.)

- Are there ways to make the instructions for use easier to understand?
- Is the mapped information depicted in a way that is understandable? For example, is the use of township-range-section designations appropriate?
- Is the use of natural and man-made landmarks appropriate?
- Is it clear what pesticides are subject to what use modifications to protect listed species?
- Are there ways to make the protection measures easier to understand?
- Are the narrative descriptions of habitat or of species as a map supplement helpful?
- How can the Agency make protection areas as specific as possible without infringing on the privacy of individual landowners, who may be the sole custodians of a species on their property, while still protecting the species and not subjecting the species to potential harm by revealing its specific location?
- How can EPA ensure that growers know they have the most recent Bulletins?
- Is annual updating of the Bulletins the right frequency? If not, how often should EPA update them?
- How can EPA work with States to improve the development of Bulletins?

C. Bulletin Distribution Procedures

EPA has been developing its distribution plan for Bulletins and other ESPP information. A key factor in developing this plan is to make sources of Bulletins and other information convenient to pesticide users. In addition, different mechanisms may be appropriate for different States and Tribes. As a result, distribution mechanisms could include several or all of the following methods, depending on the State or Tribe:

1. Mechanisms identified by SLAs.
2. Direct mailing to pesticide applicators within an affected county.
3. Pesticide dealers and distributors. Ideally, Bulletins will be available when and where pesticide applicators buy or obtain their pesticides.
4. Cooperative Extension Service, Natural Resources Conservation Service, Agricultural Stabilization and Conservation offices, and USDA county offices in the vicinity of affected counties.
5. The Services' regional and field offices, where appropriate.
6. EPA Headquarters, Regional offices, EPA's toll-free number and Web site.

EPA plans to evaluate these mechanisms continually and to modify any part of the distribution process as the need arises and as more is learned about the effectiveness of the various mechanisms.

Specific Input Requested - Bulletin Distribution

- Are the mechanisms identified for Bulletin distribution appropriate?
- What other mechanisms would be of value?

D. Amending Pesticide Labels to Reference County Bulletins

EPA proposes to request label amendments of pesticide products for which protection measures have been identified. This amendment would generally include a statement directing the user to follow the information in the County Bulletin. The label also would include a statement regarding the

potential for effects to listed species. Finally, the label would include information on how the user can obtain the County Bulletin. The County Bulletins, in turn, would contain specific information on species and areas where protection measures were necessary. Such a system would help ensure that pesticide users are aware, before applying pesticides, of both the potential harm to listed species and how they can obtain information necessary to protect listed species.

The Agency has several approaches to requesting label amendments for currently registered pesticides. In Reregistration Eligibility Decisions (REDs), the Agency can make clear its regulatory position on listed species protection and indicate the labeling that would be necessary for products to be considered eligible for reregistration. The Agency also could issue a Pesticide Registration (PR) Notice requesting amendments of pesticide labels for which limitations have been identified to protect listed species or critical habitat. The Agency also could determine that in the absence of the amended label language, the pesticide would no longer meet the risk/benefit standard of FIFRA and would, therefore, be subject to cancellation.

The Agency intends to use the first approach when completion of a listed species and critical habitat assessment and the identification of use limitations coincides with completion of a RED. However, this approach will not work in those instances where these two activities are not coincidental (i.e., the RED is completed ahead of the listed species determinations or vice versa).

To facilitate label changes in these situations, the Agency would first review the existing Interim Pamphlets to determine that the information is current. The Agency then intends to prepare a PR Notice that will generally request registrants of products in those Pamphlets to make label changes relative to listed species. Specific suggested label language would be articulated in the PR Notice. After passage of the time frames that would be articulated in that Notice, products for which revised label statements are requested, and which do not bear that statement, may be considered misbranded under FIFRA section 12(a)(1)(E) and may be subject to a Notice of Intent to Cancel. If necessary, subsequent PR Notices would generally be issued annually to request label changes for additional products. These Notices will also indicate any products that have been removed from the Program.

Because the label statements would not be county-specific or use-site specific, registrants would not need to change their product label once the appropriate changes have been made, if protection measures are extended to new locations or new species need protection. Label changes would be necessary only if the protective measures specified in the Bulletin are rescinded for all uses of the product. As noted in Unit III.H., the Agency intends to take public input on several phases of listed species assessment before implementing new measures.

The Agency proposes the following generic label statement be adopted for instructing pesticide users about listed species protection:

This product may have effects on federally listed threatened and endangered species or critical habitat in some counties. When using this product, you must follow the measures contained in the County Bulletin for the county in which you are applying the pesticide. To determine whether your County has a Bulletin consult *http://www.epa.gov/espp/usa-map.htm*. Bulletins also may be available from local pesticide dealers, extension offices, or State pesticide agencies.

Specific Input Requested - Labels

The Agency specifically requests comment on how best to accomplish label changes to protect listed species, where EPA, FWS or NOAA Fisheries has identified use limitations to ensure protection. The Agency also seeks suggestions for specific label language to relay the information articulated in this section.

E. Enforcement

For pesticide products determined to affect listed species or critical habitat, the Agency is proposing that the product labels carry a statement directing users to follow the appropriate County Bulletin in effect at the time of product application. Another option is that all Bulletins published by an annual date certain will be in effect for 12 months. In either case, pesticide users who fail to follow provisions applicable to their pesticide application, whether that failure results in harm to a listed species or not, would be subject to enforcement under the misuse provisions of FIFRA (section 12(a)(2)(G)).

Specific Input Requested - Enforcement

In connection with these approaches, EPA seeks public comment on whether:

- Either or both of these approaches provide effective means to implement species protection.
- There are alternative means to ensure appropriate protection of species that may be adversely affected from the use of a pesticide.

F. Enhancing Monitoring Programs

Evaluating the extent to which the ESPP is protecting and contributing to the conservation of listed species can be accomplished in several ways. Potential options include monitoring to determine the degree to which pesticide users in affected areas are or are not applying pesticides in accordance with the County Bulletins, best management practices associated with landowner agreements, and State-specific approaches.

To determine the feasibility of this type of monitoring, EPA proposes several pilot studies. At least two States would conduct a pilot study with the Agency regarding adherence to information in the Bulletins. States selected for this pilot would be from among those that are currently working on more efficient ways to distribute County Bulletins. EPA also proposes that another State, from among those currently employing landowner agreements in their endangered species protection efforts, pilot a review of the effectiveness of landowner agreements. Finally, the Agency proposes that two additional States assist in piloting a review of the effectiveness of State-specific approaches (Unit II.E.3.b.). Again, the States selected for this pilot would be from among those that have implemented protection programs that vary from EPA's proposal in some significant respect.

Also, it is important that data being collected through acceptable sources be used to the fullest extent possible to maximize efficiencies and minimize costs. EPA proposes to use more effectively the information being obtained by the U.S. Geological Survey to detect pesticides in surface and ground water, information provided to EPA's Office of Water under the Clean Water Act, and State-level ground or surface water monitoring resulting from State pesticide program efforts. EPA will also use the technical data identified during section 7 consultations with the Services. EPA proposes to analyze this information to determine if residues of pesticides are occurring at levels of concern in aquatic environments. Further, EPA proposes to augment these data with targeted terrestrial residue monitoring, possibly to include post-registration monitoring by registrants or others. Locations would be determined with input from the Services and the appropriate State or Tribe, based on proximity of pesticide use sites with species locations. If such pilots result in broader monitoring, this would be conducted as part of the States' or Tribes' ongoing enforcement efforts.

Finally, EPA would continue and improve upon its cooperation with the Services, States, Tribes, and others to review reported incidents in which pesticides have had an impact on listed species and critical habitat. EPA has been working with FWS field offices throughout the country, as well as other Federal and State agencies, to ensure that EPA has the best possible information on incidents. EPA's Environmental Fate and Effects Division maintains an Ecological Incidents Information System. EPA also gathers incident information from registrant reports submitted under FIFRA section 6(a)(2), or those in which pesticide registrants report to the Agency on observed adverse effects.

Specific Input Requested - Enhanced Monitoring

In particular, the Agency is interested in obtaining public input on the following issues:

- The appropriate role of pesticide registrants and manufacturers in performing environmental monitoring.
- The role incident data could play in protecting listed species and critical habitat.
- Whether there are other ongoing monitoring programs EPA should consider reviewing routinely for information.
- The role the Services should play in monitoring programs.
- Other methods of monitoring that might be appropriate for the agencies to implement.
- How to improve the quality of information on the effects of pesticides on listed species and critical habitat.

G. Role of the States and Tribes

Because local and State and Tribal circumstances may influence the effectiveness of different approaches to listed species protection, States and Tribes will continue to be integral to the success of the ESPP. Specific roles include review of county maps; review of use limitations to protect species; determining the effectiveness of the program; and, at their discretion, development of alternative approaches for protecting listed species.

1. *Review of county maps.* States and Tribes will be requested to provide input to the Agency on county maps to accomplish several things. First, accuracy of the maps is key to success of relaying information to pesticide users. Therefore, States and Tribes will be requested to provide feedback on draft maps relative to whether they accurately depict landmarks, rivers, roads, etc. Further, State and Tribal input on how best to characterize use limitation areas on the County maps will be sought. For example, some States believe that their pesticide users would be best served by designating limitation areas based on township-range-section mapping, while other States believe their pesticide users would prefer designations based on natural and man-made landmarks such as rivers, roads and railways.

2. *Review of use limitations to protect species.* States and Tribes also will be requested to provide input to the Agency on any potential use limitations for species protection. The purpose of this review would be for the Agency to ascertain, based on local conditions, whether specific use limitations could be implemented. States and Tribes will also be sources of input on the technological and economic feasibility of implementing any proposed use limitations.

3. *Help determine the effectiveness of the program.* Because States and Tribes are in closer contact with pesticide users than is the Agency, they will be requested to assist the Agency in determining whether the ESPP as implemented is effective in protecting listed species. They also will be requested to assist in determining whether the limitations outlined in County Bulletins are being followed or modified based on local conditions, and whether any generic changes in the County Bulletins would improve the success of this program.

4. *Develop alternative approaches to protect listed species.* States and Tribes may develop and propose alternative plans for protecting listed species in their areas. Such a plan would recommend measures and approaches that EPA could use to protect listed species in that area. If these plans are submitted to EPA for review and approval, EPA will coordinate with the Services and consult, as appropriate, to determine that the provisions of the plan will provide adequate protections for listed species within that State or Tribal land. If EPA approves the plan following any necessary consultation with the Services, EPA would then adopt it and could require, through Bulletins, that users comply with the requirements of the plan. Alternative plans can be developed for all or a portion of the species affected in that State or Tribal land.

An alternative plan may be submitted to EPA at any time. However, once the federally initiated actions are implemented within an area, those requirements will be effective in that area until the alternative plan is approved for implementation.

H. Public Participation

EPA has encouraged the involvement of Federal agencies, States, Tribes and members of the public throughout the development of the ESPP and will continue to provide opportunities for public participation once the program is final. EPA intends the final ESPP to be as flexible as possible and to modify it as necessary to achieve the goals of protecting listed species and minimizing the impact on pesticide users. Eventually, the ongoing program will meld its components of public participation with existing practices in the registration and reregistration processes.

EPA will always welcome comments from the public on the various aspects of the program. EPA intends periodically to reevaluate the Program, review public comments, and modify the ESPP to continually improve protection of listed species while serving the public interest. Additionally, there are several major phases of a listed species assessment that have opportunity for public input: (1) Prior to a ''may affect determination'' by EPA, (2) subsequent to such determination but during development of information with which to consult with the Services, and (3) prior to issuance of a Biological Opinion to EPA by the Services. EPA proposes to engage the public in each of these phases as noted below. When any of these phases corresponds with a public participation phase under EPA's ongoing review processes (i.e, reregistration review), that ongoing public process will be used.

1. *Prior to a ''may affect determination.''* The Agency proposes to notify affected pesticide registrants and provide them an opportunity to update information or provide additional information relative to the determination. Subsequently, the Agency will make public in draft, any determination that a pesticide ''may affect'' a listed species. The public will have a 30–day opportunity to provide input to that determination.

2. *Subsequent to a ''may affect determination.''* The Agency will accept information provided for use during consultation with the Services. Information provided subsequent to a ''may affect determination'' being made will not be considered by the Agency alone but will be shared with the Services for joint consideration during consultation.

3. *Public comment on draft Biological Opinion.* The Agency intends to request that the Services provide draft Biological Opinions to the Agency upon

their development. The Agency will provide opportunity for public input to any reasonable and prudent measures or alternatives recommended by the Services in these draft Biological Opinions. The purpose of this review would be to determine whether the alternatives or measures can be reasonably implemented and whether there are alternative measures that may provide similar protection but result in less impact. The Agency will consider this input in developing its response to the draft Biological Opinions.

Specific Input Requested - Public Participation

The Agency seeks specific suggestions on how the public could most effectively be informed of the Agency's determinations and consultations. The Agency also seeks other suggestions for enhancing public involvement in the ESPP.

I. Implementation Timing

Once public comment on this Notice has been considered and a final Notice issued, the Agency intends to begin field implementation of the ESPP. At the same time, EPA recognizes that technical and consultation process issues may change based on input in response to the ANPR the Agency will issue with DOI and DOC on or about the same date as this Notice, or changes to FIFRA implementation regulations. However, the Agency believes the responsible approach is to implement in a timely manner, those aspects of listed species protection that the Agency can, while building modifications and efficiencies into the longer term effort of a sustained approach to protecting listed species.

Within 6 months of reviewing existing Interim Pamphlets for accuracy, the Agency intends to modify them as appropriate and issue them as County Bulletins. While the Bulletins will be widely available, they will be effective upon reference to them on pesticide labels. The Agency also will develop for public comment a PR Notice that will identify time frames in which the Agency anticipates that registrants could modify labels for these products.

Upon issuance of a final Notice of Program Field Implementation, the Agency will begin the process of reviewing, for endangered species implications, those pesticides for which REDs have already been issued but for which specific endangered species assessments were not completed during the RED process.

As pesticides are reviewed and determinations made for listed species, the Agency will begin creating Bulletins or preparing to include these pesticides in existing Bulletins, as appropriate. EPA will review the County Bulletins as necessary, but generally update them not more than once annually.

Specific Input Requested - Implementation Timing

How can EPA time the release of County Bulletins to minimize the potential disruption to pesticide users during a growing season?

J. Program Maintenance

To the degree possible, endangered species issues are and will be addressed within the Agency's existing processes of registration and reregistration. Concurrently, the Agency will review those pesticides that have been through reregistration and were found potentially to affect listed species, or did not undergo ESA review during reregistration. Once all registered pesticides have been re-evaluated, EPA's future obligations to consult under ESA will be fulfilled through an ongoing process of evaluation and referral. If new, valid information becomes available on existing pesticide registrations, or if new species affected by specific pesticides are listed under the ESA, EPA will re-evaluate its determinations and reinitiate consultation when appropriate. EPA anticipates that reinitiation on the basis of new information will occur on an annual or biannual basis, as necessary. EPA will periodically reinitiate consultation, as appropriate, on pesticides already included in the Program to obtain Biological Opinions for newly listed species. It is not the Agency's intent, however, to change product labels and County Bulletins constantly; rather, EPA intends to maintain the ability to act on listed species and critical habitat issues if a new body of data becomes available.

IV. References

All references are available for public review in the public docket. The references used in this document are:

1. U.S. Environmental Protection Agency. 2002. Process for Assessing Potential Risks to Endangered and Threatened Species and Consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

2. U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure, Ecological Risk Assessment.

3. U.S. Environmental Protection Agency. 1991. Report to Congress on the Endangered Species Protection Program as it Relates to Pesticide Regulatory Activities.

List of Subjects

Environmental protection, Pesticides, Endangered species.

Dated: November 25, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

[FR Doc. 02–30463 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–4]

CERCLA Administrative Consent Order Containing Proposed Past Costs Settlement Related to the Butternuts Landfill Superfund Site, Town of Butternuts, Otsego County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of an administrative consent order (''Order'') pursuant to sections 104, 106, 107, and 122 of CERCLA 42 U.S.C. 9604, 9606, 9607, and 9622, addressing, *inter alia*, proposed recovery of past response costs paid by EPA with regard to the Butternuts Landfill Superfund Site (''Site'') located in the Town of Butternuts, Otsego County, New York. The Order requires the settling party, Hugo Neu Schnitzer East (''Respondent''), to perform a removal action at the Site and also pay $40,000 in reimbursement of EPA's past response costs at the Site. The settlement includes a covenant not to sue the Respondent pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606, 9607(a), for performance of the removal action and for recovery of EPA's past costs and oversight costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating only to the portion of the Order which settles EPA's claim for recovery of its past response costs. EPA will consider all such comments received and may modify or withdraw its consent to the past costs settlement if comments received disclose facts or considerations that indicate that the proposed past costs settlement is inappropriate, improper or inadequate. EPA's response

to any comments received will be available for public inspection at EPA Region II office at 290 Broadway, 18th floor, New York, New York 10007–1866.

DATES: Comments must be submitted on or before January 2, 2003.

ADDRESSES: The Order is available for public inspection at EPA's Region II office at 290 Broadway, 18th floor, New York, New York 10007–1866. Comments should reference the Butternuts Landfill Superfund Site located in the Town of Butternuts, Otsego County, New York, Index No. CERCLA–02–2002–2028. To request a copy of the Order, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Henry Guzmán, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3166.

Dated: November 15, 2002.

William J. Muszynski,

Deputy Regional Administrator, Environmental Protection Agency, Region 2.

[FR Doc. 02–30464 Filed 11–29–02; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Thirteenth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on January 8, 2003, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: January 8, 2003; 2:30 p.m. to 4:30 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the thirteenth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the thirteenth meeting is as follows:

Agenda

Thirteenth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC 20554

January 8, 2003; 2:30 p.m. to 4:30 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Twelfth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–30402 Filed 11–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, December 3, 2002, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule—Revisions to 12 CFR part 303—Relating to Applications, Compliance and Enforcement.

Discussion Agenda

Memorandum and Resolution Re: 2003 FDIC Budget

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550, 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–3742.

Dated: November 26, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–30547 Filed 11–27–02; 9:14 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Reimbursement for Cost of Fighting Fire on Federal Property.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0141.

Abstract: The collection of information is required in order to reimburse fire services for claims submitted for fighting fires on property, which is under the jurisdiction of the United States and to determine the

amount authorized for payment. The FEMA Director, the United States Fire Administration Administrator, and the U.S. Department of Treasury will use the information to ensure proper expenditure of Federal funds.

Affected Public: Business or Other For Profit, Not-For-Profit Institutions, and State, Local or Tribal Government.

Number of Respondents: 4.

Estimated Time per Respondent: 1.5 hours.

Estimated Total Annual Burden Hours: 24 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov.*

Dated: November 25, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–30387 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Federal Hotel and Motel Fire Safety Declaration Form.

Type of Information Collection: Existing collection in use without OMB approval.

OMB Number: 3067—New.

Abstract: FEMA is required to establish and maintain a National Master List (NML) of approved fire safe hotels, motels, or other places of public accommodation. The Federal Hotel Motel Fire Safety Declaration Form is submitted either electronically or in a paper format, and used by property managers to report a property's compliance with safety equipment requirements. The NML is also available to Federal employees, States and the general public, and the hotel and motel industry.

Affected Public: Business or Other For-Profit, Not-For-Profit, and Federal Government.

Number of Respondents: 2,000 properties per year.

Estimated Time per Respondent: Property Owners—15 minutes; Property Owner Updates—3 minutes; State Burden—20 minutes.

Estimated Total Annual Burden Hours: 1,182 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. facsimile number (202) 646–3347or email address *InformationCollections@fema.gov*.

Dated: November 19, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–30388 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1440–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1440-DR), dated November 8, 2002, and related determinations.

EFFECTIVE DATE: November 10, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 10, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30390 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1440–DR]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1440–DR), dated November 8, 2002, and related determinations.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include Individual Assistance and Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the

catastrophe declared a major disaster by the President in his declaration of November 8, 2002:

Alaska Gateway Regional Educational Attendance Area with the communities of Dot Lake, Mentasta, Northway, Tanacross, and Tetlin. Copper River Regional Educational Attendance Area with the communities of Chistochina for Individual Assistance and Categories C through G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30391 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1444–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio, (FEMA–1444-DR), dated November 18, 2002, and related determinations.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 18, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio resulting from severe storms and tornadoes on November 10, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Hancock, Ottawa, Paulding, Putnam, Seneca, and Van Wert Counties for Individual Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30389 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 15, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30392 Filed 11–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 December 13, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Mark Charles Hewitt, Ventura, Iowa; to acquire additional voting shares of Arneson Bancshares, Inc., Clear Lake, Iowa, and thereby indirectly acquire additional voting shares of Clear Lake Bank and Trust Company, Clear Lake, Iowa.

Board of Governors of the Federal Reserve System, November 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30414 Filed 11–29–02; 8:45 am]

BILLING CODE 6210–01–S

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 Web site 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 December 23, 2002.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Commerce Bancorp, Inc., Cherry Hill, New Jersey; to acquire up to 8 percent of the voting shares of The Bancorp.com, Inc., Wilmington, Delaware, and thereby indirectly acquire voting shares of The Bancorp Bank, Wilmington, Delaware.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. New West Banks of Colorado, Inc., Greeley, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of New West Bank, Greeley, Colorado.

Board of Governors of the Federal Reserve System, November 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30413 Filed 11–29–02; 8:45 am]

BILLING CODE 6210–01–S

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 December 26, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Community Bancshares of West Georgia, Inc., Villa Rica, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of West Georgia (In Organization), Villa Rica, Georgia.

Board of Governors of the Federal Reserve System, November 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30478 Filed 11–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 3:45 p.m., Thursday, December 5, 2002.

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.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

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: November 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30620 Filed 11–27–02; 2:06 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: Federal Trade Commission.

TIME AND DATE: 10 a.m., Tuesday, January 7, 2003.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Portion Open to the Public:* (1) Oral Argument in Schering-Plough Corporation *et al.,* Docket 9297.

Portion Closed to Public: (2) Executive Session to follow Oral Argument in Schering-Plough Corporation, *et al.,* Docket 9297.

FOR FURTHER INFORMATION CONTACT: Mitch Katz, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 02–30651 Filed 11–27–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Notice and Request for Comment Regarding Textile Corporate Leniency Policy

AGENCY: Federal Trade Commission.

ACTION: Notice of Textile Corporate Leniency Policy Statement and request for comment.

SUMMARY: The Federal Trade Commission (the ''Commission'') is announcing a policy statement describing the Commission's approach to self-reported minor and inadvertent violations of certain provisions of the rules and regulations implementing the Textile Fiber Products Identification Act (''Textile Act''), 15 U.S.C. section 70, *et seq.*, and the Wool Products Labeling Act (''Wool Act''), 15 U.S.C. section 68, *et seq.* Although this policy is already in effect, the Commission is soliciting comments about this policy from interested persons. If, after considering any comments, the Commission determines to revise the policy, it will publish a revised policy statement.

DATES: The policy statement is effective on December 2, 2002. Comments must be received by December 31, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave. NW., Washington, DC 20580. All comments should be captioned ''Textile Corporate Leniency Comments.'' Comments in electronic form should be sent to: *textilecorporateleniency@ftc.gov* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2966, or *cvecellio@ftc.gov.*

SUPPLEMENTARY INFORMATION: This policy statement discusses how the Commission expects to consider mitigating factors in matters where minor and inadvertent violations of the Textile or Wool Rules are self-reported by a company. This policy statement provides guidance and information only, and does not create any rights, duties, obligations, or defenses, implied or otherwise. The Commission specifically retains its discretion for determining how to proceed in particular cases.

As noted above, the Commission is soliciting comments about this policy from interested persons. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *textilecorporateleniency@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii), on normal business days between the hours of 8:30 a.m. and 5 p.m. at Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

I. Introduction

The Commission is announcing a policy statement that describes generally how the Commission will exercise its discretion in matters where minor and inadvertent violations of the Textile or Wool Rules are self-reported by a company. The purpose of the policy is to help increase overall compliance with these rules while also minimizing the burden on business of inadvertent labeling errors that are not likely to cause injury to consumers. In developing this policy, the Commission looked for guidance to its existing Civil Penalty Leniency Program, 62 FR 16809 (April 8, 1997). That program was adopted under Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. No. 104–21) (''SBREFA''), and affects only small businesses. This Textile Corporate Leniency Policy is not limited to small businesses, and it differs from the Civil Penalty Leniency Program in that it is not limited to situations involving the assessment of civil penalties.

II. Background

A. Statutory Disclosure/Labeling Requirements

The Textile and Wool Acts cover most textile products, including apparel and home furnishings such as sheets and towels. They require that labeling of wool and other textile products convey three basic pieces of information to consumers: the fiber content, the country of origin, and the name (or registered identification number) of the manufacturer, importer, or some other dealer responsible for the item. The Textile and Wool Rules promulgated by the Commission explain in detail how this information should be conveyed, and these requirements have been well publicized through ''how to comply'' guides and industry seminars. The industry, however, is very large, and many of its members are small businesses. About 17.7 billion textiles were sold in the United States in 2001, and about 34,000 companies participated in the manufacture, importation, and sale of these items. Accordingly, it is not surprising that minor violations regularly occur.

B. Enforcement Authority and History

The Textile and Wool Acts provide that violations of those acts, or of the implementing Textile or Wool Rules, are violations of the Federal Trade Commission Act.[1] Violations of the Textile or Wool Rules can be prosecuted administratively or in district court. In addition, pursuant to section 5(l) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45(l), violation of a Commission administrative order can result in a federal court action, with civil penalties of up to $11,000 per violation. The Commission also can seek penalties in appropriate situations under section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B). Under this section, a company that engages in a

[1] Section 3 of the Textile Act, 15 U.S.C. 70a; Section 3 of the Wool Act, 15 U.S.C. 68a.

practice that the Commission has found to be unfair or deceptive in a prior decision also can be subject to civil penalties of up to $11,000 per violation. Thus, in appropriate instances, the Commission can seek civil penalties in federal court, even when the party is not subject to a prior order.

There have been 31 Textile or Wool Act cases since 1990—nine of them federal court actions with civil penalties ranging from $10,000 to $360,000. One of these cases was a criminal action. (Under both the Textile and Wool Acts, willful acts of mislabeling can be charged as a misdemeanor.)

C. Current Informal Policy for Self-Reported Violations

For many years, the staff of the Commission has been receiving reports from businesses about minor mislabeling problems and requests for advice on how to handle them. The staff has advised that it would not recommend enforcement action if the mislabeled goods are sold without relabeling under the following conditions: ''first offense'' of this type for the company; the mislabeling was inadvertent; the mislabeling is not likely to lead to consumer injury; and the company has undertaken to institute new procedures to ensure the mislabeling will not occur again. The Commission staff tells the company that its decision does not bind the Commission, and asks the company to affirm that it understands that the Commission remains free to take whatever action it deems appropriate and that the staff is making its decision not to recommend action on a one-time basis only. In many of these cases, the cost of relabeling is prohibitive, and the goods would be destroyed if they could not enter commerce without being relabeled.

The following is a list of the types of mislabeling that have been reported to the Commission staff and have resulted in advice from the Commission staff that it would not recommend enforcement action if the goods were sold without relabeling:

- Label with required information is accessible but not immediately obvious (*e.g.*, covered by another label that may be lifted up).
- Fiber content is correct but constituent fibers are not listed in order of prominence (*e.g.*, 20% polyester, 80% cotton instead of 80% cotton, 20% polyester).
- A trade name is used to identify the fiber rather than the generic name (*e.g.*, lycra rather than spandex).
- A shortened form of the generic name is used (*e.g.*, ''poly'' is listed rather than polyester).
- Label contains country of origin but is not in the neck of the garment.
- The fiber content is slightly incorrect (*e.g.*, 90% nylon, 10% spandex rather than 85% nylon, 15% spandex).[2]

In instances such as these, the Commission staff has advised companies that it would not recommend enforcement action. The Commission believes it will be useful to publicly announce this policy, for the benefit of those companies that are not aware that they have the option of self-reporting and seeking a one-time reprieve from the expense of relabeling mislabeled goods.

III. Textile Corporate Leniency Policy

The Commission announces that consideration of the following factors will lead the staff to allow mislabeled textiles to be sold without relabeling:

1. The entity reported the violation to the Commission promptly after discovering it and the violation has not been discovered by the Commission or any other government agency.
2. The entity undertakes, in writing, to adopt procedures that will help ensure that the violation does not occur in the future.
3. The entity has a low degree of culpability. The degree of culpability reflects the efforts taken by the entity to determine and meet its legal obligations.
4. The entity has not been granted leniency under this program in the last three years. In addition, it has not been subject to any previous enforcement action by the Commission or other federal, state, or local law enforcement jurisdiction for the same or similar conduct. Where there have been prior enforcement actions, however, the Commission staff may take into consideration, as possible mitigating factors, when the previous enforcement action occurred, and whether the entity's management has changed since the previous enforcement action, and other appropriate factors (for example, the use of a new sub-contractor).
5. The entity's violations did not involve willful or criminal conduct.
6. The violations do not cause significant injury to consumers.

As noted, the Commission looked to its Civil Penalty Leniency Program under SBREFA for guidance. The factors listed above are in most cases identical to, or similar to the factors listed in the SBREFA program. Factor 1 is similar to SBREFA factor 1 except that the Textile Corporate Leniency Program includes the additional requirement that no other government agency has discovered the violation.[3] Factor 2 differs from the second SBREFA factor, which states that the entity ''corrected the violation within a reasonable time, if feasible.'' Under the Textile Corporate Leniency Policy, however, the entity is allowed to sell the mislabeled goods without correcting the mislabeling, for the reasons stated above, but it must undertake to adopt procedures that will help ensure that the mislabeling does not occur in the future. Factor 3 is identical to factor 3 in the SBREFA program in that the efforts taken by the entity to determine and meet its legal obligations are important in determining culpability. In the SBREFA program, however, efforts to comply with the law ''are judged in light of such factors as the size of the business; the sophistication and experience of its owners, officers, and managers; the length of time it has been in operation; the availability of relevant compliance information; the clarity of its legal obligations; and any active attempts to clarify any uncertainties regarding its obligations.'' Because a company can have minor and inadvertent violations of the Textile and Wool Rules in spite of its size or sophistication or the other factors listed in the SBREFA statement, the relevant criteria for culpability, or lack thereof, in this program is based on the efforts taken by the entity to determine and meet its legal obligations.

Factor 4 in the SBREFA program—ability to pay the usual civil penalty—is not relevant to this program. Factor 4 in this program is identical to factor 5 in the SBREFA program, except that there is an additional requirement that the entity has not been granted leniency under this program in the last three years. Factor 5 in this program is identical to factor 6 in the SBREFA program, requiring that the conduct not be willful or criminal. Factor 6 in this program is similar to the last factor in the SBREFA program, except that reference to health, safety, and environmental threats has been omitted because the Textile and Wool Rules do not address health, safety, or environmental issues.

The policy announced today is not limited to small businesses because the Commission believes it is a desirable policy for any business, large or small, that meets the criteria described above.

[2] The Textile Act itself provides a 3% tolerance, so variations of less than 3% do not violate the Act.

[3] In particular, violations of labeling rules discovered by U.S. Customs are not eligible for consideration under this policy. The Commission staff currently cooperates informally with U.S. Customs in assessing the seriousness of labeling violations, and will continue to do so.

Nevertheless, the Commission believes it is primarily small businesses that will benefit from the publication of the policy because they, unlike larger businesses, may be unaware that self-reporting and seeking a one-time reprieve from relabeling is an option. For that reason, the Commission has used Section 223 of SBREFA as a model. Section 223 of SBREFA requires that agencies establish policies to reduce or waive penalties for small entities in appropriate circumstances. The primary goal of this provision is to foster a more cooperative, less threatening regulatory environment for small entities. Although the Commission has already established the policies required by SBREFA, it believes that the proposed corporate leniency policy for violations of the Textile and Wool Rules will also foster a more cooperative, less threatening regulatory environment for small entities. In addition, the Commission believes that the informal policy developed by Commission staff has resulted in more compliance with the Textile and Wool Rules because it has encouraged self-reporting of violations and subsequent reform of internal company policies to avoid future violations. The Commission believes that the policy announced today will also result in more compliance with those rules for the same reason.

IV. Request for Comments

Members of the public are invited to comment on any issues or concerns that they believe are relevant or appropriate to the policies described above. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies specific issues on which it solicits public comments. This list is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Should the Commission revise in any way the corporate leniency policy that it has announced? (*e.g.*, should the policy be revised to include other possible violations, such as catalog disclosure requirements?) If so, please provide specific suggestions.

(2) How would the revisions affect the benefits provided by the policy?

(3) Are any of the criteria that the Commission has used in establishing the leniency policy inappropriate? If so, please explain.

(4) Are there any other criteria that the Commission should use? If so, please elaborate.

Such comments may be filed until December 31, 2002.

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41 *et seq.*; 15 U.S.C. 68 *et seq.*; 15 U.S.C. 70 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–30479 Filed 11–29–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Public Health Emergency Preparedness; Office of Public Health and Science; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, Chapter AN, ''Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)''; Chapter AB, Deputy Secretary, Chapter ABC as last amended at 66 FR 40288, dated August 2, 2001; and Chapter AC, the ''Office of Public Health and Science (OPHS)'' as last amended at 67 FR 48903–48905, dated 7/26/2002; and ACK ''Office of the Surgeon General (OSG),'' OPHS, as last amended at 60 FR 56606–06, dated November 9, 1995. This organizational change is primarily to realign the functions of the OASPHEP to more clearly delineate responsibilities for the various activities associated with emergency preparedness and response. The changes are as follows:

I. Under Part A, Chapter AN, ''Office of the Assistant Secretary for Public Health Emergency Preparedness,'' delete in its entirety and replace with the following:

Office of the Assistant Secretary for Public Health Emergency Preparedness (AN)

AN.00 Mission
AN.10 Organization
AN.20 Functions

Section AN.00 Mission. On behalf of the Secretary, the Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) directs and coordinates HHS-wide efforts with respect to preparedness for and response to bioterrorism and other public health emergencies. OASPHEP will direct the National Disaster Medical System (NDMS) and any other emergency response activities within the Department of Health and Human Services that are related to bioterrorism and other public health emergencies. OASPHEP is responsible for ensuring a ''One-Department'' approach to developing such preparedness and response capabilities and directs and coordinates relevant activities of the OPDIVs.

Section AN.10 Organization. The Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) is headed by an Assistant Secretary for Public Health Emergency Preparedness (ASPHEP), who reports directly to the Secretary, and includes the following components:

- Immediate Office of the ASPHEP (ANA)
- Office of Research and Development Coordination (ANB)
- Office of Emergency Response (ANC)
- Office of Planning and Emergency Response Coordination (ANE)
- Office of State and Local Preparedness (ANF)

Section AN.20 Functions

1. *Immediate Office of the Assistant Secretary for Public Health and Emergency Preparedness (ANA).* The Immediate Office of the ASPHEP provides executive and administrative direction to OASPHEP components. The ASPHEP is the principal advisor to the Secretary on matters relating to bioterrorism and other public health emergencies. The ASPHEP coordinates interagency interfaces between HHS and other Departments, agencies, offices of the United States and state and local entities with responsibility for emergency preparedness and direct activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The ASPHEP provides the necessary leadership and coordinates activities for emergency preparedness matters internal to the Office of the Secretary's components and represents the HHS in working closely with the **Federal Emergency** Management Agency and other Federal departments and agencies. OASPHEP acts as the lead Federal agency for Emergency Support Function #8 within the Federal Response Plan.

2. *Office of Research and Development Coordination (ANB).* The Office of Research and Development Coordination (ORDC) is headed by a Director and is responsible for research

and development toward new vaccines, diagnostics, and drugs related to the pathogenic organisms most likely to be used in a terrorist attack on the U.S. homeland. A key function of ORDC is to direct and coordinate activities related to the development of vaccines and other pharmaceuticals to be included in the National Pharmaceutical Stockpile. ORDC supports the ASPHEP by working with all scientific agencies of the Department, including the National Institutes of Health (NIH), the Centers of Disease Control and Prevention (CDC), and the Food and Drug Administration (FDA), as well as other governmental, private, and non-profit scientific entities.

3. *Office of Emergency Response (ANC).* The Office of Emergency Response (OER) is responsible for supporting the interdepartmental NDMS Senior Policy Group and Directorate Staff; enrolling Disaster Medical Assistance Teams (DMAT), Disaster Mortuary Operational Response Teams (DMORT), National Medical Response Teams (NMRT), Veterinary Medical Assistant Teams (VMAT), International Medical Surgical Response Teams (IMSuRT) and specialty team volunteers; maintaining the national NDMS data base; and supporting NDMS personnel requirements during training exercises and deployments; credentialing for NDMS team members; developing and implementing policies, procedures, and guidance for NDMS; developing and coordinating of web-based training and development and implementation of field training for NDMS; overseeing Federal Coordinating Centers; facilitating hospital claims processing; interfacing with and supporting the Metropolitan Medical Response Systems localities; and development of the yearly NDMS conference.

a. *The Division of Emergency Response Operations (ANC1):* The Division of Emergency Response Operations (DERO) is responsible for developing national DMATs, DMORTs, NMRTs, VMATs, IMSuRTs, and specialty teams capable of dealing with health and medical consequences of natural and man-made disasters, and terrorist incidents involving mass casualties, improving the communications infrastructure to support NDMS field response resources, especially for mass casualty incidents; maintaining the equipment required for emergency responses; and managing the Emergency Operations Center.

1. *National Disaster Medical System (NDMS) Branch (ANC11):* NDMS Branch is responsible for supporting the interdepartmental NDMS Senior Policy Group and Directorate Staff; enrolling Disaster Medical Assistance Teams (DMAT), Disaster Mortuary Operational Response Teams (DMORT), National Medical Response Teams (NMRT), Veterinary Medical Assistant Teams (VMAT), International Medical Surgical Response Teams (IMSuRT) and specialty team volunteers; maintaining the national NDMS data base; supporting NDMS personnel requirements during training exercises and deployments; credentialing for NDMS team members; developing and implementing policies, procedures, and guidance for NDMS; developing overall coordination of web-based training and development and implementation of field training for NDMS; overseeing Federal Coordinating Centers; facilitating hospital claims processing; and development of the yearly NDMS conference, including the award ceremony.

2. *The Field Operations Branch ANC12):* The Field Operations Branch (FOB) is responsible for developing national DMATs, DMORTs, NMRTs, VMATs, IMSuRTS, and specialty teams capable of dealing with health and medical consequences of natural and man-made disasters and terrorist incidents involving mass casualties; improving the communications infrastructure to support NDMS field response resources, especially for mass casualty incidents; maintaining the equipment required for emergency response; managing the Emergency Operations Center during emergencies; working with the Department of Veterans Affairs to achieve appropriate pharmaceutical availability, especially for mass casualty incidents; and establishing Management Support Teams at the site of emergencies.

b. *The Division of Administration and Support (ANC2).* The Division of Administration and Support (DAS) is responsible for OER budget execution and formulation, personnel and procurement actions, and other administrative activities. To accomplish these tasks, DAS works with the OASPHEP Operations Officer; and the Office of the Secretary Executive Office (OSEO) and OER program managers to develop solutions to administrative related problems and to develop more effective and efficient administrative support for accomplishing OER activities. DAS also provides staff support for the OASPHEP Operations Officer in coordinating cross-cutting activities.

4. *Office of Planning and Emergency Response Coordination (ANE).* The Office of Planning and Emergency Response Coordination (OPERC) is headed by a Director, who reports to the ASPHEP and is responsible for ensuring that the ASPHEP has in place the systems and processes necessary to coordinate the HHS response to bioterrorism and other public health emergencies. OPERC represents the ASPHEP in the planning and execution of activities to support the Continuity of Government in times of crisis. Key functions of OPERC include: (1) Development and direction of the Secretary's Command Center; (2) implementation and management of the Secretary's Emergency Response Teams; (3) development of the HHS Continuity of Operations Plan (COOP) and coordination of its execution whenever required; (4) direction and coordination of HHS activities under the Federal Response Plan (especially Emergency Support Function #8); (5) liaison with the OASPHEP Office of Emergency Response (OER); (6) primary HHS liaison with emergency response entities elsewhere within HHS (especially CDC and FDA), within other Departments and Agencies (especially the Office of Homeland Security, the Department of Justice, the Department of State, and the Federal Emergency Management Agency), and within other Nations and multi-national organizations such as the World Health Organization; (7) planning, development, and implementation of exercises and other tools for assessing the readiness of HHS emergency response entities; and (8) professional education and training of OPERC personnel and response staff.

a. *The Readiness Enhancement and Assessment Program (ANE1).* The Readiness Enhancement and Assessment Program (REAP) is responsible for evaluating the response capabilities of the Department, through its many operational assets (*e.g.,* the National Medical Disaster System, the Commissioned Corps Readiness Force, and the Epidemic Intelligence Service). Through this analysis, REAP will recommend and implement necessary changes to operational plans, Departmental functions and policy guidance. The REAP will design, implement and analyze internal and external exercises, both functional and command post. REAP supports the Director OPERC and the ASPHEP by providing analytical analysis of plans, operations and exercises, making recommendations for future improvements.

b. *The Secretary's Emergency Response Team Office (ANE2).* The Secretary's Emergency Response Team (SERT) Office is responsible for coordinating health activities between

state or local government officials involved on site with emergency incidents and the Secretary of Health and Human Services or his representative. The SERT will design, roster, equip, train and exercise a rapidly deployable group of personnel to support the combined local, state and national response to public health emergencies. The SERT will provide on-site policy guidance and communications linkages between field operations and the ASPHEP.

c. *Secretary's Command Center (ANE3).* The Secretary's Command Center (SCC) is responsible for coordinating all information received by the HHS related to public health emergencies. The SCC shall monitor both internal and external information sources and communicate relevant information directly to the ASPHEP or the Secretary. The SCC will serve as the single point of contact for all public health emergencies providing 24 hour staffing, 7 days a week, 365 days a year. During emergencies, the SCC shall serve as the focal point for liaison activities within HHS.

5. *Office of State and Local Preparedness (ANF).* The Office of State and Local Preparedness (OSLP) is headed by a Director, who reports to the ASPHEP and is responsible for directing and coordinating the activities of HHS Operating and Staff Divisions with respect to enhancing state and local preparedness for bioterrorism and other public health emergencies. OSLP takes the lead in developing policies, plans and strategies that are intended to strengthen and upgrade State and local public health and medical capacities to respond to bioterrorism. OSLP is also responsible for ensuring stewardship of the federal investment in State and local preparedness and provides oversight, in collaboration with the Operating Divisions. Such oversight will include financial auditing, project monitoring and readiness assessment.

II. Under Part A, Chapter AB, Deputy Secretary,'' add the following new component ''Security Clearance and Drug Testing Office (ABE):''

Security Clearance and Drug Testing Office (ABE). The Security Clearance and Drug Testing Office (SCDTO) reports directly to the Deputy Secretary and receives operational oversight from OASPHEP. (1) provides Department-wide guidance for policy, oversight, and operations of personnel security; classified information; and telecommunication security; and (2) coordinates the Department's drug-free workplace program, which includes scheduling drug and alcohol testing.

III. Under Part A, Chapter AC, ''Office of Public Health and Science,'' add the following new paragraph at the end of Section AC.20 Functions, Paragraph K, ''Office of the Surgeon General (ACK)''.

The Commissioned Corps Readiness Force (CCRF) is responsible for developing, commanding, deploying and coordinating a specialized cadre of U.S. Public Health Service (PHS) officers uniquely qualified by education and skills, who can be mobilized in times of extraordinary need during disaster, strife, or other pubic health emergencies. In coordination with the Assistant Secretary for Public Health and Emergency Preparedness (ASPHEP), the CCRF will respond to domestic or international requests to provide leadership and expertise by directing, enhancing, and supporting the services of the PHS and other HHS Operating Divisions, other U.S. government agencies or other responders.

IV. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the functions contained in this reorganization, heretofore issued and in effect prior to the date of this reorganization, are continued in full force and effect.

V. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

VI. *Funds, Personnel and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: November 21, 2002.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 02–30458 Filed 11–29–02; 8:45 am]

BILLING CODE 4150–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–5, CMS–R–96, CMS–209]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as 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.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; Title of Information Collection: Physician Certifications/Recertifications in Skilled Nursing Facilities (SNFs) Manual Instructions and Supporting Regulations in 42 CFR Section 424.20; *Form No.:* CMS–R–5 (OMB# 0938–0454); *Use:* This information collection requires SNFs to keep record of physician certifications and recertifications of information such as the need for care and services, estimated duration of the SNF stay, and plan for home care.; *Frequency:* On occasion; *Affected Public:* State, local or tribal government, individuals or households, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 2,068,716; *Total Annual Responses:* 883,838; Total Annual Hours: 441,793.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Emergency and Foreign Hospital Services-Beneficiary Statement in Canadian Travel Claims and Supporting Regulations in 42 CFR, Section 424.123; *Form No.:* CMS–R–96 (OMB# 0938–0484); *Use:* Payment may be made for certain part A inpatient hospital services and part B outpatient hospital services provided in a non-participating U.S. or foreign hospital when services are necessary to prevent the death or serious impairment of the health of the individual. This statement must be submitted by the beneficiary to support their claim for payment.; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 1,100; *Total*

Annual Responses: 1,100; *Total Annual Hours:* 275.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1—493.2001; *Form No.:* HCFA–0209 (OMB# 0938–0151); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. Information on personnel qualifications of all technical personnel is needed to ensure the sample is representative of all laboratories; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal government, and State, local or tribal government; *Number of Respondents:* 22,500; *Total Annual Responses:* 11,250; *Total Annual Hours:* 5,625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS 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 CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 21, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30366 Filed 11–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–855]

Agency Information Collection Activities: Proposed collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), 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 Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Federal Health Care Programs Provider/Supplier Enrollment Application; *Form No.:* CMS–855 (OMB# 0938–0685); *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, pricing and paying their claims, and verifying their qualifications and eligibility to participate in Medicare; *Frequency:* Initial enrollment/recertification and Every three years; *Affected Public:* Business or other for-profit, individuals or households, and not-for-profit institutions; *Number of Respondents:* 274,000; *Total Annual Responses:* 274,000; *Total Annual Hours:* 642,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS 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 CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 25, 2002.

Julie E. Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30377 Filed 11–26–02; 11:20 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–250]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as 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 Collection Request: Extension of a currently approved collection; *Title of Information Collection:* SNF Resident Assessment MDS Data and Supporting

Regulations in 42 CFR, Sections 413.337, 413.343, 424.32, and 483.20; *Form No.:* CMS–R–250 (OMB# 0938–0739); *Use:* Skilled Nursing Facilities (SNFs) are required to submit the resident assessment data as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data for the 5th, 30th, 60th, and 90th days following admission, necessary to administer the payment rate methodology described in Section 413.337, are subject to the Paperwork Reduction Act. The burden associated with this is the SNF staff time required to complete the Minimum Data Set (MDS), SNF staff time to encode, and SNF staff time spent in transmitting the data.; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 17,000; *Total Annual Responses:* 2,657,859; *Total Annual Hours:* 1,993,394.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS 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 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 21, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30365 Filed 11–29–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0486]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Marketing Act of 1987

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293).

DATES: Submit written or electronic comments on the collection of information by January 31, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements—21 CFR part 3 (OMB Control Number 0910–0435)—Extension

FDA is requesting OMB approval under the PRA for the reporting and recordkeeping requirements contained in the regulations implementing PDMA. PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk of counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as American goods returned causing a health and safety risk to American consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against American manufacturers and had

provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

TABLE 1.—REPORTING AND RECORDKEEPING REQUIREMENTS

21 CFR Section	Requirements
203.11	Applications for reimportation to provide emergency medical care.
203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier).
203.30(a)(3), (a)(4), and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier).
203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier).
203.31(a)(3), (a)(4), and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier).
203.37(a)	Investigation of falsification of drug sample records.
203.37(b)	Investigation of a significant loss or known theft of drug samples.
203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.

TABLE 1.—REPORTING AND RECORDKEEPING REQUIREMENTS—Continued

21 CFR Section	Requirements
203.38(a)	Printing lot or control numbers on the drug sample unit label.
203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.
203.50(a)	Drug origin statement.
203.23(a) and (b)	Credit memo for returned drugs.
203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs.
203.30(a)(2) and 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized to prescribe the product.
203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives.
203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
203.31(e)	Lists of manufacturers' and distributors' representatives.
203.34	Written policies and procedures describing administrative systems.
203.37(a)	Report of investigation of falsification of drug sample records.
203.37(b)	Report of investigation of significant loss or known theft of drug samples.
203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed.
203.39(d)	Records of drug samples destroyed or returned by a charitable institution.
203.39(e)	Record of drug samples donated to a charitable institution.
203.39(f)	Records of donation and distribution or other disposition of donated drug samples.

TABLE 1.—REPORTING AND RECORDKEEPING REQUIREMENTS—Continued

21 CFR Section	Requirements
203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
203.50(a)	Drug origin statement.
203.50(b)	Retention of drug origin statement for 3 years.
203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals:

(1) To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care;

(2) To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any drug sample;

(3) To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;

(4) To require licensed or authorized practitioners to request samples in writing;

(5) To mandate storage, handling, and recordkeeping requirements for drug samples;

(6) To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization;

(7) To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.11	12	1	12	.5	6
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4), and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4), and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	25	1	25	6.00	150
203.37(b)	200	1	200	6.00	1,200
203.37(c)	50	1	50	1.00	50

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.37(d)	2,208	1	2,208	.08	177
203.38(a)	2,208	1	2,208	3.00	6,624
203.39(g)	3,221	1	3,221	2.00	6,442
203.50(a)	125	100	12,500	.08	1,000
Total					2,300,628

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400
203.31(d)(1) and (d)(2)	2,208	1	2,208	40.00	88,320
203.31(d)(4)	442	1	442	24.00	10,608
203.31(e)	2,208	1	2,208	1.00	2,208
203.34	2,208	1	2,208	40.00	88,320
203.37(a)	25	1	25	18.00	450
203.37(b)	200	1	200	18.00	3,600
203.38(b)	2,208	14,543	32,111,457	.02	642,229
203.39(d)	65	1	65	1.00	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8.00	25,768
203.39(g)	3,221	1	3,221	8.00	25,768
203.50(a)	125	100	12,500	.17	2,125
203.50(b)	125	100	12,500	.50	6,250
203.50(d)	691	1	691	2.00	1,382
Total					1,061,368

[1] There are no operating and maintenance costs or capital costs associated with this collection of information.

Dated: November 21, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30404 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1527]

Laverne M. Charpentier; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Ms. Laverne M. Charpentier's request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Ms. Laverne M. Charpentier for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Charpentier was convicted of a felony under Federal law for conspiring to make false statements in matters within the jurisdiction of a Government agency, and that Ms. Charpentier's conduct undermined the process for the regulation of drugs. Ms. Charpentier has failed to file with the agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: This order is effective December 2, 2002.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

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

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1997, the U.S. District Court for the Central District of California accepted the plea of Ms. Laverne M. Charpentier to one count of conspiring to make false statements in matters within the jurisdiction of a Government agency under 18 U.S.C. 371 and 1001.

Ms. Charpentier, a former drug study coordinator, was employed by a private company retained by drug manufacturers to conduct clinical studies of new pharmaceutical products to be submitted to FDA in support of approval of the drug products. In her capacity as a drug study coordinator, Ms. Charpentier participated in the conduct of clinical studies to test the safety and effectiveness of investigational new drugs. Ms. Charpentier admitted that she, among other things: (1) Falsely reported that certain subjects participated in clinical trials when in fact, they had not; (2) substituted samples and data from qualifying subjects for nonqualifying subjects; and (3) enrolled nonexistent and nonqualifying subjects in the clinical studies and falsified data for those nonexistent and nonqualifying subjects.

As a result of Ms. Charpentier's conviction, FDA served her by certified letter on May 14, 2002, a proposal to debar her for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Ms. Charpentier an opportunity for a hearing on the proposal. FDA based the debarment proposal on a

finding, under section 306(b)(2)(B)(i)(II) and (a)(2) of the act (21 U.S.C. 335a(b)(2)(B)(i)(II) and (a)(2)) that Ms. Charpentier was convicted of a felony under Federal law for conspiring to make false statements in matters within the jurisdiction of a Government agency, FDA, and that Ms. Charpentier's conduct undermined the process for the regulation of drugs.

The certified letter also informed Ms. Charpentier that her request for a hearing could not rest upon mere allegations or denials, but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also informed Ms. Charpentier that if it conclusively appeared from the face of the information and factual analyses in her request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, FDA would enter summary judgment against her and deny her request for a hearing.

In a letter dated May 28, 2002, Ms. Charpentier requested a hearing on the proposal and indicated she would submit further information to justify a hearing. Ms. Charpentier filed a letter dated July 1, 2002, in which she again requested an opportunity for a hearing. In her request for a hearing, Ms. Charpentier discusses her motives for her illegal conduct, her embarrassment and her financial problems resulting from her conviction. Such matters do not create a basis for a hearing because hearings will not be granted on mere allegations, denials, or general descriptions of positions and contentions, nor on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)(2) and (b)(3)).

II. Denial of Hearing

In her requests for a hearing, Ms. Charpentier does not present any arguments or information to show why she should not be debarred. Ms. Charpentier acknowledges that the agency is aware of the facts and states that she submitted the July 1, 2002, request for a hearing to set forth ''some of the circumstances that led up to this unfortunate situation.'' Ms. Charpentier's explanation of the facts leading to her conviction does not raise a genuine and substantial issue of fact requiring a hearing.

Ms. Charpentier is subject to permissive debarment based on: (1) FDA's findings that she was convicted of a Federal felony that undermined the regulatory process (section 306(b)(2)(B)(i)(II) and (a)(2) of the act)) and (2) FDA's determination that debarment is appropriate in this case based on a consideration of applicable factors set forth in section 306(c)(3) of the act. After FDA finds that the statutory criteria for permissive debarment has been met, the only relevant issue is whether Ms. Charpentier was, in fact, convicted as alleged in the proposal to debar. Ms. Charpentier does not dispute that she pled guilty to one Federal felony count for actions that undermined the regulation of drug products. In fact, in her letter of July 1, 2002, Ms. Charpentier: (1) Acknowledges wrongdoing, stating that she made a ''big mistake''; (2) expresses her remorse; and (3) offers an apology for her illegal conduct. Section 306(l)(1)(B) of the act includes in its definition of a conviction, a guilty plea. The facts underlying Ms. Charpentier's conviction have been established by her conviction and, therefore, are not at issue. In her July 1, 2002, letter, Ms. Charpentier's discusses the motives resulting in her conviction, her remorse, her apology, and her statements indicating that she will not again participate in illegal activity. This information does not justify a hearing. Although such information may be considered in determining whether to grant special termination of debarment under section 306(d)(4)(C) of the act, this information does not raise a factual dispute regarding Ms. Charpentier's conviction, but rather supports it. Thus, FDA finds that Ms. Charpentier has failed to identify any genuine and substantial issue of fact requiring a hearing. Accordingly, FDA denies Ms. Charpentier's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner, under section 306(b) of the act and under authority delegated to him (21 CFR 5.10), finds that Ms. Laverne M. Charpentier has been convicted of a felony under Federal law for conspiracy to make false statements to a Government agency, and that Ms. Charpentier's conduct undermined the process for the regulation of drugs.

As a result of the foregoing findings, Ms. Laverne M. Charpentier is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective December 2, 2002 (sections 306 (c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Charpentier, in any capacity, during her period of debarment, will be subject to civil money penalties. If Ms. Charpentier, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Charpentier during her period of debarment.

Any application by Ms. Charpentier for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 00N–1527 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 2002.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 02–30482 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0451]

Withdrawal of 20 Guidances on Individual Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of 20 individual product labeling guidances. The guidances are being withdrawn because they are out of date and of little use to the generic drug industry. The agency has developed other guidance and resources to assist the industry in obtaining up-to-date labeling for reference listed drugs.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to agency guidance documents.

FOR FURTHER INFORMATION CONTACT: Rita Hassall, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the withdrawal of 20 individual product labeling guidances. A list of FDA's Center for Drug Evaluation and Research (CDER) guidances (the Comprehensive List) can be found on the Internet on the CDER guidance page at *http://www.fda.gov/cder/guidance/index.htm*, and many of the guidances on the Comprehensive List are posted on the CDER guidance page (old draft guidances have not been posted). This withdrawal of labeling guidances is in addition to the withdrawal of 53 individual product labeling guidances announced in the **Federal Register** of July 5, 2002 (67 FR 44857).

The labeling guidances being withdrawn were intended to provide sponsors of abbreviated new drug applications (ANDAs) with product specific templates for package insert labeling that could be submitted to the Office of Generic Drugs (OGD). Because package insert labeling for innovator products changes frequently, it is difficult to keep the guidances updated; and because these labeling guidances are out of date, they are being withdrawn.

In May 2000, the agency issued a guidance for industry entitled ''Revising ANDA Labeling Following Revision of the RLD Labeling.'' This guidance provides information on how to access current package insert labeling on OGD's Labeling Review Branch Internet site at *http://www.fda.gov/cder/ogd/rld/labeling_review_branch.htm*.

The withdrawal of product-specific labeling guidances is part of a long-term effort in OGD to review guidance documents on the development of generic drug products with the goal of identifying documents that need to be revised, reformatted, or withdrawn because they are no longer current.

CDER is withdrawing the following labeling guidances:

Chlordiazepoxide Hydrochloride Capsules—January 1, 1988

Clorazepate Dipotassium Capsules/Tablets—March 1, 1993

Cyproheptadine Hydrochloride Tablets/Syrup—December 1, 1986

Dipivefrin Hydrochloride Ophthalmic Solution, 0.1%—November 2, 1998

Ergoloid Mesylate Tablets—January 1, 1988

Hydroxyzine Hydrochloride Injection—December 1, 1989

Isoetharine Inhalation Solution—March 1, 1989

Meclofenamate Sodium Capsules—July 1, 1992

Naphazoline Hydrochloride Ophthalmic Solution—March 1, 1989

Niacin Tablets—July 1, 1992

Phendimetrazine Tartrate Capsules/Tablets, and Extended-Release Capsules—February 1, 1991

Phentermine Hydrochloride Capsules/Tablets—August 1, 1988

Promethazine Hydrochloride Tablets—March 1, 1990

Propantheline Bromide Tablets—August 1, 1988

Pyridoxine Hydrochloride Injection—June 1, 1984

Quinidine Sulfate Capsules USP—October 1, 1995

Sulfamethoxazole and Phenazopyridine Hydrochloride Tablets—February 1, 1992

Theophylline Immediate Release Oral Dosage Forms—February 1, 1995

Thiamine Hydrochloride Injection—February 1, 1988

Vitamin A Capsules—February 1, 1992

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain guidance documents at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 25, 2002.

Margaret M. Dotzel

Assistant Commissioner for Policy.

[FR Doc. 02–30481 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0503]

Compliance Policy Guide: ''Filth from Insects, Rodents, and Other Pests in Food''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) entitled ''Filth from Insects, Rodents, and Other Pests in Food.'' The purpose of this CPG is to revise and clarify existing guidance on the interpretation of filth in foods within the context of current science. The CPG provides guidance to FDA components as well as to the industry.

DATES: Submit written or electronic comments concerning the CPG at any time.

ADDRESSES: Submit written requests for single copies of the CPG ''Filth from Insects, Rodents, and Other Pests in Food'' to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or FAX your request to 301–827–0482. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written comments on the CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

Technical Questions Concerning Filth in Foods: Alan R. Olsen, Microanalytical Branch (HFS–315), Office of Plant, Dairy Foods, and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1962, FAX 301–436–2644.

Questions Concerning Regulatory Actions: Nina Adler, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0417, FAX 301–827–0482.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of December 18, 2001 (66 FR 65214), FDA announced the availability of a draft CPG entitled ''Filth from Insects, Rodents, and Other Pests in Food.'' FDA has finalized the draft CPG after receiving no comments on the document. The CPG revises and clarifies existing guidance on foods that contain filth from insects, rodents, and other pests to reflect recent advances in science. The purpose of this CPG is to provide clear policy to FDA's field and headquarters staff with regard to filth from insects, rodents, and other pests in foods. It also contains information that may be useful to the regulated industry and to the public.

The CPG supersedes the current CPG and represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of applicable statutes or regulations.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

II. Comments

Interested persons may submit to the Docket Management Branch (*see* **ADDRESSES**) written or electronic comments on the CPG entitled ''Filth from Insects, Rodents, and Other Pests in Food'' at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the CPG and received comments may be seen in the Dockets Management Branch (*see* **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the CPG also may be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs home page includes the CPG and may be accessed at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: November 4, 2002.

John M. Taylor,

Senior Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–30403 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1378]

Draft Guidance for Industry on Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients.'' FDA has considered evidence that suggests that topically applied cosmetic products containing alpha hydroxy acids (AHAs) may increase the sensitivity of skin to the sun while the products are used and for up to a week after use is stopped and that this increased skin sensitivity to the sun may increase the possibility of sunburn. The purpose of this draft guidance is to educate manufacturers to help ensure that their labeling for AHA-containing cosmetic products is not false or misleading. The draft guidance suggests content for a labeling statement for AHA-containing cosmetic products. This action was prompted by a citizen petition filed by the Cosmetic, Toiletry, and Fragrance Association (CTFA), which requested that FDA issue a regulation establishing sun alert labeling on AHA-containing products.

DATES: Submit written or electronic comments by January 31, 2003, to ensure their adequate consideration in preparation of the final document. Comments on this draft guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Cosmetics and Colors (HFS–100), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Submit electronic comments on the draft guidance to *http://www.fda.gov/dockets/ecomments*. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Julie N. Barrows, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3412.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients.'' This draft guidance explains FDA's suggested labeling of topically applied cosmetic products that contain AHAs to alert consumers of the need to use sun protection when using these products. The guidance will educate manufacturers to help ensure that their labeling for AHA-containing cosmetic products is not false or misleading under 21 U.S.C. 362(a) and 321(n).

AHAs are organic acids with a hydroxyl group on the carbon adjacent to the carboxylic acid group. The predominant AHAs present in cosmetic products are glycolic acid and lactic acid. Other AHAs that are found in cosmetic products include citric acid, -hydroxyoctanoic acid, and -hydroxydecanoic acid (Ref. 1). Since the early 1990s, there has been a proliferation of AHA-containing cosmetic and salon products (Ref. 2). AHAs have been formulated into skin products, make-up, hair products, nail products, bath products, colognes, and suntan preparations. Most AHA-containing products are ''leave on'' products that are intended for daily use on the skin or mucous membrane or are ''discontinuous use'' products that are intended to be applied to the skin for a short period of time (*e.g.*, less than an hour) followed by thorough rinsing. Salon products are usually discontinuous use products.

FDA received a total of 107 adverse dermatologic experience reports for AHA-containing skin care products between 1992 and 2000, with the maximum number (32) in 1994 (Ref. 2). The reported adverse experiences include: Burning (43), dermatitis or rash (33), swelling (26), pigmentary changes (15), blisters or welts (13), skin peeling (12), itching (12), irritation or tenderness (6), chemical burns (6), and increased sunburn (3).

Starting in 1994, CTFA's Cosmetic Ingredient Review (CIR) Expert Panel, FDA's AHA Review Committee, and FDA reviewed the safety of topically applied AHAs in cosmetic products

(Refs. 2 through 4). The reviewers evaluated human clinical studies that investigated the effects of ultraviolet (UV) radiation on the skin after exposure to AHAs. The studies demonstrated that topically applied AHAs increase skin sensitivity to UV radiation during application and that this increased skin sensitivity to UV radiation diminishes after discontinuing application for a week.

Sensitivity to UV radiation is the main reason for the skin's sensitivity to the sun (Ref. 5). Short-term exposure to the sun may cause sunburn, and chronic long-term exposure to the sun may increase the risk of premature skin aging (Ref. 5). Experimental and epidemiological studies have demonstrated that prolonged exposure to the UV radiation in sunlight is a primary risk factor for certain types of skin cancer (Refs. 6 through 8).

The human clinical studies provided data for the effects of UV radiation on the skin after short-term (up to 12 weeks) topical exposure to AHAs. The evidence from the clinical studies suggests that increased skin sensitivity to UV radiation may increase the possibility of sunburn for consumers. Adverse experience reports of increased sunburn after AHA use support this conclusion (Ref. 2). The increased skin sensitivity to UV radiation also may result in other harmful effects to the skin, but the data available to FDA's Center for Food Safety and Applied Nutrition (CFSAN) are still inconclusive on this point.

FDA's National Center for Toxicological Research (NCTR) currently is investigating the effects of long-term exposure to AHAs in a photocarcinogenicity study by the National Toxicology Program's Center for Phototoxicology (Ref. 2). The purpose of the NCTR study is to allow quantitative determination of the effect AHA treatment (glycolic acid) has on the induction of mouse skin cancer (SKH–1 hairless mouse) by simulated solar radiation.

FDA believes that increased skin sensitivity to the sun, and particularly the possibility of sunburn following AHA use, may be material facts that manufacturers should disclose to users under 21 U.S.C. 362(a) and 321(n) and 21 CFR 1.21. Accordingly, FDA believes that if manufacturers inform users of AHA-containing products about the potential for increased skin sensitivity to the sun and particularly the possibility of sunburn, and what steps a user may take to avoid such consequences, this will help avoid the potential that the products are misbranded under 21 U.S.C. 362(a) and 321(n).

In the draft guidance, FDA suggests that the following statement appear on the label of AHA-containing cosmetic products:

> ''Sunburn Alert: This product contains an alpha hydroxy acid (AHA) that may increase your skin's sensitivity to the sun and particularly the possibility of sunburn. Use a sunscreen and limit sun exposure while using this product and for a week afterwards.''

FDA expects that a label statement such as the recommended ''Sunburn Alert'' will be a source of new information about sun protection for most consumers, as well as a reminder about sun protection for consumers who already are aware of the need to use sun protection when using these products (Ref. 2).

CTFA submitted a citizen petition (dated June 29, 2000, and assigned FDA Docket No. 00P–1378/CP1), which requested that under 21 U.S.C. 362(a), FDA issue a regulation on cosmetic labeling in 21 CFR part 701 establishing labeling requirements related to sun protection with use of cosmetics containing AHAs. FDA is issuing this draft guidance entitled ''Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients'' rather than a proposed regulation.

FDA is announcing the availability of this draft guidance at this time pending the results of the NCTR study because the agency believes interim action is warranted to recommend that manufacturers label topically applied cosmetic products that contain AHAs to alert consumers of the need to use sun protection when using these products. After assessing the results of the photocarcinogenicity study and the effectiveness of any final guidance, the agency intends to determine if additional agency action is appropriate.

This draft guidance is a level 1 guidance issued consistent with FDA's regulation on good guidance practices (21 CFR 10.115). The draft guidance represents the agency's current thinking on the labeling of topically applied cosmetic products that contain an AHA as an ingredient. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (*see* **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this draft guidance is available on the Internet at *http://www.cfsan.fda.gov/~dms/guidance.html*.

IV. References

The following references are on display in the Dockets Management Branch (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Yates, R. L., and D. C. Havery, ''Determination of Phenol, Resorcinol, Salicylic Acid and -Hydroxy Acids in Cosmetic Products and Salon Preparations,'' *Journal of Cosmetic Science*, vol. 50, pp. 315–325, 1999.

2. Barrows, Julie N., memorandum to the administrative file, ''Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients,'' Office of Cosmetics and Colors, CFSAN, FDA, September 12, 2002.

3. Andersen, F. A., Ed., ''Final Report on the Safety Assessment of Glycolic Acid, Ammonium, Calcium, Potassium, and Sodium Glycolates, Methyl, Ethyl, Propyl, and Butyl Glycolates, and Lactic Acid, Ammonium, Calcium, Potassium, Sodium, and TEA-Lactates, Methyl, Ethyl, Isopropyl, and Butyl Lactates, and Lauryl, Myristyl, and Cetyl Lactates,'' *International Journal of Toxicology*, vol. 17, supplement 1, pp. 1–241, 1998.

4. FDA, memoranda of meetings of AHA Review Committee, May 6, 1997, and February 12, 1997, and index of reviewed information.

5. Hawk, J. L. M., Ed., ''*Photodermatology*,'' Arnold Publishers, chapters 4, 6, and 7, pp. 43–52 and 69–102, 1999.

6. DeGruijl, F. R., J. B. VanDerMeer, and J. C. VanDerLeun, ''Dose-Time Dependency of Tumor Formation by Chronic UV Exposure,'' *Photochemistry and Photobiology*, vol. 37, pp. 53–62, 1983.

7. Strickland, P. T., et al., ''Quantitative Carcinogenesis in Man: Solar Ultraviolet B Dose Dependence of Skin Cancer in Maryland Watermen,'' *Journal of the National Cancer Institute*, vol. 81, pp. 1910–1913, 1989.

8. Forbes, P. D., et al., ''Simulated Stratospheric Ozone Depletion and Increased Ultraviolet Radiation: Effects on Photocarcinogenesis in Hairless Mice,'' *Cancer Research*, vol. 42, pp. 2796–2803, 1982.

Dated: November 15, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30340 Filed 11–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Treatment Outcomes Monitoring System (NTOMS)—New—NTOMS is an extension and expansion of two pilot projects funded by the Office of National Drug Control Policy (ONDCP), the Drug Evaluation Network System (DENS) and Random Access Monitoring of Narcotics Addicts (RAMONA). NTOMS will be a surveillance system that will provide periodic reporting on access to and effectiveness of drug abuse treatment using a nationally representative sample of patients receiving treatment for psychoactive substance dependence in a sample of specialty treatment providers throughout the United States. NTOMS will collect information from and about clients, and limited information about treatment facilities. A sample of 250 facilities and 84,000 clients is planned. The clients will be sampled over a period of four years. NTOMS will permit SAMHSA's Center for Substance Abuse Treatment (CSAT) to enhance its ability to carry out statutory responsibilities to determine the quality and appropriateness of treatment, as required by Sections 507(b)(13) and (14) of the Public Health Service Act [42 U.S.C. 290bb].

Specialized substance abuse treatment facilities will be sampled as clusters of service delivery units (SDU's). Facilities will be asked to complete a single instrument, the Addiction Treatment Inventory once per year to track changes in facility treatment programs and activities. Some facilities will thus complete this instrument four times; those that are recruited late in the beginning stages of the system will complete it less often. Replacements for dropouts and closures, or for the purpose of adjusting the facility sample to changes in the facility population, will also have fewer administrations.

Upon admission, a baseline battery consisting of several different instruments will be administered to a sample of clients. The principal questionnaire will include the content of the Addiction Severity Index, an intake assessment instrument already widely used at treatment facilities. This content will impose no marginal burden on clients beyond the normal intake process. However, the Addiction Severity Index will be supplemented by additional items that are required for CSAT to meet its obligations under the Government Performance Results Act of 1993 (GPRA) (31 U.S.C. 101) and by items concerning entering patients collected at publicly-funded treatment facilities as part of the Treatment Episode Data Set, a component of the Drug and Alcohol Services Information System. At admission, three other questionnaires will be administered. The Life History Interview (LHI) will obtain information about patterns of substance use over the past five years. The Waiting List Module will ask about access to treatment and how long entering patients have waited for admission since seeking treatment. The Locator/Tracking Form will request information needed to find clients six months after discharge to determine the outcome of their treatment. Clients will also be asked to read and sign a consent form for participation in subsequent stages of the study.

During treatment, sampled clients who are still in treatment will be contacted periodically by telephone and asked the questions in the Treatment Services Review, an extant instrument used to determine the treatment services and activities actually delivered to clients. This instrument will be administered periodically. Therefore, clients who spend more than 30 days in treatment will be asked to complete it more than once. Because of high initial drop-out rates, it is estimated that only 60 percent of clients will be asked to complete at least one Treatment Services Review.

Selected items from the expanded ASI will be administered to a sample of the original clients again shortly after they leave treatment and the sampled clients will be asked to confirm or update the locating information. Six months after discharge, a sample of 20 percent of the clients who left treatment will be interviewed in person or by telephone. The expanded ASI will be administered for a third time, and the LHI for a second time. Approximately one-third of this sample of clients, all interviewed in person, will also be asked to provide a urine sample for analysis.

To obtain a response rate at both the institutional and client levels that will support estimates in larger populations, CSAT plans to offer incentives for participation in NTOMS to both facilities and clients. Estimated annual burden for NTOMS is shown below:

Type of respondent and activity	Number of respondents	Responses/ respondent	Hours/response	Total burden hours
Treatment Facilities				
Addiction Treatment Inventory	250	1	0.33	83
Facility Subtotal	250			83
Clients				
Instruments administered at admission or during treatment:				
Expanded ASI at admission [1]	21,000	1	0.17	3,500
LHI at admission	21,000	1	0.50	10,500

Type of respondent and activity	Number of respondents	Responses/ respondent	Hours/response	Total burden hours
Waiting List questionnaire	21,000	1	0.08	1,750
Treatment Services Review	12,600	[2] 1.6	0.75	15,120
Instrument administered at discharge: Reduced ASI	5,250	1	0.50	2,625
Instruments administered six months after discharge:				
Follow-up interview	1,975	1	0.50	988
Follow-up LHI	1,975	1	0.25	494
Provision of urine sample	670	1	0.08	56
Client subtotal	21,000			35,033
Total	21,250			35,116

[1] Time burden includes only marginal time required to administer NTOMS-specific items not normally included in the ASI when it is used as an intake instrument—GPRA items, TEDS minimum data set, locating information—and securing consent from patients.
[2] Assumes that TSR is administered once to 60% of admission sample, twice to 18%, three times to 13%, four times to 6%.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 24, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–30384 Filed 11–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in December 2000.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Division of Extramural Policy Management, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b© (6) and 5 U.S.C. App.2, 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: December 9th–13th, 2002.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 8:30 a.m. December 9th to Adjournment December 13th.

Panel: Targeted Capacity Expansion, PA 03–01, two committees.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Dated: November 19, 2002.

Diane McMenamin,

Chief, Review Branch, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–30484 Filed 11–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–19]

Announcement of Funding Awards for Fiscal Year 2002 for the Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2002 to housing agencies (HAs) under the Section 8 housing choice voucher program. The purpose of this notice is to publish the names, addresses, and the amount of the awards to housing agencies for housing conversion actions, special housing conversion fees, public housing relocations and replacements, and Section 8 counseling.

FOR FURTHER INFORMATION CONTACT: Deborah Hernandez, Acting Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–2934. Hearing-or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the housing choice voucher program are published at 24 CFR 982. The regulations for allocating housing assistance budget authority under Section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR Part 791, Subpart D.

The purpose of this rental assistance program is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 2002 awardees announced in this notice were provided Section 8 funds on an as needed basis, *i.e.*, not consistent with the provisions of a Notice of Funding Availability (NOFAs). Announcements of awards provided consistent with NOFAs for family unification, mainstream housing, designated housing programs, and family self-sufficiency coordinators will be published in a separated **Federal Register** notice.

Awards published under this notice were provided (1) to assist families living in HUD-owned properties that are being sold; (2) to assist families affected by the expiration or termination of assistance; (3) to assist families in properties where the owner has prepaid the HUD mortgage; (4) to provide special housing fees to compensate housing agencies for any extraordinary Section 8 administrative costs associated with the previous three categories; (5) to provide relocation and replacement housing in connection with the demolition of public housing; and (6) to provide counseling and assistance to families so that they may move to areas that have low racial and ethnic concentrations.

A total of $142,295,161 in budget authority for rental vouchers (22,839 units) was awarded to recipients under all of the above-mentioned categories.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: November 1, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002

Housing agency	Address	Units	Award
PROPERTY DISPOSITION FEES			
SAN FRANCISCO HSG AUTH	440 TURK STREET, SAN FRANCISCO, CA 94102	0	$5,250
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	0	23,000
INDIANAPOLIS HSG AGENCY	1919 N. MERIDIAN STREET, INDIANAPOLIS, IN 46202	0	32,750
FORD COUNTY HSG AUTH	P.O. BOX 1636, DODGE CITY, KS 67801	0	16,000
WEST CENTRAL HSG AUTH	P.O. BOX 599, OGALLALA, NE 69153	0	250
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	7,750
HSG AUTH CITY OF PITTSBURG	200 ROSS STREET, PITTSBURGH, PA 15219	0	43,250
LANCASTER HSG AUTH	325 CHURCH STREET, LANCASTER, PA 17602	0	1,750
JACKSONVILLE HSG AUTH	301 E COMMERCE, 2ND FL, JACKSONVILLE, TX 75766	0	15,250
Total for Property Disposition Fees		0	$145,250
PRESERVATION/PREPAYMENT FEES			
MOBILE HOUSING BOARD	P.O. BOX 1345, MOBILE, AL 36633	0	23,000
HA OF ANNISTON	P.O. BOX 2225, ANNISTON, AL 36202	0	2,000
HA OF TUSCALOOSA	P.O. BOX 2281, TUSCALOOSA, AL 35403	0	16,750
NORTH LITTLE ROCK HA	PO BOX 516, NORTH LITTLE ROCK, AR 72115	0	25,750
TEMPE HSG AUTH	132 E. 6TH ST, STE 201, P.O. BOX 5002, TEMPE, AZ 85280	0	11,000
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	0	4,750
SACRAMENTO HSG & REDEV	P.O. BOX 1834, SACRAMENTO, CA 95812	0	47,500
YOLO COUNTY HSG AUTH	P.O. BOX 1867, WOODLAND, CA 95776	0	24,250
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE., SAN DIEGO, CA 92113	0	12,750
CITY OF REDDING HSG AUTH	P.O. BOX 496071, 777 CYPRESS AVE., REDDING, CA 96049.	0	12,500
BOULDER CITY HSG AUTH	3120 BROADWAY, BOULDER, CO 80304	0	4,250
D.C HOUSING AUTHORITY	1133 NORTH CAPITOL ST, NE., WASHINGTON, DC 20002	0	81,500
HA OF COLUMBUS GA	P.O. BOX 630, COLUMBUS, GA 31902	0	13,750
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	0	7,500
DCA	60 EXECUTIVE PARK SO., NE STE 250, ATLANTA, GA 30329.	0	15,750
SOUTHERN IOWA REG HSG AUTH	219 N PINE, CRESTON, IA 50801	0	750
NORTHWEST IOWA REG HA	P.O. BOX 7980, 125 WEST 4TH ST., SPENCER, IA 51301	0	750
CENTRAL IOWA REG HA	950 OFFICE PARK RD., STE 321, WEST DES MOINES, IA 50265.	0	7,500
CHICAGO HSG AUTH	626 WEST JACKSON BLVD., CHICAGO, IL 60661	0	11,750
OGLE COUNTY HSG AUTH	407 NORTH UNION STREET, POLO, IL 61064	0	11,250
FORT WAYNE HA–CITY OF FORT WAY	P.O. BOX 13489, FORT WAYNE, IN 46869	0	40,750
INDIANA DEPT OF HUMAN SERVICES	P.O. BOX 6116, INDIANAPOLIS, IN 46206	0	50,000
TOPEKA HSG AUTH	2010 SE CALIFORNIA AVE., TOPEKA, KS 66607	0	11,500
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139	0	6,250
HARFORD COUNTY HSG AGENCY	15 SOUTH MAIN STREET SUITE 106, BEL AIR, MD 21014	0	13,500
MD DEPT OF HSG & COMM DEV	100 COMMUNITY PLACE, CROWNSVILLE, MD 21032	0	16,500
LANSING HSG COMMISSION	310 NORTH SEYMOUR STREET, LANSING, MI 48933	0	57,500
MOUNT PLEASANT HSG COMM	ONE MOSHER STREET, MOUNT PLEASANT, MI 48858	0	32,500
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	34,250
ST. PAUL PHA	480 CEDAR STREET, ST. PAUL, MN 55101	0	2,750
DETROIT LAKES HRA	P.O. BOX 731, DETROIT LAKES, MN 56501	0	13,000
METROPOLITAN COUNCIL HRA	230 EAST FIFTH STREET, ST. PAUL, MN 55101	0	59,750
WASHINGTON COUNTY HRA	321 BROADWAY AVENUE, ST. PAUL PARK, MN 55071	0	15,000
SOUTH CENTRAL MULTI-COUNTY HRA	410 JACKSON STREET, STE 100, MANKATO, MN 56002	0	7,000
INDEPENDENCE HSG AUTH	210 SOUTH PLEASANT, INDEPENDENCE, MO 64050	0	16,500
MANCHESTER HSG AUTH	198 HANOVER STREET, MANCHESTER, NH 03104	0	33,750
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	0	24,750
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	0	13,250
CITY OF RENO HSG AUTH	1525 EAST NINTH ST, RENO, NV 89512	0	30,750
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	0	189,000
THE CITY OF NEW YORK DHPD	100 GOLD STREET, ROOM 5N, NEW YORK, NY 10038	0	289,250
NEW YORK STATE HSG FIN AGENCY	25 BEAVER STREET, RM 674, NEW YORK, NY 10004	0	45,000
LUCAS MHA	P.O. BOX 477, 435 NEBRASKA AVE., TOLEDO, OH 43602	0	50,000
LAKE MHA	189 FIRST STREET, PAINESVILLE, OH 44077	0	45,000

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	19,000
BUCKS COUNTY HSG AUTH	350 SO. MAIN ST., STE 205, DOYLESTOWN, PA 18901	0	88,000
LEBANON COUNTY HSG AUTH	303 CHESTNUT STREET, LEBANON, PA 17042	0	37,500
CUMBERLAND COUNTY HSG AUTH	114 NORTH HANOVER STREET, CARLISLE, PA 17013	0	51,250
HA OF SOUTH CAROLINA REG NO 1	P.O. BOX 326, LAURENS, SC 29360	0	12,000
AUSTIN HOUSING AUTHORITY	P.O. BOX 6159, AUSTIN, TX 78762	0	32,500
DALLAS	3939 N. HAMPTON RD., DALLAS, TX 75212	0	1,000
MC ALLEN HSG AUTH	2301 JASMINE AVE., MC ALLEN, TX 78501	0	11,250
TARRANT COUNTY	1200 CIRCLE DR., #100, FORT WORTH, TX 76119	0	20,500
LANCASTER	525 W. PLEASANT RUN RD STE K, LANCASTER, TX 75146	0	25,750
GREENVILLE	4417 O'NEAL, GREENVILLE, TX 75401	0	1,750
DALLAS COUNTY	2377 N. STEMMONS FREEWAY, STE 200—LB 16, DALLAS, TX 75207.	0	14,750
ALAMO AREA COG	8700 TESORO SUITE 700, SAN ANTONIO, TX 78217	0	12,000
HA OF ASOTIN COUNTY	1212 FAIR STREET, CLARKSTON, WA 99403	0	7,250
HA OF THE CITY OF MILWAUKEE	P.O. BOX 324, 809 NORTH BROADWAY, MILWAUKEE, WI 53201.	0	1,250
BROWN COUNTY HA	100 N., JEFFERSON ST., ROOM 608, GREEN BAY, WI 54301.	0	14,500
KANAWHA COUNTY HA	P.O. BOX 3826, CHARLESTON, WV 25338	0	42,500
Total for Preservation/Prepayment Fees		0	1,825,250
PRESERVATION/PREPAYMENT			
MOBILE HOUSING BOARD	P.O. BOX 1345, MOBILE, AL 36633	108	480,816
HA OF ANNISTON	P.O. BOX 2225, ANNISTON, AL 36202	19	66,804
HA OF TUSCALOOSA	P.O. BOX 2281, TUSCALOOSA, AL 35403	70	256,200
NORTH LITTLE ROCK HA	P.O. BOX 516, NORTH LITTLE ROCK, AR 72115	107	471,228
TEMPE HSG AUTH	132 E. 6TH ST., STE 201, P.O. BOX 5002, TEMPE, AZ 85280.	44	252,912
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	19	127,224
SACRAMENTO HSG & REDEV	P.O. BOX 1834, SACRAMENTO, CA 95812	90	950,920
YOLO COUNTY HSG AUTH	P.O. BOX 1867, WOODLAND, CA 95776	97	498,192
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE., SAN DIEGO, CA 92113	51	328,032
CITY OF REDDING HSG AUTH	P.O. BOX 496071, 777 CYPRESS AVE., REDDING, CA 96049.	100	390,000
BOULDER CITY HSG AUTH	3120 BROADWAY, BOULDER, CO 80304	17	120,972
CONN DEPT OF SOCIAL SERVICES	25 SIGOURNEY ST., 9TH FLOOR, HARTFORD, CT 06105	71	512,902
D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL ST., NE., WASHINGTON, DC 20002	328	2,727,648
HA OF COLUMBUS GA	P.O. BOX 630, COLUMBUS, GA 31902	58	212,280
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	30	219,240
DCA	60 EXECUTIVE PARK SO, NE. STE 250, ATLANTA, GA 30329.	94	451,200
SOUTHERN IOWA REG HSG AUTH	219 N PINE, CRESTON, IA 50801	6	19,224
NORTHWEST IOWA REG HA	P.O. BOX 7980, 125 WEST 4TH STREET, SPENCER, IA 51301.	8	21,792
CENTRAL IOWA REG HSG AUTH	950 OFFICE PARK ROAD STE 321, WEST DES MOINES, IA 50265.	58	203,928
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	58	436,392
OGLE COUNTY HSG AUTH	407 NORTH UNION STREET, POLO, IL 61064	48	171,648
FORT WAYNE HA–CITY OF FORT WAY	P.O. BOX 13489, FORT WAYNE, IN 46869	192	937,728
INDIANA DEPT OF HUMAN SERVICES	P.O. BOX 6116, INDIANAPOLIS, IN 46206	200	847,200
TOPEKA HSG AUTH	2010 SE CALIFORNIA AVE, TOPEKA, KS 66607	75	336,600
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139	25	309,900
HARFORD COUNTY HSG AGENCY	15 SOUTH MAIN STREET, SUITE 106, BEL AIR, MD 21014	54	258,552
MD DEPT OF HSG & COMM DEV	100 COMMUNITY PLACE, CROWNSVILLE, MD 21032	66	255,024
LANSING HSG COMMISSION	310 NORTH SEYMOUR ST, LANSING, MI 48933	252	1,209,600
MOUNT PLEASANT HSG COMM	ONE MOSHER STREET, MOUNT PLEASANT, MI 48858	130	511,680
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	155	781,200
ST PAUL PHA	480 CEDAR STREET, ST. PAUL, MN 55101	214	1,389,288
DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	42	190,800
DETROIT LAKES HRA	P.O. BOX 731, DETROIT LAKES, MN 56501	53	144,372
METROPOLITAN COUNCIL HRA	230 EAST FIFTH STREET, ST. PAUL, MN 55101	240	1,372,296
SOUTH CENTRAL MULTI-COUNTY HRA	410 JACKSON STREET, SUITE 100, MANKATO, MN 56002	28	92,736
INDEPENDENCE HSG AUTH	210 SOUTH PLEASANT, INDEPENDENCE, MO 64050	110	546,480
MANCHESTER HSG AUTH	198 HANOVER STREET, MANCHESTER, NH 03104	135	638,280
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	99	651,024
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	48	382,800
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	758	5,512,176

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
THE CITY OF NEW YORK DHPD	100 GOLD STREET ROOM 5N, NEW YORK, NY 10038	1,157	7,469,592
NEW YORK STATE HSG FIN AGENCY	25 BEAVER STREET, RM 674, NEW YORK, NY 10004	180	1,451,520
LUCAS MHA	P.O. BOX 477, 435 NEBRASKA AVENUE, TOLEDO, OH 43602.	200	825,600
LAKE MHA	189 FIRST STREET, PAINESVILLE, OH 44077	182	884,520
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	76	342,000
BUCKS COUNTY HSG AUTH	350 SOUTH MAIN STREET, SUITE 205, DOYLESTOWN, PA 18901.	352	1,938,816
LEBANON COUNTY HSG AUTH	303 CHESTNUT STREET, LEBANON, PA 17042	150	541,800
CUMBERLAND COUNTY HA	114 NORTH HANOVER STREET, CARLISLE, PA 17013	208	818,688
HA SOUTH CAROLINA REG NO 1	P.O. BOX 326, LAURENS, SC 29360	60	230,400
DALLAS HSG AUTH	3939 N. HAMPTON RD., DALLAS, TX 75212	4	30,240
MC ALLEN HSG AUTH	2301 JASMINE AVE, MC ALLEN, TX 78501	48	183,168
CISCO HOUSING AUTHORITY	714 EAST 10TH STREET, CISCO, TX 76437	0	91,123
TARRANT COUNTY	1200 CIRCLE DR, #100, FORT WORTH, TX 76119	82	436,896
LANCASTER HSG AUTH	525 WEST PLEASANT RUN RD, STE K, LANCASTER, TX 75146.	104	655,200
GREENVILLE HSG AUTH	4417 O'NEAL, GREENVILLE, TX 75401	7	35,700
DALLAS COUNTY	2377 N. STEMMONS FREEWAY, STE 200—LB 16, DALLAS, TX 75207.	74	482,184
ALAMO AREA COG	8700 TESORO SUITE 700, SAN ANTONIO, TX 78217	48	164,736
HA OF ASOTIN COUNTY	1212 FAIR STREET, CLARKSTON, WA 99403	29	124,584
BROWN COUNTY HA	100 N JEFFERSON STREET, RM 608, GREEN BAY, WI 54301.	58	205,320
KANAWHA COUNTY HA	P.O. BOX 3826, CHARLESTON, WV 25338	177	828,360
Total for Preservation/Prepayment		7,553	$43,027,737
PROPERTY DISPOSITION RELOCATION			
SAN FRANCISCO HSG AUTH	440 TURK STREET, SAN FRANCISCO, CA 94102	24	260,928
ADAMS COUNTY	7190 COLORADO BLVD, 6TH FL, COMMERCE CITY, CO 80022.	82	609,096
BROWARD COUNTY HSG AUTH	1773 NORTH STATE ROAD 7, LAUDERHILL, FL 33313	108	716,688
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE. NE, ATLANTA, GA 30303	120	876,960
SOUTHERN IOWA REG HSG AUTH	219 N. PINE, CRESTON, IA 50801	23	73,692
REGIONAL HSG AUTH—VOUCHER XI	108 WEST 6TH ST, P.O. BOX 663, CARROLL, IA 51401	55	143,220
INDIANAPOLIS HOUSING AGENCY	1919 N. MERIDIAN ST, INDIANAPOLIS, IN 46202	134	643,200
FORD COUNTY HSG AUTH	P.O. BOX 1636, DODGE CITY, KS 67801	96	291,456
OWENSBORO HSG AUTH	2161 EAST 19TH STREET, OWENSBORO, KY 42303	38	130,872
APPALACHIAN FOOTHILLS HA	1214 RIVERSIDE BOULEVARD, WURTLAND, KY 41144	32	128,640
H.A.K.C.	301 EASTARMOUR BLVD, KANSAS CITY, MO 64111	48	243,648
GASTONIA HSG AUTH	340 W. LONG AVENUE P.O. BOX 2398, GASTONIA, NC 28053.	82	378,840
WEST CENTRAL HSG AUTH	P.O. BOX 599, OGALLALA, NE 69153	8	23,808
CLOVIS HOUSING AUTHORITY	P.O. BOX 1240, 2101 W. GRAND AVE., CLOVIS, NM 88102	50	153,000
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	164	1,192,608
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	98	216,000
HA OF CITY OF PITTSBURG	200 ROSS STREET, PITTSBURGH, PA 15219	399	1,891,260
PHILADELPHIA HSG AUTH	12 SOUTH 23RD STREET, PHILADELPHIA, PA 19103	218	1,600,992
LANCASTER HSG AUTH	325 CHURCH STREET, LANCASTER, PA 17602	8	40,704
BROOKINGS HSG AUTH	1310 MAIN AVE. SOUTH, BROOKINGS, SD 57006	18	63,288
SAN BENITO HSG AUTH	P.O. BOX 1900, SAN BENITO, TX 78586	65	277,680
CISCO HSG AUTH	714 EAST 10TH STREET, CISCO, TX 76437	68	204,816
ARLINGTON HSG AUTH	501 W. SANFORD, SUITE 20, ARLINGTON, TX 76011	44	261,888
CITY OF PASADENA HSG AUTH	P.O. BOX 672, PASADENA, TX 77501	76	397,632
JACKSONVILLE HSG AUTH	301 E COMMERCE, 2ND.FL, JACKSONVILLE, TX 75766	64	273,408
Total for Property Disposition Relocation		2,122	11,094,324
PUBLIC HOUSING RELOCATION/REPLACEMENTS			
HA OF CITY OF MONTGOMERY	1020 BELL ST, MONTGOMERY, AL 36104	230	1,059,840
HA OF HUNTSVILLE	P.O. BOX 486, HUNTSVILLE, AL 35804	76	329,232
CITY OF PHOENIX	251 W. WASHINGTON ST, 4TH FL, PHOENIX, AZ 85034	364	2,197,104
SAN FRANCISCO HSG AUTH	440 TURK STREET, SAN FRANCISCO, CA 94102	150	1,960,200
CITY OF FRESNO HSG AUTH	1331 FULTON MALL, FRESNO, CA 93776	36	172,800
ORLANDO H/A	300 REEVES COURT, ORLANDO, FL 32801	90	498,780
HA OF FORT LAUDERDALE CITY	437 S W 4TH AVENUE, FORT LAUDERDALE, FL 33315	100	583,200
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE. NE, ATLANTA, GA 30303	444	3,489,840

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
HA OF FULTON COUNTY	10 PARK PLACE SE, SUITE 550, ATLANTA, GA 30303	144	855,360
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	2,469	19,347,084
CHRISTIAN CTY HA	P.O. BOX 86, PANA, IL 62557	32	110,208
NEW ORLEANS HSG AUTH	4100 TOURO STREET, NEW ORLEANS, LA 70122	120	665,280
HSG AUTH OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	575	3,077,400
HAGERSTOWN HSG AUTH	35 WEST BALTIMORE ST, HAGERSTOWN, MD 21740	97	416,712
EAST GRAND FORKS ECON DEV HA	P.O. BOX 439, EAST GRAND FORKS, MN 56721	65	295,620
BURLEIGH COUNTY HSG AUTH	410 SOUTH 2ND STREET, BISMARCK, ND 58504	34	137,088
ATLANTIC CITY HA	227 VERMONT AVE, P.O. BOX 1258, ATLANTIC CITY, NJ 08404.	40	299,040
EAST ORANGE HSG AUTH	160 HALSTED STREET, EAST ORANGE, NJ 07018	9	75,294
CITY OF LAS VEGAS HSG AUTH	420 N. 10TH STREET P.O. BOX 1897, LAS VEGAS, NV 89125.	102	807,840
MERCER COUNTY HSG AUTH	80 JEFFERSON AVENUE P.O. BOX 683, SHARON, PA 16146.	76	234,384
NEWPORT HSG AUTH	1 YORK STREET, NEWPORT, RI 02840	33	260,964
HA OF NORTH CHARLESTON	P.O. BOX 70987, NORTH CHARLESTON, SC 29415	140	666,960
METROPOLITAN DEV & HA	701 SOUTH SIXTH ST, P.O. BOX 846, NASHVILLE, TN 37202.	66	380,160
FORT WORTH HSG AUTH	P.O. BOX 430, 1201 E. 13TH ST, FORT WORTH, TX 76101	268	1,382,880
HA COUNTY OF KING	600 ANDOVER PARK WEST, TUKWILA, WA 98188	279	2,290,032
Total for Public Housing Relocation/Replacements		6,039	41,593,302
SECTION 8 COUNSELING			
PORT ARTHUR HSG AUTH	P.O. BOX 2295, 920 DEQUEEN BLVD, PORT ARTHUR, TX 77643.	0	1,200,000
Total for Section 8 Counseling		0	1,200,000
TERMINATIONS/OPTOUTS/PD RELOCATION FEES			
AK HSG FINANCE CORP	P.O. BOX 101020, ANCHORAGE, AK 99510	0	13,750
HA OF BIRMINGHAM DISTRICT	1826 3RD AVE. SOUTH, BIRMINGHAM, AL 35233	0	45,500
HA OF PRICHARD	P.O. BOX 10307, PRICHARD, AL 36610	0	4,250
HA OF THE CITY OF PINE BLUFF	P.O. BOX 8872, PINE BLUFF, AR 71611	0	1,750
JACKSONVILLE HSG AUTH	P.O. BOX 734, JACKSONVILLE, AR 72076	0	5,000
TUCSON HSG MANAGEMENT DIV	310 NORTH COMMERCE PARK LOOP, TUCSON, AZ 85726	0	36,000
LOS ANGELES COUNTY HSG AUTH	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	0	42,000
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD, 3RD FL, LOS ANGELES, CA 90057	0	66,000
COUNTY OF SAN JOAQUIN HA	448 SOUTH CENTER ST, P.O. BOX 447, STOCKTON, CA 95203.	0	24,500
SAN BUENAVENTURA HSG AUTH	995 RIVERSIDE STREET, VENTURA, CA 93003	0	24,250
COUNTY OF SANTA CLARA HA	505 WEST JULIAN ST, SAN JOSE, CA 95110	0	2,500
CITY OF PITTSBURG HSG AUTH	333 EAST LELAND RD, PITTSBURG, CA 94565	0	29,250
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	0	4,250
ALAMEDA COUNTY HSG AUTH	22941 ATHERTON STREET, HAYWARD, CA 94541	0	9,000
ORANGE COUNTY HSG AUTH	1770 NORTH BROADWAY, SANTA ANA, CA 92706	0	18,250
AURORA HSG AUTH	10745 E. KENTUCKY AVENUE, AURORA, CO 80012	0	18,500
CO DEPT OF HUMAN SERVICES	4131 S. JULIAN WAY, DENVER, CO 80236	0	2,250
BRIDGEPORT HSG AUTH	150 HIGHLAND AVENUE, BRIDGEPORT, CT 06604	0	9,000
HA OF CITY OF NEW HAVEN	360 ORANGE STREET, NEW HAVEN, CT 06511	0	18,250
D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL ST. NE., WASHINGTON, DC 20002	0	63,000
NEW CASTLE COUNTY	87 READ'S WAY, NEW CASTLE, DE 19720	0	15,500
HA OF TAMPA	1514 UNION ST, P.O. BOX 4766, TAMPA, FL 33607	0	3,000
HA OF THE CITY OF TITUSVILLE	524 S. HOPKINS AVE., TITUSVILLE, FL 32782	0	9,250
HIALEAH HSG AUTH	70 EAST 7TH STREET, HIALEAH, FL 33010	0	12,000
HILLSBOROUGH COUNTY–BOCC	9260 BAY PLAZA BOULEVARD, STE 510, TAMPA, FL 33619	0	7,250
HA OF SAVANNAH	P.O. BOX 1179, SAVANNAH, GA 31402	0	5,500
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE., NE., ATLANTA, GA 30303.	0	66,250
CITY OF MARIETTA HA	P.O. BOX 609, MARIETTA, GA 30061	0	6,250
DCA	60 EXECUTIVE PARK SO, NE STE 250, ATLANTA, GA 30329.	0	6,000
CITY & COUNTY OF HONOLULU	715 SOUTH KING ST., SUITE 311, HONOLULU, HI 96813	0	2,750
SIOUX CITY HSG AUTH	CITY HALL P.O. BOX 447, SIOUX CITY, IA 51102	0	1,250
AREA XV MULTI–COUNTY HA	417 NORTH COLLEGE P.O. BOX 276, AGENCY, IA 52530	0	12,250
EASTERN IOWA REG HSG	330 NESLER CENTRE P.O. BOX 1140, DUBUQUE, IA 52001	0	5,750
CENTRAL IOWA REG HSG AUTH	950 OFFICE PARK ROAD, STE 321, WEST DES MOINES, IA 50265.	0	750

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
IOWA NORTHLAND REG HA	2530 UNIVERSITY AVE., SUITE #5, WATERLOO, IA 50701	0	2,250
HA OF CITY OF POCATELLO	P.O. BOX 4161, POCATELLO, ID 83205	0	26,250
IDAHO HSG & FINANCE ASSN	565 W MYRTLE STREET, P.O. BOX 7899, BOISE, ID 83707	0	4,250
CHICAGO HSG AUTH	626 WEST JACKSON BLVD., CHICAGO, IL 60661	0	23,250
GREATER MAH OF ROCK ISLAND	325 SECOND STREET, SILVIS, IL 61282	0	19,000
JACKSON COUNTY HSG AUTH	P.O. BOX 1209, MURPHYSBORO, IL 62966	0	12,000
HA OF CITY OF EVANSVILLE	P.O. BOX 3605, 500 COURT STREET, EVANSVILLE, IN 47735.	0	9,250
INDIANAPOLIS HOUSING AGENCY	1919 N. MERIDIAN STREET, INDIANAPOLIS, IN 46202	0	9,000
NEK–CAP, INC	P.O. BOX 380, HIAWATHA, KS 66434	0	10,000
KENTUCKY HSG CORP	1231 LOUISVILLE ROAD, FRANKFORT, KY 40601	0	22,500
JEFFERSON PARISH HA	1718 BETTY STREET, MARRERO, LA 70072	0	15,500
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVE., CAMBRIDGE, MA 02139	0	4,250
WAKEFIELD HSG AUTH	26 CRESCENT ST., WAKEFIELD, MA 01880	0	11,000
HA OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	0	35,000
HA OF THE CITY OF FREDERICK	209 MADISON STREET, FREDERICK, MD 21701	0	6,000
MONTGOMERY CO HSG AUTH	10400 DETRICK AVENUE, KENSINGTON, MD 20895	0	34,000
HA OF PRINCE GEORGE'S CO	9400 PEPPERCORN PLACE, STE 200, LARGO, MD 20774	0	12,000
ANNE ARUNDEL COUNTY HA	7885 GORDON COURT, P.O. BOX 0817, GLEN BURNIE, MD 21060.	0	21,750
HOWARD COUNTY HSG COMM	6751 COLUMBIA GATEWAY DR., 3RD FL., COLUMBIA, MD 21046.	0	12,000
DETROIT HSG COMMISSION	1301 EAST JEFFERSON AVENUE, DETROIT, MI 48207	0	9,750
LIVONIA HSG COMMISSION	19300 PURLINGBROOK ROAD, LIVONIA, MI 48152	0	4,500
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	0	22,250
MINNEAPOLIS PHA	1001 WASHINGTON AVE. NORTH, MINNEAPOLIS, MN 55401.	0	1,000
MOORHEAD PHA	800 SECOND AVENUE NORTH, MOORHEAD, MN 56560	0	6,000
H.A.K.C.	301 EASTARMOUR BLVD., KANSAS CITY, MO 64111	0	17,750
ST. LOUIS COUNTY HSG AUTH	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121	0	12,250
LEES SUMMIT HSG AUTH	111 SOUTH GRAND, LEES SUMMIT, MO 64063	0	10,500
RALEIGH HSG AUTH	P.O. BOX 28007, RALEIGH, NC 27611	0	7,750
HA OF WINSTON–SALEM	901 CLEVELAND AVENUE, WINSTON–SALEM, NC 27101	0	250
HA OF DURHAM	330 E. MAIN STREET, P.O. BOX 1726, DURHAM, NC 27702	0	3,750
ISOTHERMAL PLAN'G & DEV COMM	111 W. COURT ST., P.O. BOX 841, RUTHERFORDTON, NC 28139.	0	22,250
PORTSMOUTH HSG AUTH	245 MIDDLE STREET, PORTSMOUTH, NH 03801	0	7,500
NEW HAMPSHIRE HSG FIN AGENCY	P.O. BOX 5087, MANCHESTER, NH 03108	0	12,500
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	0	43,750
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	0	5,500
EDISON HSG AUTH	WILLARD DUNHAM DRIVE, EDISON, NJ 08837	0	16,500
NORTH LAS VEGAS HSG AUTH	1632 YALE STREET, NORTH LAS VEGAS, NV 89030	0	6,750
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO ROAD, LAS VEGAS, NV 89122	0	12,750
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	0	57,750
HEMPSTEAD HSG AUTH	260 CLINTON STREET, HEMPSTEAD, NY 11550	0	25,750
NEW YORK STATE HSG FIN AGENCY	25 BEAVER STREET, RM 674, NEW YORK, NY 10007	0	43,500
COLUMBUS METRO HA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	0	12,750
CUYAHOGA MHA	1441 WEST 25TH STREET, CLEVELAND, OH 44113	0	37,500
CINCINNATI METRO HSG AUTH	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210	0	20,750
DAYTON METROPOLITAN HA	400 WAYNE AVE POST OFFICE BOX 8750, DAYTON, OH 45401.	0	46,750
LUCAS MHA	P.O. BOX 477 435 NEBRASKA AVENUE, TOLEDO, OH 43602.	0	23,500
LORAIN MHA	1600 KANSAS AVENUE, LORAIN, OH 44052	0	5,250
HAMILTON COUNTY PUB HSG AUTH	138 EAST COURT STREET, ROOM 507, CINCINNATI, OH 45202.	0	3,000
PARMA PHA	6901 WEST RIDGEWOOD DRIVE, PARMA, OH 44129	0	4,500
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	0	69,500
HA OF CHARLESTON	20 FRANKLIN STREET, CHARLESTON, SC 29401	0	3,000
HA OF COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	0	6,500
HA OF GREENVILLE	P.O. BOX 10047, GREENVILLE, SC 29603	0	4,000
MADISON HSG AUTH	111 S. WASHINGTON AVE., MADISON, SD 57042	0	2,250
HA OF MEMPHIS	700 ADAMS AVE, P.O. BOX 3664, MEMPHIS, TN 38103	0	20,500
METROPOLITAN DEV & HA	701 SOUTH SIXTH ST, P.O. BOX 846, NASHVILLE, TN 37202.	0	16,000
KINGSPORT HSG & REDEV AUTH	P.O. BOX 44, KINGSPORT, TN 37662	0	19,250
AUSTIN HSG AUTH	P.O. BOX 6159, AUSTIN, TX 78762	0	500
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	0	43,750
WACO HSG AUTH	P.O. BOX 978, 1001 WASHINGTON, WACO, TX 76703	0	0,500
ARLINGTON HSG AUTH	501 W. SANFORD, SUITE 20, ARLINGTON, TX 76011	0	5,750
GRAND PRAIRIE HSG AUTH	201 NW 2ND ST, STE 150, GRAND PRAIRIE, TX 75053	0	25,000

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
GARLAND HSG AUTH	P.O. BOX 469002, 210 CARVER ST, STE 201B, GARLAND, TX 75046.	0	8,500
LANCASTER HSG AUTH	525 WEST PLEASANT RUN RD STE K, LANCASTER, TX 75146.	0	9,000
HARRIS COUNTY HSG AUTH	8410 LANTERN POINT, HOUSTON, TX 77054	0	7,500
FAIRFAX CO RED & HSG AUTH	3700 PENDER DRIVE SUITE 300, FAIRFAX, VA 22030	0	12,750
VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE STREET, RICHMOND, VA 23220	0	13,750
HA OF COUNTY OF KING	600 ANDOVER PARK WEST, TUKWILA, WA 98188	0	10,000
HA OF CITY OF TACOMA	902 SOUTH ''L'' STREET SUITE 2C, TACOMA, WA 98405	0	4,500
HA OF CITY OF VANCOUVER	2500 MAIN STREET, #200, VANCOUVER, WA 98660	0	6,000
HA OF THE CITY OF MILWAUKEE	P.O. BOX 324 809, NORTH BROADWAY, MILWAUKEE, WI 53201.	0	500
RIVER FALLS HA	625 NORTH MAIN STREET, RIVER FALLS, WI 54022	0	1,500
WEST BEND HSG AUTH	475 MEADOWBROOK DR, WEST BEND, WI 53095	0	24,250
DANE COUNTY HSG AUTH	2001 W BROADWAY, SUITE 1, MONONA, WI 53713	0	5,250
Total for Terminations/Opt-outs/PD Relocation Fees		0	1,714,500
TERMINATIONS/OPT–OUTS			
AK HSG FINANCE CORP	P.O. BOX 101020, ANCHORAGE, AK 99510	55	335,280
HA OF BIRMINGHAM DISTRICT	1826 3RD AVE. SOUTH, BIRMINGHAM, AL 35233	190	836,760
HA PRICHARD	P.O. BOX 10307, PRICHARD, AL 36610	40	185,280
HA OF THE CITY OF PINE BLUFF	P.O. BOX 8872, PINE BLUFF, AR 71611	7	26,712
JACKSONVILLE HSG AUTH	P.O. BOX 734, JACKSONVILLE, AR 72076	20	76,080
TUCSON HSG MANAGEMENT DIV	310 NORTH COMMERCE PARK LOOP, TUCSON, AZ 85726	154	842,688
LOS ANGELES COUNTY HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91755	168	1,163,328
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD, 3RD FL, LOS ANGELES, CA 90057	264	1,708,032
COUNTY OF SAN JOAQUIN HA	448 SOUTH CENTER ST, P.O. BOX 447, STOCKTON, CA 95203.	101	267,120
SAN BUENAVENTURA HA	995 RIVERSIDE STREET, VENTURA, CA 93003	97	663,480
CITY OF PITTSBURG HSG AUTH	333 EAST LELAND RD, PITTSBURG, CA 94565	124	952,320
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113	17	109,344
ALAMEDA COUNTY HSG AUTH	22941 ATHERTON STREET, HAYWARD, CA 94541	36	307,152
ORANGE COUNTY HSG AUTH	1770 NORTH BROADWAY, SANTA ANA, CA 92706	74	522,144
AURORA HSG AUTH	10745 E KENTUCKY AVENUE, AURORA, CO 80012	74	517,704
CO DEPT OF HS	4131 S. JULIAN WAY, DENVER, CO 80236	13	54,600
BRIDGEPORT HSG AUTH	150 HIGHLAND AVENUE, BRIDGEPORT, CT 06604	36	230,688
HA OF CITY OF NEW HAVEN	360 ORANGE STREET, NEW HAVEN, CT 06511	77	609,840
D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002	301	2,503,116
NEW CASTLE COUNTY HA	87 READ'S WAY, NEW CASTLE, DE 19720	100	584,400
HA OF TAMPA	1514 UNION ST P.O. BOX 4766, TAMPA, FL 33607	12	75,168
HA OF THE CITY OF TITUSVILLE	524 S. HOPKINS AVE, TITUSVILLE, FL 32782	37	184,704
HIALEAH HSG AUTH	70 EAST 7TH STREET, HIALEAH, FL 33010	48	307,008
HILLSBOROUGH COUNTY–BOCC	9260 BAY PLAZA BLVD STE 510, TAMPA, FL 33619	29	150,684
HA OF SAVANNAH	P.O. BOX 1179, SAVANNAH, GA 31402	23	124,752
HA OF ATLANTA GA	230 JOHN WESLEY DOBBS AVE NE, ATLANTA, GA 30303	285	2,082,780
HA OF CITY OF MARIETTA	P.O. BOX 609, MARIETTA, GA 30061	26	187,512
DCA	60 EXECUTIVE PARK SOUTH, NE, STE 250, ATLANTA, GA 30329.	37	177,600
CITY & COUNTY OF HONOLULU	715 SOUTH KING ST., SUITE 311, HONOLULU, HI 96813	11	89,496
SIOUX CITY HSG AUTH	CITY HALL P.O. BOX 447, SIOUX CITY, IA 51102	5	19,020
AREA XV MULTI–COUNTY HA	417 NORTH COLLEGE P.O. BOX 276, AGENCY, IA 52530	54	160,464
EASTERN IOWA REG HSG AUTH	330 NESLER CENTRE, P.O. BOX 1140, DUBUQUE, IA 52001.	24	79,776
CENTRAL IOWA REG HSG AUTH	950 OFFICE PARK RD, STE 321, WEST DES MOINES, IA 50265.	8	28,128
IOWA NORTHLAND REG HA	2530 UNIVERSITY AVE., STE #5, WATERLOO, IA 50701	12	39,168
HA OF CITY OF POCATELLO	P.O. BOX 4161, POCATELLO, ID 83205	105	428,400
IDAHO HSG & FIN ASSN	565 W. MYRTLE ST., P.O. BOX 7899, BOISE, ID 83707	22	88,968
CHICAGO HSG AUTH	626 WEST JACKSON BLVD., CHICAGO, IL 60661	94	707,226
GREATER MAH OF ROCK ISLAND	325 SECOND STREET, SILVIS, IL 61282	76	320,112
JACKSON COUNTY HSG AUTH	P.O. BOX 1209, MURPHYSBORO, IL 62966	48	176,256
HA CITY OF EVANSVILLE	P.O. BOX 3605 500 COURT ST, EVANSVILLE, IN 47735	40	159,360
INDIANAPOLIS HSG AGENCY	1919 N. MERIDIAN STREET, INDIANAPOLIS, IN 46202	37	177,600
NEK–CAP, INC	P.O. BOX 380, HIAWATHA, KS 66434	44	117,744
KENTUCKY HSG CORP	1231 LOUISVILLE ROAD, FRANKFORT, KY 40601	107	412,164
JEFFERSON PARISH HA	1718 BETTY STREET, MARRERO, LA 70072	62	283,464
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139	17	210,732
WAKEFIELD HSG AUTH	26 CRESCENT ST., WAKEFIELD, MA 01880	44	350,064
HA OF BALTIMORE CITY	417 EAST FAYETTE STREET, BALTIMORE, MD 21201	140	720,720

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2002—Continued

Housing agency	Address	Units	Award
HA OF THE CITY OF FREDERICK	209 MADISON STREET, FREDERICK, MD 21701	24	180,288
MONTGOMERY CO HSG AUTH	10400 DETRICK AVENUE, KENSINGTON, MD 20895	86	724,464
HA OF PRINCE GEORGE'S CO	9400 PEPPERCORN PLACE SUITE 200, LARGO, MD 20774	48	395,136
ANNE ARUNDEL COUNTY HA	7885 GORDON CT., P.O. BOX 0817, GLEN BURNIE, MD 21060.	106	657,624
HOWARD COUNTY. HSG COMM	6751 COLUMBIA GATEWAY DR., 3RD FL, COLUMBIA, MD 21046.	48	363,456
DETROIT HSG COMMISSION	1301 EAST JEFFERSON AVE., DETROIT, MI 48207	52	321,984
LIVONIA HSG COMMISSION	19300 PURLINGBROOK ROAD, LIVONIA, MI 48152	32	178,944
MICHIGAN STATE HSG DEV AUTH	P.O. BOX 30044, LANSING, MI 48909	89	448,560
MINNEAPOLIS PHA	1001 WASHINGTON AVE NORTH, MINNEAPOLIS, MN 55401.	5	34,500
METROPOLITAN COUNCIL HRA	230 EAST FIFTH STREET, ST. PAUL, MN 55101	41	91,620
H.A.K.C.	301 EASTARMOUR BLVD., KANSAS CITY, MO 64111	73	370,548
ST. LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121	66	316,800
LEES SUMMIT HSG AUTH	111 SOUTH GRAND, LEES SUMMIT, MO 64063	42	210,672
RALEIGH HSG AUTH	P.O. BOX 28007, RALEIGH, NC 27611	31	194,928
HA OF WINSTON–SALEM	901 CLEVELAND AVENUE, WINSTON–SALEM, NC 27101	4	20,880
HA OF DURHAM	330 E MAIN STREET P.O. BOX 1726, DURHAM, NC 27702	16	93,696
ISOTHERMAL PLAN'G & DEV COMM	111 W COURT ST., P.O. BOX 841, RUTHERFORDTON, NC 28139.	100	358,800
PORTSMOUTH HSG AUTH	245 MIDDLE STREET, PORTSMOUTH, NH 03801	30	174,960
NEWARK HSG AUTH	57 SUSSEX AVENUE, NEWARK, NJ 07103	175	1,150,800
JERSEY CITY HSG AUTH	400 U.S. HIGHWAY #1, JERSEY CITY, NJ 07306	22	153,120
EDISON HSG AUTH	WILLARD DUNHAM DRIVE, EDISON, NJ 08837	66	502,920
NORTH LAS VEGAS HSG AUTH	1632 YALE STREET, NORTH LAS VEGAS, NV 89030	30	209,160
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO ROAD, LAS VEGAS, NV 89122	51	306,000
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	231	1,679,832
HEMPSTEAD HSG AUTH	260 CLINTON STREET, HEMPSTEAD, NY 11550	103	1,067,904
NEW YORK STATE HSG FIN AGENCY	BEAVER STREET, RM 674, NEW YORK, NY 10007	178	1,435,392
COLUMBUS MHA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	51	261,324
CUYAHOGA MHA	1441 WEST 25TH STREET, CLEVELAND, OH 44113	150	813,600
CINCINNATI MHA	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210	100	464,400
DAYTON METROPOLITAN HA	400 WAYNE AVE, P.O. BOX 8750, DAYTON, OH 45401	240	540,000
LUCAS MHA	P.O. BOX 477, 435 NEBRASKA AVE, TOLEDO, OH 43602	96	396,288
LORAIN MHA	1600 KANSAS AVENUE, LORAIN, OH 44052	24	119,808
HAMILTON COUNTY PHA	138 EAST COURT ST, RM 507, CINCINNATI, OH 45202	12	61,488
PARMA PHA	6901 WEST RIDGEWOOD DRIVE, PARMA, OH 44129	39	171,288
OKLAHOMA HSG FIN AGENCY	P.O. BOX 26720, OKLAHOMA CITY, OK 73126	318	1,431,000
HA OF CHARLESTON	20 FRANKLIN STREET, CHARLESTON, SC 29401	12	54,288
HA OF COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	26	139,464
HA OF GREENVILLE	P.O. BOX 10047, GREENVILLE, SC 29603	16	66,816
HA OF GREENWOOD	P.O. BOX 973, GREENWOOD, SC 29648	0	15,984
MADISON HSG AUTH	111 S. WASHINGTON AVE, MADISON, SD 57042	32	93,312
HA OF MEMPHIS	700 ADAMS AVE, P.O. BOX 3664, MEMPHIS, TN 38103	82	436,896
METROPOLITAN DEV & HA	701 SOUTH SIXTH ST, P.O. BOX 846, NASHVILLE, TN 37202.	71	400,440
KINGSPORT HSG & REDEV AUTH	P.O. BOX 44, KINGSPORT, TN 37662	79	326,112
AUSTIN HSG AUTH	P.O. BOX 6159, AUSTIN, TX 78762	2	14,712
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	175	1,026,900
ARLINGTON HSG AUTH	501 W. SANFORD, STE 20, ARLINGTON, TX 76011	23	136,896
GRAND PRAIRIE HSG AUTH	201 NW, 2ND ST., SUITE 150, GRAND PRAIRIE, TX 75053	100	603,600
GARLAND HSG AUTH	210 CARVER STREET, STE 201B, GARLAND, TX 75046	39	288,756
LANCASTER HSG AUTH	525 WEST PLEASANT RUN RD STE K, LANCASTER, TX 75146.	44	277,200
HARRIS COUNTY HSG AUTH	8410 LANTERN POINT, HOUSTON, TX 77054	30	197,280
FAIRFAX CO RED & HSG AUTH	3700 PENDER DRIVE, STE 300, FAIRFAX, VA 22030	51	408,204
VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE STREET, RICHMOND, VA 23220	59	276,120
HA OF COUNTY OF KING	600 ANDOVER PARK WEST, TUKWILA, WA 98188	40	297,120
HA OF CITY OF TACOMA	902 SOUTH "L" STREET SUITE 2C, TACOMA, WA 98405	18	94,824
HA OF CITY OF VANCOUVER	2500 MAIN STREET, #200, VANCOUVER, WA 98660	24	138,816
RIVER FALLS HSG AUTH	625 NORTH MAIN STREET, RIVER FALLS, WI 54022	6	24,408
DANE COUNTY HSG AUTH	2001 W BROADWAY, SUITE 1, MONONA, WI 53713	22	119,328
Total for Terminations/Opt-outs		7,125	41,694,798
Grand Total		22,839	142,295,161

[FR Doc. 02–30363 Filed 11–29–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Availability of Geographic Information and Related Spatial Data

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of geographic information and related spatial data.

SUMMARY: Notice is hereby given that effective with this publication, MMS will assume its responsibilities for National Spatial Data Infrastructure (NSDI) Data Themes as defined in the Office of Management and Budget's Circular No. A–16, ''Coordination of Geographic Information and Related Spatial Data Activities,'' as revised on August 19, 2002.

FOR FURTHER INFORMATION CONTACT: To acquire spatial data from MMS for the following Data Themes, Offshore Minerals, please contact Renee Orr, Chief, Leasing Division Minerals Management Service, Mail Stop 4010, 381 Elden Street, Herndon, Virginia 20170, Telephone (703) 787–1165, Cadastral (Offshore) and Outer Continental Shelf Submerged Lands, please contact Leland F. Thormahlen, Chief, Mapping and Boundary Branch, Minerals Management Service, PO Box 25165, Mail Stop 4011, Denver Federal Center, Lakewood, Colorado 80225, Telephone (303) 275–7120 or visit our web site at *www.mms.gov/ld/leasing.htm*.

SUPPLEMENTARY INFORMATION: Under the Revised OMB Circular A–16 the following Data Themes as defined are the sole responsibility of the MMS:

Cadastral (Offshore): DOI, MMS

Definition: Offshore cadastre is the land management system used on the Outer Continental Shelf. The cadastre extends from the baseline to the extent of United States jurisdiction. Existing coverage is currently limited to the conterminous United States and portions of Alaska. The maximum extent of United States jurisdiction has not been mathematically determined and will be available as soon as the information is provided by the Department of Commerce.

Offshore Minerals: DOI, MMS

Definition: Offshore minerals include minerals occurring in submerged lands. Examples of marine minerals include oil, gas, sulfur, gold, sand and gravel, and manganese.

Outer Continental Shelf Submerged Lands: DOI, MMS

Definition: This data includes lands covered by water at any stage of the tide, as distinguished from tidelands, which are attached to the mainland or an island and cover and uncover with the tide. Tidelands presuppose a high-water line as the upper boundary; whereas submerged lands do not.

Dated: November 18, 2002.

Johnnie Burton,

Director, Minerals Management Service.

[FR Doc. 02–30442 Filed 11–29–02; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–989 (Final)]

Ball Bearings From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On October 8, 2002, the Commission established a schedule for the conduct of the final phase of the subject investigation (67 FR 65142, October 23, 2002). The Commission hereby revises the date for its hearing in the investigation from March 4, 2003, to March 6, 2003.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 26, 2003; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 3; the prehearing staff report will be placed in the nonpublic record on February 21; the deadline for filing prehearing briefs is February 28; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 6; the deadline for filing posthearing briefs is March 13; the Commission will make its final release of information on March 26; and final party comments are due on March 28. For further information concerning this investigation see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30371 Filed 11–29–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–757 and 759 (Review)]

Collated Roofing Nails From China and Taiwan

AGENCY: International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in October 2002 to determine whether revocation of the antidumping duty orders on collated roofing nails from China and Taiwan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On November 25, 2002, the Department of Commerce published notice that it was revoking the orders effective November 25, 2002 because ''no domestic party responded to the sunset review notice of initiation by the applicable deadline'' (67 FR 70578). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: November 25, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30443 Filed 11–29–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–430A and 430B and 731–TA–1019A and 1019B (Preliminary)][1]

Durum and Hard Red Spring Wheat From Canada

Determinations

On the basis of the record[2] developed in the subject investigations, the United States International Trade Commission (Commission) determines,[3] pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that industries in the United States are materially injured by reason of imports from Canada of durum and hard red spring wheat, provided for in subheadings 1001.10.00, 1001.90.10, and 1001.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada and sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 13, 2002, a petition was filed with the Commission and Commerce by the North Dakota Wheat Commission (hard red spring wheat), Bismarck, ND; the Durum Growers Trade Action Committee (durum wheat), Bismarck, ND;[4] and the U.S. Durum Growers Association (durum wheat), Bismarck, ND, alleging that industries in the United States are materially injured and are threatened with material injury by reason of subsidized and LTFV imports of durum and hard red spring wheat from Canada. Accordingly, effective September 13, 2002, the Commission instituted countervailing duty and antidumping duty investigations Nos. 701–TA–430 and 731–TA–1019 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 25, 2002 (67 FR 60256). The conference was held in Washington, DC, on October 4, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 25, 2002.

The views of the Commission are contained in USITC Publication 3563 (December 2002), entitled *Durum and Hard Red Spring Wheat from Canada: Investigations Nos. 701–TA–430A and 430B and 731–TA–1019A and 1019B (Preliminary).*

Issued: November 25, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30444 Filed 11–29–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–456]

Certain Gel-Filled Wrist Rests and Products Containing Same; Notice of Final Determination of No Violation of Section 337 of the Tariff Act OF 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

[1] Subsequent to the Commission's institution of these investigations, the Department of Commerce (Commerce) initiated separate countervailing duty investigations on durum wheat (C–122–846) and hard red spring wheat (C–122–848), and separate antidumping investigations on durum wheat (A–122–845) and hard red spring wheat (A–122–847). For consistency, the Commission is further delineating its investigation numbers for the duration of the investigations as follows: investigations Nos. 701–TA–430A and 731–TA–1019A will cover durum wheat and investigations Nos. 701–TA–430B and 731–TA–1019B will cover hard red spring wheat.

[2] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[3] Commissioner Stephen Koplan dissenting.

[4] In a petition supplement dated September 24, 2002, the petitioners informed Commerce that, with respect to the petition on durum wheat, the petitioners were replacing the North Dakota Wheat Commission with the Durum Growers Trade Action Committee.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 17, 2001, based on a complaint filed on behalf of Minnesota Mining and Manufacturing Company (now called 3M Company) and 3M Innovative Properties Company (collectively complainants), both of St. Paul, Minnesota. 66 FR 27535 (2001). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain gel-filled wrist rests and products containing same that infringe certain claims of U.S. Letters Patent 5,713,544 (''the '544 patent''). The Commission named as respondents Velo Enterprise Co. Ltd., Taiwan; Aidma Enterprise Co. Ltd. (''Aidma''), Taiwan; Good Raise Chemical Industry Co., Ltd. (''Good Raise''), Taiwan; ACCO Brands, Inc., Lincolnshire, Illinois; Curtis Computer Products Inc. (''Curtis''), Provo, Utah; Allsop, Inc. (''Allsop''), Bellingham, Washington; American Covers Inc., Draper, Utah; and Gemini Industries (''Gemini''), Clifton, New Jersey. The complaint and notice of investigation were later amended to add Crown Vast Development Ltd. and Hornleon Company, Ltd. (''Hornleon'') both of Taiwan as respondents. On October 22, 2001, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID''), Order No. 6, granting complainants'' unopposed motion to terminate the investigation with respect to respondent Gemini on the basis of a consent order. On January 9, 2002, the ALJ issued an ID, Order No. 12, finding respondents Good Raise and Aidma in default. On May 15, 2002, the ALJ issued an ID, Order No. 15, granting complainants' unopposed motion to terminate the investigation with respect to respondent Curtis on the basis of a consent order. On May 21, 2002, the ALJ issued an ID, Order No. 16, granting complainants' unopposed motion to terminate the investigation with respect to respondent Allsop on the basis of a consent order. None of these IDs was reviewed by the Commission. The ALJ held an evidentiary hearing from January 14, 2002, to January 18, 2002. On July 24, 2002, the ALJ issued his final ID in which he found no infringement of the claims of the ''544 patent at issue, and hence no violation of section 337. He also found that complainants had failed to demonstrate satisfaction of the technical prong of the domestic industry requirement of section 337 for the ''544 patent, and that the claims in issue of the ''544 patent are invalid due to obviousness and failure to disclose the best mode of practicing the invention. The ALJ also found that the claims in issue of the ''544 patent are not invalid due to anticipation, indefiniteness, lack of a written description or the lack of enablement, or improper joinder or non-joinder of inventors; that the ''544 patent is not unenforceable due to inequitable conduct before the U.S. Patent and Trademark Office; and that complainants are not barred from asserting the ''544 patent due to equitable estoppel. The ALJ noted that respondent Hornleon did not respond to the complaint and notice of investigation or provide written discovery in this investigation, although a representative of the firm appeared and testified at a deposition. Hornleon neither appeared at the hearing nor filed briefs. However, complainants did not move to find Hornleon in default. The ALJ thus found no violation of section 337 with respect to Hornleon, and no party contested that finding. All parties filed petitions for review and subsequently responded to each other's petitions. On September 9, 2002, the Commission determined to review: (1) The ID's construction of the asserted claims of the ''544 patent; (2) the ID's infringement conclusions; (3) the ID's validity conclusions with regard to obviousness and failure to disclose best mode of practice; and (4) the ID's conclusion with respect to the technical prong of the domestic industry requirement.

The Commission determined not to review the remainder of the ID. In accordance with the Commission's instructions, the parties filed their main briefs on September 23, 2002, and reply briefs on September 30, 2002. Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission found that the domestic products of complainants do not practice any claim of the ''544 patent, and thus the technical prong of the domestic industry requirement of section 337 is not met in this investigation. The Commission also found that the accused imported wrist rests, except the Jelly Mouse product, infringe the asserted claims of the ''544 patent, and that the ''544 patent is not invalid due to obviousness or failure to disclose the best mode of practicing the invention. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's rules of practice and procedure, 19 CFR 210.45–210.51.

By order of the Commission.

Issued: November 25, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30372 Filed 11–29–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title: Reporting for Temporary Extended Unemployment Compensation Program.

OMB Number: 1205–0433.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 53.

ANNUALIZED REPORTING BURDEN

Form	Frequency	Annual responses	Average response time (hours)	Total annual burden hours
ETA–207	Quarterly	212	0.5	106
ETA–218	Quarterly	212	0.2	42
ETA–227	Quarterly	212	1.0	212
ETA–2112	Monthly	636	0.2	127
ETA–5130	Monthly	636	1.0	636
ETA–5159	Monthly	636	1.0	636
ETA–539	Weekly	2,756	0.01	28
Total:		5,300		1,787

Total Burden Cost (capital/startup): $ 0.

Total Burden Cost (operating/maintaining): $ 0.

Description: On March 9, 2002, President Bush signed into law the Temporary Extended Unemployment Compensation (TEUC) program. This program provides up to 26 weeks of additional unemployment benefits to eligible claimants who have exhausted their regular entitlement. This is a temporary, federally funded program enacted through December 31, 2002. To properly administer and monitor this program, specific information is required from states. The information requested through these reports are necessary to proper administer the program and interpretation of labor market conditions. Approval is not being sought for any new forms, but rather, approval is being sought for an additional use of the following existing forms:

Report	OMB No.	Expiration date
ETA 207	1205–0150	10/31/2004
ETA 218	1205–0177	07/31/2004
ETA 227	1205–0173	11/30/2003
ETA 2112	1205–0154	01/31/2003
ETA 5130	1205–0172	10/31/2004
ETA 5159	1205–0010	03/31/2003
ETA 539	1205–0028	07/31/2003

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–30420 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E–Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: New collection.

Title: Local Area Survey of Self-directed Labor Exchange Services.

OMB Number: 1205–ONEW.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Twice over three years.

Number of Respondents: 605.

Annual Responses: 605.

Average Response Time: 30 minutes.

Total Annual Burden Hours: 303.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The data collected on this survey will provide a national snapshot of self-service tools and resources available in local workforce areas and the systems and mechanisms that areas use to track customers' usage, outcomes, and satisfaction with services. In addition to contributing to ETA's understanding of the resources and tools that have been developed for delivery of self-directed services, survey results will be used to select a sample of states and local areas for subsequent in-depth analysis of the quality and cost-effectiveness of self-directed services.

Ira L. Mills,

Departmental clearance Officer.

[FR Doc. 02–30421 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 22, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Noise Exposure Assessment; Audiometric Testing, Evaluation, and Records and Training in all Mines.

OMB Number: 1219–0120.

Affected Public: Business or other for-profit and State, Local, or Tribal Government.

Type of Response: Recordkeeping.

Frequency: On occasion.

Number of Respondents: 13,552.

Annual Responses: 821,843.

Total Annual Burden Hours: 101,852.

Average Response Time: Varies from 5 minutes to post notices to 5 hours to establish a system for monitoring noise exposure.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $4,151,448.

Description: 30 CFR Sections 62.110, 62.130, 62.170, 62.171, 62.172, 62.173, 62.174, 62.175, 62.180, and 62.190 establish uniform noise exposure recordkeeping requirements for the mining industry. Records of miner exposures are necessary so that mine operators and MSHA can evaluate the need for and effectiveness of engineering controls, administrative controls, and personal protective equipment to protect miners from harmful levels of noise exposure. Records of miner hearing examinations enable mine operators and MSHA to ensure that controls are effective in preventing noise-induced hearing loss for individual miners. Records of training are needed to confirm that miners receive the information they need to become active participants in hearing conservation efforts.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–30422 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 21, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (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 contact Marlene Howze at (202) 219–8904 or e-mail *Howze-Marlane@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Disclosures for Participant Directed Individual Account Plans under the Employee Retirement Income Security Act (ERISA) Section 404(c).

OMB Number: 1210–0090.

Affected Public: Business or other for-profit, individuals or households, and Not-for-profit institutions.

Frequency: On Occasion.

Number of Respondents: 324,000.

Number of Annual Responses: 39,100,000.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 36,950.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $17,555.00.

Description: Section 404(c) of ERISA provides that where an individual account pension plan permits individual investment direction, the individual will not be deemed a fiduciary and no person otherwise a fiduciary shall be liable for any loss or breach that results from the individual's exercise of control. The information collection requirements are mandatory only if a plan wishes to utilize the relief available under ERISA Section 40(c). There is no reporting to the Federal government under this regulation.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–30423 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; ERISA Procedure 76–1 '' Advisory Opinion Procedure

AGENCY: Pension and Welfare Benefits Administration, Department of 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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments on the proposed extension of ERISA Procedure 76–1 '' Advisory Opinion Procedure.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before January 31, 2003.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Employee Retirement Income Security Act of 1974, as amended, (ERISA) the Secretary of Labor is responsible for administration and enforcement of reporting, disclosure, fiduciary, and other standards established for pension and welfare benefit plans. ERISA Procedure 76–1 describes the administrative procedures to be used by the public when requesting a legal interpretation from the Department with regard to specific facts and circumstances (an Advisory Opinion or information letter), and the procedures used by the Department in issuing such interpretations. The procedure is designed to promote efficient handling of inquiries, and to facilitate prompt responses.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on January 31, 2003. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: ERISA Procedure 76—1—Advisory Opinion Procedure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0066.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 115.

Responses: 115.

Average Response time: 14 hours.

Estimated Total Burden Hours: 161.

Estimated Total Burden Cost (Operating and Maintenance): $98,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–30424 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; National Medical Support Notice—Part B

AGENCY: Pension and Welfare Benefits Administration, Department of 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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the

Pension and Welfare Benefits Administration is soliciting comments on the proposed extension of the National Medical Support Notice—Part B.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before January 31, 2003.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 609(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), provides that each group health plan, as defined in ERISA section 607(1), shall provide benefits in accordance with the applicable requirements of any ''qualified medical child support order'' (QMCSO). Based on a desire to eliminate concerns raised both by state agencies that enforce the programs under Title IV–D of the SSA (known as the Child Support Enforcement Program, which is administered by the Federal Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS)), and by sponsors and administrators of group health plans about difficulties in establishing medical child support orders that are qualified, Congress enacted section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA) to amend both ERISA and the SSA.

Section 401(a) of CSPIA mandated that the Secretaries of Labor and of Health and Human Services (the Secretaries) jointly establish a Medical Child Support Working Group (the Working Group) whose purpose was to identify the impediments to the effective enforcement of medical support by state agencies and to submit a report to the Secretaries containing recommendations for appropriate measures to address such impediments. CSPIA specifically directed the Working Group to make recommendations based on assessments of the form and content of QMCSOs.

As a response to the concerns of state agencies and plan administrators regarding QMCSOs, the Department and HHS jointly promulgated the National Medical Support Notice (Notice). The Notice simplifies the issuance and processing of medical child support orders, provides standardized communication between state agencies, employers, and plan administrators, and creates a uniform and streamlined process for enforcement of medical child support to ensure that all children receive the health care coverage for which they are eligible and to which they are entitled. Part B pertains to plan administrators pursuant to ERISA.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on January 31, 2003. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: National Medical Support Notice—Part B.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0113.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 156,000.

Responses: 770,000.

Average Response time: One hour to and hour and three-quarters.

Estimated Total Burden Hours: 785,000.

Estimated Total Burden Cost (Operating and Maintenance): $1,100,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–30425 Filed 11–29–02; 8:45 am]

BILLING CODE 4510–29–P

Medicare Payment Advisory Commission

Commission Meeting

AGENCY: MEDICARE PAYMENT ADVISORY COMMISSION.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, December 12, 2002, and Friday, December 13, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on December 12, and at 9 a.m. on December 13.

Topics for discussion include: Beneficiaries' spending for Medicare and other health care services; payment adequacy and updating Medicare payments; comparing of Medicare physician payments to the private sector; paying for new technologies; PPS for inpatient psychiatric facilities; Medicare+Choice and other options available to beneficiaries; expanded transfer policy for hospital inpatient services; indirect medical education payments above the costs of teaching; and beneficiaries' access to care.

Agendas will be mailed on December 4, 2002. The final agenda will be available on the Commission's website (*http://www.MedPAC.gov.*)

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Elllison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 02–30393 Filed 11–29–02; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 02–145]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). NASA will utilize the information collected to expedite reporting of Government-owned, contractor-operated vehicles as required by Executive Order 13149.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. William Gookin, Code JG, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Federal Automotive Statistical Tool (FAST) Collection.

OMB Number: 2700.

Type of review: New collection.

Need and Uses: Data gathered in this report will enable NASA transportation managers to control costs and energy use by contractors operating Government-owned vehicles.

Affected Public: Business or other for-profit.

Number of Respondents: 93.

Responses Per Respondent: 1.

Annual Responses: 93.

Hours Per Request: 15 min/vehicle.

Annual Burden Hours: 425.

Frequency of Report: Annually.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–30353 Filed 11–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls)

Time and Dates for 2003: 12 noon, Eastern Time, January 9, March 6, May 1, July 3, September 4, November 6.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these conference calls will be open to the public. Those interested in participating in conference calls should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for each conference call.

Agendas: Roll call, announcements, overview of accomplishments, planning, reports, new business, adjournment.

Contact Person for More Information: Joan M. Durocher, Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

International Watch Advisory Committee Mission: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Dated: November 25, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–30401 Filed 11–29–02; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of proposed projects.

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 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.

DATES: Written comments on this notice must be received by January 31, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the collection instruments and instructions, contact Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Earned Doctorates.

OMB Approval Number: 3145–0019.

Expiration Date of Approval: May 31, 2003.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. *Abstract:* The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The Survey of Earned Doctorates is part of an integrated survey system that meets the human resources past of this mission.

The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by six Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly

educated individuals. Data are obtained via paper questionnaire or Web option from each person earning a research doctorate at the time they receive the degree. Data are collected on their field of specialty, educational background, source of support in graduate school, debt level, post graduation plans for employment, and demographic characteristics. The Federal government, universities, researchers, and others use the information extensively.

The National Science Foundation, as the lead agency, publishes statistics from the survey in many reports, but primarily in the annual publication series, ''Science and Engineering Doctorates.'' The National Opinion Research Corporation at the University of Chicago disseminates a free interagency report entitled ''Doctorate Recipients from U.S. Universities: Summary Report.'' These reports are available in print and electronically on the World Wide Web.

The survey will be collected in conformance with the Privacy Act of 1974 Confidential Information Protection and Statistical Efficiency Act of 2002. Responses from individuals are voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A total response rate of 92% of the total 40,744 persons who earned a research doctorate was obtained in academic year 2000/2001. This level of response rate has been consistent for several years. The respondents will be individuals and the estimated number of respondents annually is 37,484 (based on 2001 data)

3. *Estimate of Burden:* The Foundation estimates that, on average, 19 minutes per respondent will be required to complete the survey, for a total of 11,714 hours for all respondents (based on the Academic 2000/2001 number). This is reduced by 2,514 hours from the last annual estimate approved by OMB; this reduction is due to a revised, more efficient section on educational history and a declining number of research doctorate recipients since 1998.

Dated: November 26, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 02–30399 Filed 11–29–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste

Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on December 17, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, December 17, 2002—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: November 25, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–30418 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on December 11–12, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 11, 2002–8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the work performed by NRC's Office of Nuclear Regulatory Research (RES) pertaining to the use of the RELAP–5 code for calculation of the thermal-hydraulic parameters used in the Oak Ridge National Laboratory FAVOR code, pursuant to the Pressurized thermal Shock Rule Reevaluation effort.

Thursday, December 12, 2002–8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the RES TRAC–M code consolidation and documentation project.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be

considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its contractors, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 25, 2002.

Sher Bahadur,

Associate Director, for Technical Support, ACRS/ACNW.

[FR Doc. 02–30419 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Pub. L. 100–647), the amount of each employer's contribution is determined by the RRB, primarily on the basis of RUIA benefit payments made to the employees of that employer. These experienced based contributions, take into account the frequency, volume and duration of RUIA benefits, both unemployment and sickness, attributable to a railroad's employees. Each employer's contribution rate includes a component for administrative expenses and a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments of underpayments of contributions are contained in 20 CFR 345.

RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act, is currently utilized by the RRB for the reporting and remitting of quarterly contributions by railroad employers. The RRB utilizes a manual version of Form DC–1 and also provides railroad employers with the option of reporting the required information and remitting their quarterly contributions via and Internet equivalent version Form DC–1.

The RRB estimates that 2,200 responses are received annually. One response is requested quarterly of each respondent. Completion is mandatory. The RRB proposes non-burden impacting editorial changes to Form DC–1. The estimated completion for the manual and Internet version of Form DC–1 is estimated at 25 minutes.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board , 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–30431 Filed 11–29–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medicare.

(2) *Form(s) submitted:* AA–6, AA–7, AA–8, RL–311–F.

(3) *OMB Number:* 3220–0082.

(4) *Expriation date of current OMB clearance:* 9/30/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or Households, Business or other-for-profit.

(7) *Estimated annual number of respondents:* 1,040.

(8) *Total annual responses:* 1,040.

(9) *Total annual reporting hours:* 165.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The forms in the collection obtain information needed to enroll non-retired employees and survivor applicants in the plan and also obtain information from railroad employers needed to determine if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplemental medical coverage under Medicare.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–30432 Filed 11–29–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (CII Financial, Inc., 9½% Senior Debentures (Due September 15, 2004)) on the New York Stock Exchange, Inc. File No. 1–18324

November 22, 2002.

CII Financial, Inc., a California corporation (''Issuer''), has filed an

application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 9½% Senior Debentures (due September 15, 2004) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has complied with all applicable laws in effect in the state of California, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

The Board of Directors (''Board'') of the Issuer unanimously adopted resolutions on September 16, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making the decision to withdraw its Security from the NYSE, the Issuer noted that: (i) As of September 12, 2002, there were approximately 75 holders of the Security, including holders of record and those firms that held the Security through Cede & Co.; (ii) the Issuer states that it is not obligated under the indenture under which the Security was issued nor any other documents to maintain a listing of the Security on the NYSE or any other exchange and; (iii) the burden and expense of maintaining the Issuer's listing on the NYSE are disproportionate, given the small number of holders of the Security, and the fact that the Security will mature in less than two years.

Any interested person may, on or before December 20, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–30368 Filed 11–29–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27607]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 22, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 17, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 17, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Gas Markets LLC, et al. (70–10097)

Northeast Gas Markets LLC (''NEGM''), 100 Cummings Center, Suite 457G, Beverly, Massachusetts 01915–6132, a nonutility subsidiary of KeySpan Corporation (''KeySpan''), a registered holding company; and KeySpan's utility subsidiaries Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (''KEDNY''), One MetroTech Center, Brooklyn New York, 11201; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (''KEDLI''), 175 East Old Country Road, Hicksville, New York 11801; Boston Gas d/b/a KeySpan Energy Delivery New England (''Boston Gas'') and Essex Gas Company d/b/a KeySpan Energy Delivery New England (''Essex Gas''), both located at One Beacon Street, Boston, Massachusetts 02108; and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (''ENGI''), 1260 Elm Street, P.O. Box 329, Manchester, New Hampshire 03105 (collectively ''Applicants''),[1] have filed an application-declaration, as amended, under sections 12(f) and 13(b) of the Act and rule 54 under the Act.

NEGM, a Delaware limited liability company, is a nonutility company that provides natural gas procurement, contract management and marketing services to clients located in the northeastern part of the United States. KeySpan indirectly holds a 90% ownership interest in NEGM. Michael S. Lucy Associates, a company which is wholly owned by Michael S. Lucy, owns the remaining 10% interest of NEGM. Mr. Lucy is the president of NEGM.

Currently, NEGM is a ''facilitating entity'' providing contract services to customers in connection with large natural gas supply contracts with Western Canadian gas producers. The two major gas supply projects administered by NEGM are Boundary Gas, Inc. (''Boundary'') and Alberta Northeast Gas Limited (''ANE''). NEGM provides contract services to ANE and Boundary under longstanding management services arrangements. ANE and Boundary purchase Canadian natural gas and resell it to numerous local distribution companies (''US Customers'') in the northeast United States. The Boundary arrangements end on January 15, 2003. The ANE arrangements will not expire in their entirety until 2007.

In order to avoid interruption of the base load supplies once the Boundary arrangement ends, the KeySpan Gas Utilities as well as several gas utilities that are Boundary participants but not affiliated with KeySpan (''Unaffiliated Utilities''),[2] have each entered into contracts with EnCana Corporation (''Encana'') to supply Canadian gas beginning on January 15, 2003 (''Encana

[1] KEDNY, KEDLI, Boston Gas, Essex Gas and ENGI are collectively referred to as the ''KeySpan Gas Utilities.''

[2] The Unaffiliated Utilities are Bay State Gas Company, The Berkshire Gas Company, and Northern Utilities, Inc., gas utility subsidiaries of NiSource and Energy East.

Gas Contracts''). Specifically, the Unaffiliated Utilities and the KeySpan Gas Utilities have entered into a management service agreement and agency agreement (collectively, the ''M&A Agreement'') under which NEGM will provide contract services to the utilities for the EnCana Gas Contracts after Boundary expires. However, the KeySpan Gas Utilities and NEGM have executed a letter of agreement which states that the effectiveness of the M&A Agreement as between NEGM and the KeySpan Gas Utilities is conditioned upon obtaining any necessary approvals from the Commission under the Act and applicable state regulatory commissions.

In accordance with the M&A Agreement it has negotiated with the Unaffiliated Utilities and the KeySpan Gas Utilities, NEGM will provide day-to-day contract services consisting of notifying EnCana of the amounts of gas the utilities would like to schedule for delivery; processing and auditing the EnCana gas supply bills to ensure their accuracy and submitting to the utilities their pro rata share of the gas supply costs based on the amount of gas they each purchased; preparing and filing regulatory and customs reports in Canada and the U.S. relating to the EnCana gas supply; providing informational support to the gas utilities for their federal and state regulatory filings; and daily interactions with EnCana regarding the Encana Gas Contracts (including price negotiations when appropriate). These are the same types of services NEGM currently provides under the Boundary and ANE arrangements. The fee structure under the M&A Agreement with NEGM is the same as for a Boundary and ANE projects—$0.0128/Mcf of contracted volume. Because the KeySpan Gas Utilities and the Unaffiliated Utilities are parties to the same M&A Agreement, all of the participating utilities (affiliated and non-affiliated) will receive the same services at the same price and terms. Accordingly, Applicants seek authorization for NEGM to provide gas contract services to the KeySpan Gas Utilities under the terms as outlined above.

With respect to the KeySpan Gas Utilities, the Encana Gas Contracts and the M&A Agreement expire on March 31, 2004, unless extended pursuant to the terms of those agreements. Once these arrangements terminate, NEGM may wish to enter into contracts to provide the KeySpan Gas Utilities with contract services for new Canadian gas supplies that the KeySpan Gas Utilities purchase. Accordingly, NEGM also requests authorization to enter into future agreements to provide contract services to the KeySpan Gas Utilities with respect to their gas supplies provided the following conditions are met: (1) The price charged to a KeySpan Gas Utility is no greater than the prices that unaffiliated entities pay to NEGM for the same type of contract services; (2) the non-price terms of any NEGM gas contract services provided to a KeySpan Gas Utility are the same as those provided to non-affiliated entities obtaining the same type of service from NEGM; and (3) the KeySpan Gas Utility's cost of gas is regulated by its applicable state commission and the utility treats the price paid for NEGM services as a cost of gas.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30369 Filed 11–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 2, 2002: A Closed Meeting will be held on Tuesday, December 3, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (6), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, December 3, 2002 will be: Institution and settlement of administrative proceedings of an enforcement nature; settlement of injunctive actions; and amicus consideration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 26, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30567 Filed 11–27–02; 10:54 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46885; File No. SR–NASD–2002–142]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto To Establish an Execution Price Governor in SuperMontage

November 22, 2002.

On October 9, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish in SuperMontage a permanent execution price governor to prevent inadvertent executions significantly away from the inside market. The NASD amended its proposals on October 10, 2002.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 21, 2002.[4] The Commission received no comments on the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 15A of the Act[5] and the rules and regulations thereunder.[6] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 15(A)(b)(6),[7] which provides that the rules of the association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 10, 2002 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 46650 (October 11, 2002), 67 FR 64683.

[5] 15 U.S.C. 78*o*–3.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the establishment of a SuperMontage execution price governor may prevent inadvertent executions significantly away from the inside market. The Commission also agrees with Nasdaq that this approach may act to balance the goals of rapid execution and price discovery while protecting market participants and the public investors they represent from excessive volatility and market confusion that can result from grossly mispriced/sized quotes/orders in an automated and linked trading environment. The Commission also notes that Nasdaq separately filed and received accelerated approval of a proposal, pursuant to Section 19(b)(2) of the Act,[8] to establish the execution price governor on a 60-day pilot basis, which is scheduled to expire on December 13, 2002.[9] Since the implementation of the pilot program, Nasdaq has indicated that it has encountered no problems with the establishment of the execution price governor.[10]

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change and Amendment No. 1 (SR-NASD–2002–142) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30370 Filed 11–29–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 46652 (October 11, 2002), 67 FR 64681 (October 21, 2002).

[10] Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Cyndi Nguyen, Attorney, Division, Commission, on November 21, 2002.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3469]

State of Alaska

As a result of the President's major disaster declaration for Public Assistance on November 8, 2002, and subsequent amendment adding Individual Assistance on November 18, 2002, I find that the Alaska Gateway Regional Educational Attendance Area (REAA) and the Copper River Regional Educational Attendance Area (REAA) in the State of Alaska constitute a disaster area due to damages caused by an earthquake occurring on November 3, 2002 and continuing through November 10, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 17, 2003 and for economic injury until the close of business on August 18, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following areas and jurisdictions may be filed until the specified date at the above location: Chugach REAA, Delta/Greely REAA, Yukon Flats REAA, City & Borough of Yakutat, Fairbanks North Star Borough, and Matanuska—Susitna Borough in the State of Alaska. The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 346902. For economic injury the number is 9T1100 for Alaska.

Dated: November 21, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–30449 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3470]

State of Arkansas (And Contiguous Counties in Mississippi and Tennessee)

Crittenden County and the contiguous counties of Cross, Lee, Mississippi, Poinsett and St. Francis Counties in the State of Arkansas; DeSoto and Tunica Counties in the State of Mississippi; and Shelby and Tipton Counties in the State of Tennessee constitute a disaster area as a result of severe storms and tornadoes that occurred on November 9, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 21, 2003, and for economic injury may be filed until the close of business on August 22, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	6.648
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.324
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.324

The numbers assigned to this disaster for physical damage are 347011 for Arkansas; 347111 for Mississippi; and 347211 for Tennessee. The numbers assigned to this disaster for economic injury are 9T1200 for Arkansas; 9T1300 for Mississippi; and 9T1400 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 22, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–30447 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3462]

State of Tennessee; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency, dated November 22, 2002, the above numbered declaration is hereby amended to include Bledsoe, Fentress, Roane and Van Buren Counties in the State of Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on November 9 through November 12, 2002.

In addition, applications for economic injury loans from small businesses located in Hamilton, McMinn, Meigs, Overton and Sequatchie Counties in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is January 13, 2003, and for economic injury the deadline is August 13, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 28, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–30446 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated November 20, 2002, the above numbered declaration is hereby amended to include Jim Wells County in the State of Texas as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing through November 15, 2002.

In addition, applications for economic injury loans from small businesses located in Brooks and Duval Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 25, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–30448 Filed 11–29–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4211]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-five letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 18, 2002.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

Department of State, Washington, D.C. 20520

October 4, 2002.

The Honorable Henry J. Hyde,

Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: I am transmitting, herewith, certification of a proposed issuance of export licenses pursuant to Section 126.14 of the International Traffic in Arms Regulations concerning a Global Project Authorization (GPA) and Section 36(c) of the Arms Export Control Act.

The transaction described in the attached certification concerns the Systems Design and Development phase of the Joint Strike Fighter program and involves the export of technical data and defense services among U.S. defense firms and their foreign collaborative partners located in the countries of Canada, Denmark, Italy, Norway, The Netherlands, Turkey and the United Kingdom.

The United States Government is prepared to license exports of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael C. Polt,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 277–02

Department of State, Washington, D.C. 20520

October 7, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and assistance for the manufacture of C–130 nacelles for use by Lockheed Martin in the production and support of C–130 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael C. Polt,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 146–02

Department of State, Washington, D.C. 20520

October 7, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act,

I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of Significant Military Equipment, which also involves the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense services and defense articles for the manufacture, test and depot level repair of data terminal equipment for the United Kingdom BOWMAN Radio Communication Program with end-use by the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael C. Polt,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 244–02

Department of State, Washington, DC 20520

October 10, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to France in order to manufacture nozzle-exit cone extensions for incorporation into the RL10B–2 production engines, which will in turn be integrated into Delta III and IV launch vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 208–02

Department of State, Washington, DC 20520

October 11, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to South Korea to support the manufacture and assembly of forty (40) F–15 fighter aircraft with associated spares and support equipment.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 209–02

Department of State, Washington DC 20520

October 11, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the Republic of Korea of technical data, defense services and defense articles for the manufacture of eighty-eight F110–GE–129 engines and component parts for installation in the F–15K fighter aircraft being developed for the Republic of Korea Air Force for end-use in the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 245–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the manufacture of Bowman HF radio subsystems for integration into the Bowman Communications System for end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 280–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement (MLA) involving the manufacture abroad of significant military equipment.

The transaction contained in the attached certification involves the export to Spain of technical data and assistance in the manufacture of the Dragoon/Patroller vehicle for end-use by Spain, and marketing to Portugal, Greece, Turkey, Argentina, Brazil, Canada, Chile, Colombia, Dominican Republic, Ecuador, Jamaica, Peru, Venezuela, Egypt, Israel, Kuwait, Oman, Qatar, Saudi Arabia, Malaysia, the Philippines, Taiwan and Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification, which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 222–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act,

I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more and includes the manufacture of significant military equipment overseas.

The transaction contained in the attached certification involves the export of defense services and technical data to South Korea to support the development and production of M77 grenades used in the Multiple Launch Rocket System (MLRS) by the South Korean Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 247–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to support the manufacture of F100–PW–220 and F100–PW–229 engine parts, components and assemblies in South Korea, for shipment back to the U.S.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 248–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense services and defense articles for the production of the Mk 46 Mod 5A(S) and Mod 5A(SW) Torpedo assemblies and components in Japan for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 249–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture in Italy of significant military equipment.

The transaction described in the attached certification involves the transfer of technical data and defense services for the replication of HAVE QUICK II software object code for incorporation into Italian manufactured radio equipment for sale to Australia, Belgium, Canada, Denmark, Greece, The Netherlands, Norway, Portugal, South Korea, Spain, Turkey, France, Poland and Oman.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 250–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the continuation of an expired manufacturing license agreement for the production of F–15 aircraft fuel cells in Japan for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 251–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more and includes the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of hardware, technical data and assistance to support the manufacture of Tactical Air Launched Decoys (TALD) and Improved TALDs with Israel Military Industries Ltd. of Israel, for sale in the U.S. and thirteen countries.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 252–02

Department of State, Washington, DC 20520

Ooctober 21, 2002.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and assistance in

the production of the control section for the Advanced Medium Range Air-to-Air Missile (AMRAAM) for final incorporation into the missile back in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 268–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves a manufacturing license agreement with Japan for the production, service and overhaul of Model 501–K34 naval engine parts for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 269–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment.

The transaction described in the attached certification involves the transfer of technical data and defense services to Canada for the production of Optomechanical Major Assemblies and Optical Components and Subassemblies for the Advanced Short Range Air-to-Air Missile (ASRAAM) for end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 270–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Taiwan of defense services, technical data and defense articles to support the operational readiness of the Taiwanese Air Force's fleet of F–16 fighter aircraft by providing F100 engine parts, support equipment and training.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 274–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with the United Kingdom for the manufacture of Significant Military Equipment overseas.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to the United Kingdom for the manufacture of seeker and roll gyros for the United Kingdom Ministry of Defence's Javelin Anti-Tank Weapon System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 275–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with Chile, Germany and the United Kingdom for the manufacture of Significant Military Equipment overseas.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Chile, jointly with Germany and the United Kingdom, for the overhaul and upgrade of up to 158 military ground vehicles for use by the Chile Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 276–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which also involves the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Canada and Australia of technical data, defense services and defense articles for the manufacture of LAV–25 turrets for installation on Warrior Armored Vehicles for end-use by the Kuwaiti Armed Forces in Kuwait.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 278–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement (MLA) involving the manufacture abroad of Significant Military Equipment.

The transaction contained in the attached certification involves the export to Japan of technical data and assistance in the manufacture of HTPE solid rocket motor propellant for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 279–02

Department of State, Washington, DC 20520

October 21, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of hardware, technical data and assistance to support manufacture of airfoils for F100, J–52, J–57, TF–30, F119, F135, TF33 and F117 aircraft engines with Israel, for sale back to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 281–02

Department of State, Washington, DC 20520

October 25, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: I am transmitting, herewith, certification of a proposed issuance of export licenses pursuant to Section 126.14 of the International Traffic in Arms Regulations concerning a Global Project Authorization (GPA) and Section 36(c) of the Arms Export Control Act.

The transaction described in the attached certification concerns the inclusion of Australia in the GPA for the Systems Design and Development phase of the Joint Strike Fighter program, which was notified separately under DTC 277–02, and involves the export of technical data and defense services to Australian firms.

The United States Government is prepared to license exports of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 283–02

Department of State, Washington, DC 20520

October 28, 2002.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement involving the manufacture abroad of significant military equipment, which involves the export of defense articles and defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the manufacture of sporting rifles in Japan for sale in the United States and Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary,Legislative Affairs.

Enclosure: Transmittal No. DTC 253–02

[FR Doc. 02–30454 Filed 11–29–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4191]

Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations

Agency: Office of the Legal Adviser, U.S. Department of State.

This notice amends and supplements Department of State public notice 3802, 66 FR 58544 (November 21, 2001).

Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in substantial conformity with the standards set forth in the statute. The statutory standards are: Establishment of child support orders, including the establishment of paternity if necessary to establish the order; enforcement of child support orders, including collection and distribution of payments under such orders; cost-free services (including administrative and legal services, as well as paternity testing; and the designation of an agency as Central Authority to facilitate enforcement.

Once such a declaration is made, support agencies in jurisdictions of the United States participating in the program established by title IV-D of the Social Security Act (the IV-D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. state.

The declaration authorized by the statute may be made ''in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.'' The Secretary of State has authorized either the Legal Adviser or the Assistant Secretary for Consular Affairs to make such a declaration after consultation with the other.

As of this date, the following countries (or Canadian provinces) have

been designated foreign reciprocating countries:

Country	Effective date
Australia	May 21, 2001.
Canadian Provinces:	
Alberta	Sept. 4, 2002.
British Columbia	Dec. 15, 1999.
Manitoba	July 11, 2000.
Newfoundland/Labrador.	August 7, 2002.
Nova Scotia	Dec. 18, 1998.
Ontario	August 7, 2002.
Czech Republic	May 3, 2000.
Ireland	Sept. 10, 1997.
Netherlands	May 1, 2002.
Norway	June 10, 2002.
Poland	June 14, 1999.
Portugal.	Mar. 17, 2001.
Slovak Republic.	Feb. 1, 1998.

Information

Each of these countries (or Canadian provinces) has designated a Central Authority to facilitate enforcement and ensure compliance with the standards of the statute. Information relating to the designated Central Authorities, and the procedures for processing requests may be obtained by contacting the United States Central Authority for International Child Support, Department of Health and Human Services, Office of Child Support Enforcement (OCSE), 370 L'Enfant Promenade, SW., 4-East, Washington, DC 20447; phone 202.401.5566, fax 202.401.5539, e-mail *ocseinternational@acf.hhs.gov*.

Questions regarding this notice, the status of negotiations, declarations and agreements may be obtained by contacting Mary Helen Carlson at the Office of the Assistant Legal Adviser for Private International Law, Suite 203 South Building, 2430 E Street, NW., Washington, DC 20037–2851; phone 202.776.8420, fax 202.776.8482, E-mail *carlsonmh@ms.state.gov*.

The law also permits individual states of the United States to establish or continue existing reciprocating arrangements with foreign countries when there has been no federal declaration. Many states have such arrangements with additional countries not yet the subject of a federal declaration. Information as to these arrangements may be obtained from the individual state IV-D Agency.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 02–30453 Filed 11–29–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Redelegation of Authority and Further Assignment of Functions

AGENCY: Office of the United States Trade Representative.

ACTION: The United States Trade Representative (USTR) is redelegating authorities and further assigning functions under the Trade Act of 2002 (''Trade Act'') to other agencies and departments of the Executive Branch.

SUMMARY: The Trade Act specifically granted to the President certain authorities and assigned certain functions related to agreements covered by Trade Act provisions. In Executive Order 13277 (67 FR 7305), the President delegated certain authorities and assigned certain functions to the USTR and provided guidance for exercising that authority and performing those functions, including the redelegation of authority and further assignment of functions to officers of any other department or agency within the Executive Branch. This notice informs the public of the USTR's redelegation of authorities and further assignment of functions. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

DATES: These actions are effective immediately.

Redelegation of Authorities and Further Assignment of Functions

Pursuant to section 3(b)(ii) of Executive Order 13277, the USTR hereby redelegates certain authorities and further assigns certain functions delegated or assigned to the USTR as set forth below. Agencies and departments to which authorities are delegated or functions are assigned shall exercise or perform them in a manner that is supportive of agreements subject to the Trade Act.

(a) The functions of the President under section 2102(c)(5) of the Trade Act with respect to reviewing the impact of trade agreements on U.S. employment, including labor markets, assigned to the USTR are further assigned to the Secretary of Labor. Such reviews will be conducted through the interagency Trade Policy Staff Committee.

(b) The USTR, in carrying out the assessment required under section 2104(c), may obtain the advice and assistance of the Secretary of Commerce. The USTR will report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on proposals related to trade remedies as provided under section 2104(d)(3)(A) with the advice and assistance of the Secretary of Commerce and the U.S. International Trade Commission.

(c) The functions of the President under section 2108(a)(1–3) and (5), as they pertain to section 2108(1–3) of the Trade Act with respect to preparing and submitting to Congress implementation and enforcement plans for trade agreements, that have been assigned to the USTR are further assigned to the Director of the Office of Management and Budget who shall carry out these functions with the advice and assistance of the Secretaries of Agriculture, Commerce, State and the Treasury and the U.S. Trade Representative and other agencies and departments as necessary.

(d) The authorities and functions of the President under sections 204(b)(3)(B)(ii), 204(b)(3)(B)(vi)(II)(cc), 204(b)(3)(C), 204(b)(3)(D), and 204(b)(3)(E) of the Andean Trade Preferences Act (ATPA) (19 U.S.C. 3203(b)(3)(B)(ii), 3203(b)(B)((vi)(II)(cc), 3203(b)(3)(C), 3203(b)(3)(D), and 3202(b)(3)(E)) that have been delegated or assigned to the USTR are redelegated and further assigned to the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Labor and may be redelegated or further assigned within each department or agency consistent with law. In exercising these authorities and performing these functions, these officials, including the USTR, or their designees shall act collectively in accordance with the requirements and procedures set forth in sections 1(a) and (b) of Executive Order 11651, as amended, and in Executive Order 13191.

Dated: November 25, 2002.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–30427 Filed 11–29–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Extension of Deadline for the Submission of Requests (Anniversary) for Exclusion of Particular Products From Actions With Regard to Certain Steel Products Under Section 203 of the Trade Act of 1974, as Established in Presidential Proclamation 7529 of March 5, 2002

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of deadline for submission of comments and responses.

SUMMARY: The United States Trade Representative (USTR) is extending the deadline for the submission of requests for the exclusion of certain steel products (exclusion requests) from the safeguard measures established by Presidential Proclamation 7529 of March 5, 2002.

DATES: The deadline for the submission of exclusion requests is being extended to December 10, 2002. The deadlines for public comments expressing objections to the exclusion of certain products will be announced on the USTR web site.

FOR FURTHER INFORMATION CONTACT: Please send inquiries regarding the exclusion process by e-mail simultaneously to: <*exclusion_support@ita.doc.gov* > and <*FR001@ustr.gov*> You may also contact the Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On November 19, 2002, the USTR published in the **Federal Register** a notice establishing a deadline for the submission of exclusion requests and modifying certain procedures for the consideration of exclusion requests by USTR and the Department of Commerce. See 67 FR 69802 (''Notice''). According to the Notice, the deadline for the submission of exclusion requests is December 3, 2002. The USTR is extending the deadline for submitting exclusion requests until not later than December 10, 2002. Interested persons should refer to the Notice for instructions for the submission of exclusion requests.

Peter Davidson,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 02–30426 Filed 11–29–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Office Relocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new office address and telephone number.

SUMMARY: Effective as of November 18, 2002, the FAA Office of Dispute Resolution for Acquisition relocated to a new address different from the one listed in its Procedural Regulations, 14 CFR part 17. The new address, telephone and facsimile numbers are as follows: 800 Independence Avenue, SW., Room 323, Washington, DC 20591, Telephone (202) 267–3290, Facsimile (202) 267–3720.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC–70, Room 323, 800 Independence Avenue, SW., Washington, DC 20591, telephone number (202) 267–3290, facsimile (202) 267–3720.

Issued in Washington, DC, on November 25, 2002.

Anthony N. Palladino,

Associate Chief Counsel and Director, Office of Dispute Resolution for Acquisition.

[FR Doc. 02–30335 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 2002, there were eight applications approved. This notice also includes information on application, approved in August 2001, inadvertently left off the August 2001 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Lebanon, New Hampshire.

Application Number: 01–04–C–00–LEB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $77,330.

Earliest Charge Effective Date: September 1, 2001.

Estimated Charge Expiration Date: March 1, 2002.

Classes of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators—nonscheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Lebanon Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Reconstruct north ramp, including adjacent taxiways.

Reconstruct emergency access road.

Construct aircraft rescue and firefighting vehicle ramp.

Install airfield control and power cables.

Groove runway 7/25.

Engineering.

Airport master plan update.

PFC administration

Decision Date: August 2, 2001.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Blair County Airport Authority, Martinsburg, Pennsylvania.

Application Number: 02–04–U–00–AOO.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $43,610.

Charge Effective Date: July 1, 2000.

Estimated Charge Expiration Date: March 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Avigation easement acquisition and obstruction removal.

Decision Date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Daboin, Harrisburg Airports District Office, (717) 730–2830.

Public Agency: City of La Crosse, Wisconsin.

Application Number: 02–06–C–00–LSE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,022,045.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: May 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxis filing FAA Form 1800–31, except commuter air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the

total annual enplanements at La Crosse Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Reconstruct runway 13/31.

Baggage handling system.

Airfield electrical upgrades phase 1.

Airport snow removal equipment.

Terminal development.

PFC administration.

Environmental assessment.

Decision Date: October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: City of Atlanta, Georgia.

Application Number: 03–03–C–00–ATL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,269,547,063.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: October 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators with limited, irregular, and special service operations.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hartsfield Atlanta International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Construction of fifth runway.

Taxiway L extension.

Taxiway construction and intersection upgrades.

Airfield pavement replacement.

Airfield lighting system.

Surface movement guidance system.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Approach clearing and landscape safety.

Brief Description of Project Approved for Collection at a $4.50 PFC Level: End around taxiway.

Brief Description of Project Approved for Collection at a $3.00 PFC Level: Airport access road.

Brief Description of Project Partially Approved for Collection at a $3.00 PFC Level: Consolidated rental car facility automated people mover system.

Determination: The maintenance facility element of the project was determined to be ineligible in accordance with paragraph 622 of FAA Order 5100.38B, Airport Improvement Program Handbook (May 31, 2002).

Decision Date: October 10, 2002.

FOR FURTHER INFORMATION CONTACT: Terry R. Washington, Atlanta Airports District Office, (404) 305–7143.

Public Agency: City of Pullman, Washington.

Application Number: 02–03–U–00–PUW.

Application Type: $4.50.

Total PFC Revenue To Be Used in This Decision: $290,000.

Charge Effective Date: February 1, 2000.

Estimated Charge Expiration Date: May 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Purchase land leased from Washington State University.

Purchase new snowplow.

Rehabilitate terminal apron.

Rehabilitate runway 5.23

Taxiway edge lighting.

Decision Date: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Susanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Toledo-Lucas County Port Authority, Toledo, Ohio.

Application Number: 02–04–C–00–TOL.

Application Type: Impose and use a PFS.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,921,997.

Earliest Charge Effective Date: December 1, 2003.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Toledo Express Airport.

Brief Description of Projects Approved for collection and Use:

Terminal roadway reconstruction.

Reconstruct air carrier apron.

Purchase snow removal equipment.

Terminal renovations: heating, ventilation, and air conditioning units; and multiple user flight information display system.

Replace aircraft rescue and firefighting vehicle.

Jetway replacement.

Taxiway D extension.

Decision Date: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: City of Pullman, Washington.

Application Number: 02–04–C–00–PUW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $89,900.

Earliest Charge Effective Date: May 1, 2004.

Estimated Charge Expiration Date: January 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxi operators who conduct operation sin air commerce carrying persons for compensation on hire.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pullman-Moscow Regional Airport.

Brief Description of Projects Approved for collection and Use:

Purchase Kopf, LLC property.

Snow removal equipment building expansion.

Security enhancements.

Airfield friction meter device.

Construct parking lot (non-revenue).

Decision Date: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Susquehanna Area Regional Airport Authority, Middletown, Pennsylvania.

Application Number: 02–04–C–00–MDT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

total PFC Revenue Approved in This Decision: $66,334,500.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: August 1, 2020.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Harrisburg International Airport.

Brief Description of Projects Approved For Collection and Use at a $4.50 PFC Level:

Construct parallel taxiway, taxilanes, and lighting.

NAVAIDS and runway lighting.

Construct terminal and related work.

Preparation of PFC application.

Brief Description of Project Approved for Use at a $3:00 PFC Level: Relocate terminal loop road.

Decision Date: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Salt Lake City Department of Airports, Salt Lake City, Utah.

Application Number: 02–05–C–00–SLC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $19,001,300.

Earliest Charge Effective Date: February 1, 2003.

Estimated Charge Expiration Date: September 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport (SLC).

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Concourse A apron expansion.

Concourse A apron reconstruction, phase I.

Concourse A apron reconstruction, phase II.

Deicing lagoon upgrade.

Security identification display area perimeter patrol road, phase I.

Security identification display area perimeter patrol road, phase II.

Taxiway H reconstruction H10–H12.

Taxiway H reconstruction H7–H10.

Terminal unit 2 checked baggage and screening checkpoint queuing modifications.

Concourse E SkyWest Interim facility.

Land acquisition for approach protection and noise compatibility, phase I.

Terminal roadway security improvements, phase II.

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $3.00 PFC Level:

Airport layout plan/environmental update, phase I.

Electronic visual information display system installation.

East apron rehabilitation, phase II.

East apron rehabilitation, phase III.

Surface condition analyzer upgrade.

Brief Description of Project Approved for Collection at SLC and Use at Salt Lake City Municipal Airport II at a $3.00 PFC Level:

Runway overlay.

Brief Description of Project Approved for Collection at SLC and Use at Tooele Valley Airport at a $3.00 PFC Level: Runway 16/34 widening and extension.

Brief Description of Disapproved Project: East side oil/water separator.

Determination: The FAA has determined that the project does not meet any of the objectives of § 158.15(a). The public agency did not provide documentation regarding project justification, nor did it demonstrate compliance with Advisory Circular 150/5320–15 for water quality equipment.

Decision Date: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge ext. date	Amended estimated charge ext. date
00–06–C–02–CRW Charleston, WV	09/24/02	$1,051,081	$1,141,822	09/01/01	09/01/01
99–06–C–01–STT St. Thomas, VI	10/02/02	3,000,000	3,450,000	12/01/02	12/01/02
99–04–C–02–EYW Key West, FL	10/08/02	1,596,503	1,344,903	08/01/01	06/01/01
01–05–C–01–EYW Key West, FL	10/09/02	1,631,431	1,042,931	04/01/04	06/01/03
92–01–I–03–BUF Buffalo, NY	10/30/02	81,167,538	62,817,833	05/01/05	01/01/05
92–02–C–04–BUF Buffalo, NY	10/30/02	5,757,959	2,528,721	09/01/15	06/01/05
98–03–C–02–BUF Buffalo, NY	10/30/02	2,659,807	1,902,652	07/01/15	10/01/05

Issued in Washington, DC on November 21, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–30336 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–C–00–MSP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 2, 2003

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey W. Hamiel, Executive Director of the Metropolitan Airports Commission at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. 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 Minneapolis-St. Paul International

Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 28, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Airports Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 25, 2003.

The following is a brief overview of the application.

Proposed charge effective date: April 1, 2003.

Proposed charge expiration date: October 1, 2017.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $94,832,543.

Brief description of proposed projects:

(Impose and Use Projects)

Runway 12R/30L temporary extension; runway 4/22 property acquisition; airside bituminous construction—2001; pavement rehabilitation—aprons/taxiways; miscellaneous airfield construction; taxiway A/H reconstruction; Green/Gold connector bag belt; Green/Gold connector ticket counter/bag check; security fence/gate replacements; maintenance facility addition.

(Impose Only Project)

Concourse F expansion.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $1,121,378,685.

Brief description of proposed projects:

(impose and Use Projects)

Runway 12L deicing pad; runway 12R deicing pad; buildings demolition; taxiway B construction; runway 17/35 site preparation and utility installation (including wetland mitigation, concrete paving, storm sewer and storm water pond construction); runway 17/35 site demolition (on and off airport); runway 17/35 runways, taxiways, taxilanes, and connectors (including runway 17 deicing pad); runway 17/35 airfield service road; runways 17/35 and 4/22 tunnels; taxiways W–Y/Y–3 tunnels; tenant lease extinguishment; deicing agent processing facility; airfield material and equipment storage facilities; property acquisition (for runway 17/35); program planning/management costs; residential noise insulation; Green Concourse (Concourse C) expansion (Phases 1 and 2); Green Concourse apron expansion (including runway 30R deicing pad); Green/Gold connector; Green Concourse automated people mover; Humphrey terminal hydrant fueling system.

(Impose Only Project)

Fire/rescue replacement facility. Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

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 Metropolitan Airports Commission.

Issued in Des Plaines, Illinois on November 22, 2002.

Barbara Jordan,

Acting Manager, Airports Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–30337 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–6480, FMCSA–2000–7006, FMCSA–2000–7165, FMCSA–2000–7363, and FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA's decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 44 individuals.

DATES: This decision is effective December 8, 2002. Comments from interested persons should be submitted by January 2, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for receiving an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 44 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 44 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Henry W. Adams
Willie F. Adams
Delbert R. Bays
Robert F. Berry
James A. Bright
Robert W. Brown
Gary Bryan
Robert R. Buis
David D. Bungori, Jr.
Richard S. Carter
Donald Grogan
Christopher L. Humphries
Nelson V. Jaramillo
Jimmie W. Judkins
Bruce T. Loughary
Demitrio Lozano
Michael L. Manning
Wayne R. Mantela
Kenneth D. May
David P. McCabe
Arthur A. Sappington
James L. Schneider
Patrick W. Shea
Carl B. Simonye
Everett J. Smeltzer
William H. Smith
Paul D. Spalding
Timothy W. Strickland
George W. Thornhill
Rick N. Ulrich

Lynn A. Childress	Harold J. Mitchell	Roy F. Varnado, Jr.
David R. Cox	Gordon L. Nathan	Larry D. Wedekind
Gerald W. Cox	Jerry L. New	Daniel G. Wilson
Rosalie A. Gifford	Bernice R. Parnell	Wonda L. Wooten
Eugene A. Gitzen	Franklin D. Reed, Sr.	

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 44 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285, 63 FR 54519, 64 FR 68195, 65 FR 20251, 65 FR 20245, 65 FR 57230, 65 FR 33406, 65 FR 45817, 65 FR 77066), and two of the applicants have previously satisfied the conditions for renewing an exemption (65 FR 66293, 65 FR 77069). Each of these 44 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 2, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: November 22, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–30338 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

[Docket Number FRA–2002–13570]

The Canadian National Railway Company and its wholly owned U.S. subsidiaries, Illinois Central Railroad Company, Wisconsin Central, LTD., Grand Trunk Western Railroad Company, Chicago Central & Pacific Railroad Company, and Duluth, Winnipeg & Pacific Railway Company (hereafter ''CN''), seeks a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR Part 218, regarding blue signal protection of workers. Specifically, CN seeks to permit train and yard crew members, and utility employees to remove and replace batteries in two-way end-of-train telemetry devices (EOT) while the EOT is in place on the rear of the train the individual has been called to operate, without establishing any blue signal protection. CN's waiver request is identical to the waiver granted to the Burlington Northern and Santa Fe Railway, FRA–2001–10660. CN's waiver request is only for the replacement of batteries in EOTs manufactured by Digitair PULSE and is not for any other EOT device.

Section 218.5 defines worker as ''any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as ''utility employees''). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning.'' Both § 218.25 and § 218.27, require blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. Section 218.22(b) states in part: ''A utility employee may

be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions * * * (5) The utility employee is performing one or more of the following functions: * * * inspect, test, install, remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with § 218.23 through § 218.30 of this part.''

The FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

CN contends that safety would be enhanced if the individual were allowed to perform the battery work without removing the device from the rear of the train. Exposure to injury is greatly reduced because the individual would be handling a battery pack that weighs 10.1 pounds or less, as opposed to lifting the EOT device that weighs 32–34 pounds. Also, it takes approximately five minutes to remove and then re-install the EOT device, as opposed to removing and replacing a battery pack that takes less than one minute to complete. CN contends that the time the employee is performing the safety sensitive task is reduced by 80 percent. Coupling and uncoupling the air hose between the car and EOT also poses a risk of a striking injury from the air hose, if the air pressure has not been completely released. CN also believes that there is potential for reduction in train delays if this waiver is granted, which could contribute to increased train velocity, efficiency of operations, and to CN's ongoing fuel conservation initiatives. In analyzing safety risks and benefits, CN believes that there are no adverse consequences or costs that will accrue from granting this petition. Also, there are no anticipated costs to the private sector, to the consumer, or to federal, state, and local governments if this waiver is granted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13570) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level) 400–7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on November 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–30438 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation

(Docket Number FRA–2002–13096)

The Norfolk Southern Corporation (NS), on behalf of itself and its subsidiaries and affiliates, seeks a permanent waiver of compliance from the requirements of Railroad Workplace Safety Standards, 49 CFR part 214. The NS intends this waiver to cover all ''railroad bridge workers'' or ''bridge workers'' (as those terms are defined by 49 CFR 214.7) employed by NS or its contractors, including track inspectors and signal maintainers who perform their duties on bridges. The waiver would apply to all installations and locations, and related equipment where the NS is responsible for the construction, inspection, testing, or maintenance of a bridge.

Bridge workers employed by or contracting with the NS are required by § 214.107 to wear life vests or buoyant work vests and to have available ring buoys and lifesaving skiffs when working ''over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists.'' These requirements apply even where bridge workers are otherwise exempt from wearing fall protection, such as where satisfactory walkways and railings (§ 214.103(c)(1)) exist on the bridge, where workers remain at least six feet from the edge of a roadway deck or any opening (§ 214.103(c)(2)), or where workers perform a repair or inspection of a minor nature that is completed by working exclusively within the gauge of the rail (§ 214.103(d)). There appear to be no exceptions to the requirements for ring buoys and lifesaving skiffs where a bridge worker is working alone on or near a bridge. Accordingly, the NS requests a waiver of § 214.107 in those situations where (1) bridge workers are not at risk of falling from a bridge, or (2) the risk of falling is so minimal that fall protection is not required. Specifically, the NS requests a waiver of drowning protection requirements under the same conditions where the exceptions to the fall protection requirements set forth in §§ 214.103(c) and (d) apply.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13096) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400–7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as

practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on November 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–30439 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13942]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–4161; FAX: 202–366–7901 or E-mail: *joe.strassburg@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Approval of Underwriters for Marine Hull Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0517.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Foreign and domestic applicants will be required to submit financial data upon which MARAD approval would be based.

Need and Use of the Information: This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

Description of Respondents: Underwriters of marine insurance and marine insurance brokers.

Annual Responses: 62.

Annual Burden: 46 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator,

Dated: November 26, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–30429 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: 30-day Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on July 27, 2000 [65 FR 46228].

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: William D. Evans at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202–366–2272, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 571.403 Platform lift systems for motor vehicles; 49 CFR Part 571.404 Platform lift installations in motor vehicles.

OMB Number: 2127–New.

Type of Request: New collection.

Abstract: On July 27, 2000, NHTSA published a Supplemental Notice of Proposed Rulemaking (SNPRM) [65 FR 46228], and a Final Rule will be published eminently, to facilitate the safe use of platform lifts by the disabled population. The regulation will be found at 49 CFR Part 571.403 and 49 CFR Part 571.404. This final rule includes several new ''collection of information,'' requirements as the term is defined in 5 CFR Part 1320 Controlling Paperwork Burdens on the Public: a label, a vehicle owner's manual insert, and a installation instruction insert.

Affected Public: Businesses that manufacturer platform lifts for the purpose of assisting persons with limited mobility in entering and exiting a vehicle and vehicle manufacturers that install such lifts in vehicles before first retail sale.

Estimated Total Annual Burden: 144 hours and $9315.32.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: November 26, 2002.

Noble N. Bowie,

Acting Associate Administrator for Rulemaking.

[FR Doc. 02–30437 Filed 11–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Collection; Comment Request; Customer Survey

AGENCY: Financial Crimes Enforcement Network (FinCEN).

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on an information collection requirement concerning a survey of customer satisfaction with regulatory guidance. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Management, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, VA 22183, *Attention:* PRA Comments-Customer Satisfaction Survey. Comments also may be submitted by electronic mail to the following Internet address: *''regcomments@fincen.treas.gov''* with the caption in the body of the text, ''*Attention:* PRA Comments—Customer Satisfaction Survey.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the information collection should be directed to: Office of Management, FinCEN, 703–905–3947, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Survey.

OMB Number: None.

Form Number: None

Abstract: The Government Performance and Results Act requires agencies to submit an annual performance plan and performance report to Congress. In connection with this requirement, FinCEN will conduct a survey of customer satisfaction with regulatory guidance provided under the Bank Secrecy Act.

Current Action: New collection.

Affected Public: Individuals, business or other for-profit institutions, not-for-profit institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 33 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: November 21, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–30352 Filed 11–29–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker Permit

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Issuing port
Jonathan T. Cottingham	30–02–ACP	Seattle.
ABX Logistics (USA), Inc	35–00–060	Minneapolis.
All Nations Forwarding Import Co., Inc	271	Miami.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30361 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and any and all associated local and national permits are canceled without prejudice.

Name	License No.	Issuing port
Leif, Inc.	09768	San Francisco.
Gene Brosterhous Customs Broker, Inc.	21187	Portland, Oregon.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30359 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Customs Service, Department of the Treasury.

ACTION: Cancellation of license.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license has been cancelled due to death of the broker:

Name	License No.	Port name
William J. O'Donnell	03452	Philadelphia.
Rene Alvarez	04692	Miami.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30358 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Triennial Status Report and Status Report Fee: General Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of due date for status report and fee.

SUMMARY: This is to advise Customs brokers that the Triennial Status Report Fee of $100 that is assessed for each license held by a broker whether it may be an individual, partnership, association or corporation, is due during the month of February 2003 along with the corresponding status report.

SUPPLEMENTARY INFORMATION: In accordance with 19 U.S.C. 1641(g) and 19 CFR 111.30(d), each broker must file a written status report and pay the corresponding fee of $100 every three years. The report is due every three years regardless of the date the license was issued to the broker. The last status report and fee were due during the month of February 2000. Reports and fees must next be filed during the month of February 2003. They should be delivered to the director of the port that originally delivered the license to the broker. No reports or fees should be submitted directly to Customs Headquarters.

The elements that must be included in the report are prescribed in 19 CFR 111.30(d). While no particular format is required, a model report may be obtained from your local Customs Service Port.

DATES: Due date for payment of fee: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Scott J. Nielsen, Broker Management, (202) 927–0380.

Dated: November 21, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–30360 Filed 11–29–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–189–84]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–189–84 (TD 8517), Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property (§§ 1.1272–3, 1.1273–2(h), 1.1274–3(d), 1.1274–5(b), 1.1274A–1(c), and 1.1274–3(b)).

DATES: Written comments should be received on or before January 31, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–3869, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.

OMB Number: 1545–1353.

Regulation Project Number: FI–189–84.

Abstract: This regulation provides definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms and state, local or tribal governments.

Estimated Number of Respondents: 525,000.

Estimated Time Per Respondent: 21 min.

Estimated Total Annual Burden Hours: 185,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 21, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–30315 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, December 10, 2002.

FOR FURTHER INFORMATION CONTACT: James McGurn at 1–888–912–1227, or 718–488–3553.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel will be held Tuesday, December 10, 2002 from 2 pm EST to 4 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3553, or write to James McGurn, TAP Office, 625 Fulton Street, 6th Floor, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with James McGurn. Mr. McGurn can be reached at 1–888–912–1227 or 718–488–3553.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 14, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–30317 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Credit Issue Committee will be held Wednesday, December 18, 2002, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the website: *www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 15, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–30318 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, December 16, 2002, from 2 p.m. p.s.t. to 3 p.m. p.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 14, 2002.

Cathy Vanhorn,

Director, Communication and Liaison.

[FR Doc. 02–30319 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via Conference call.

DATES: The meeting will be held Tuesday, December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, December 17, 2002, from 1 p.m. e.s.t. 2 p.m. e.s.t. via a telephone conference call. Public comments will be welcome during the meeting. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly summary report, self-assessment report, getting started issues, and discussion of next meetings.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 18, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–30320 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, November 15, 2002, from 1 p.m. e.s.t. to 3 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or e-mail *firstcapsfl@mindspring.com.*

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 14, 2002.

Cathy Vanhorn,

Communication & Liaison.

[FR Doc. 02–30321 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Texas, Oklahoma, Kansas, Missouri, Nebraska, Iowa, South Dakota, North Dakota, and Minnesota)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, December 16, 2002.

FOR FURTHER INFORMATION CONTACT: James McGurn at 1–888–912–1227, or 718–488–3553.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, December 16, 2002, from 2:30 p.m. central time to 4:30 p.m. central time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3553, or write to James McGurn, TAP Office, 625 Fulton Street, 6th Floor, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with James McGurn. Mr. McGurn can be reached at 1–888–912–1227 or 718–488–3553.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 26, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–30475 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Thursday, December 19, 2002, from 1

p.m. e.s.t. to 3 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 26, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–30476 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, December 20, 2002, from 11 a.m. e.s.t. to 12 noon e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 26, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–30477 Filed 11–29–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
December 2, 2002

Part II

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2003 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Kathy Schwartz, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States. Complete information about the Institute and its grant programs, including tutorials, forms, and instructions for all grant applications, can be found at *http://www.statejustice.org.*

This Guideline is being published at a time when the Institute is operating on a Continuing Resolution (CR) that expires on January 11, 2003. The Guideline is contingent on further action by Congress to either extend the CR or enact an appropriations bill funding the Institute in FY 2003 at no less than the level approved by the Senate Appropriations Committee ($3.1 million).

Types of Grants Available and Funding Schedules

SJI offers five types of grants in FY 2003: Project Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) Grants, Continuation Grants, and Scholarships.

Project Grants

The Guideline allocates up to $2 million for Project Grants in FY 2003, in addition to the $800,000 in FY 2003 and 2004 funds allocated for the Solutions Project described below.

Project Grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. As provided in section V.C. of the Guideline, Project Grants may ordinarily not exceed $200,000 a year; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

The Solutions Project is a multi-stage project that will draw on State and local court initiatives to identify and exchange promising solutions to the most critical problems facing the courts, and define a national agenda to improve the quality of justice in State courts nationwide. The Project will entail five steps:

(1) Information collection about the specific needs of State courts, the efforts they have made to address them, and other possible responses to those needs;

(2) Information analysis;

(3) A national event to identify the most promising solutions to the State courts' most critical problems;

(4) Development of a comprehensive catalogue of promising solutions; and

(5) Distribution of a final product, clearly stating both the problems facing State courts as well as real and promising solutions, to State court leaders, Congress, and other interested parties.

The first step of the Solutions Project is well under way. Twenty-three (23) States have submitted information collection grant applications requesting approximately $450,000. The Board of Directors anticipates awarding grants to support these applications before the end of the year. Applicants interested in a grant to support the remaining steps of the Solutions Project may obtain information about these projects upon request. Interested applicants are encouraged to include creative uses of technology to maximize participation in the remaining phases of the project as well as distribution of the final product. See sections II.C. and VI.C.

SJI also awards ''think piece'' Project Grants to support the development of essays of publishable quality that explore emerging issues that could result in significant changes in court processes or judicial administration. ''Think pieces'' are limited to no more than $10,000. See section II.B.

All project grant applications, including ''think piece'' proposals, must address a topic included in the five Special Interest categories listed in the Guideline.

The deadline for submitting Project Grant applications (including Solutions Project applications) is February 7, 2003. The Board of Directors will meet in early May 2003 to approve grant awards. See section VI.A. for project grant application procedures.

Technical Assistance Grants

Section II.C. reserves up to $300,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by January 10, 2003 will be notified by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified of the Board's decision by December 12, 2003. See section VI.E. for Technical Assistance Grant application procedures.

Judicial Branch Education Technical Assistance Grants

The Guideline implements an expansion of the Institute's former Curriculum Adaptation grant program that was proposed for comment last year. Up to $300,000 will be allocated for grants under the expanded program, which is renamed the Judicial Branch Education Technical Assistance (JBE TA) grant program. Grants of up to $20,000 are available to: (1) Enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (*i.e.*, curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants:

Applicants submitting letters by January 10, 2003 will be notified by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified of the Board's decision by December 12, 2003. See section VI.F. for JBE TA Grant application procedures.

Scholarships

The Guideline allocates up to $200,000 of FY 2003 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs.

Scholarships for eligible applicants are approved largely on a ''first come, first served'' basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) address topics included in the Guideline's Special Interest categories (section II.A.); (2) enhance the skills of judges and court managers; or (3) are part of a graduate degree program for judges or court personnel.

Applicants interested in obtaining a scholarship for a program beginning between April 1 and June 30, 2003 must submit their applications and documents between January 3 and March 3, 2003. For programs beginning between July 1 and September 30, 2003, the applications and documents must be submitted between April 1 and June 2, 2003. For programs beginning between October 1 and December 31, 2003, the applications and documents must be submitted between July 7 and August 29, 2003. For programs beginning between January 1 and March 31, 2004, the applications and documents must be submitted between October 1 and December 1, 2003. See section VI.G. for Scholarship application procedures.

Continuation Grants

Continuation Grants (see sections III.F, V.B.2., and VI.B.) are intended to enhance the specific program or service begun during the initial project grant period. The Guideline establishes a firm limit for Continuation Grants of 20% of the total amount projected to be available for Project Grants in FY 2003, *i.e.*, $400,000. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide continuation funding. No grant awarded in FY 2003 will be continued for more than five years.

An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

Response to Comments

The Proposed Guideline generated a substantial number of comments, many of which sought clarification and, in some cases, elimination of the policy that would require all grantees to provide matching funds to support their SJI-supported projects. After consideration of the comments and a review of Federal grant match policies, SJI has decided to retain the match requirement for all grantees but to add provisions that would permit the Institute to waive the match and cash match requirements in certain circumstances. See revised section VIII.A.8.

The Final Guideline also revises prior Institute policy by permitting project income, *e.g.*, tuition and proceeds from the sale of grant products, to be used as match. See sections III.O. and IX.G.3. and 4.

In addition, section III.L. of the Guideline has been revised to clarify what the Institute considers cash match and in-kind match. See also section 7 of Appendix A—Recommendations to Grantwriters for further guidance on match issues.

The following discussion summarizes the Final Guideline's match requirements.

Match requirements for State and local units of government. The Guideline applies the statutorily-mandated requirement that governmental grantees provide matching support equal to 50% of a new SJI-funded project (see 42 U.S.C. 10705(d)), subject to the statutory waiver provision noted below. Except for Solutions Project Information Collection grants made under section VI.C. of the Guideline, at least 20% of the required match must be in cash.

Example. If a court receives a $100,000 grant from the Institute, it must provide a $50,000 match. Under the Final Guideline, the court must provide at least 20% of the required match for a new grant ($10,000 in the example) in the form of cash rather than in-kind support.

Match requirements for all other grantees. The Guideline requires all other grantees (except scholarship recipients and individuals who receive grants to develop ''think pieces'') to contribute a match of 25% to a new SJI-funded project. At least 10% of the required match must be in cash.

Example. If a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match. Under the Guideline, a non-profit must provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

Waivers. An applicant may request a waiver of the match requirement, the cash match requirement, or both, in its application. See section VIII.A.8.c.

For State and local government grantees, the Institute's enabling legislation provides that the match requirement may be waived by the Board of Directors in ''exceptionally rare circumstances.'' The Guideline incorporates this requirement in section VIII.A.8.c.(1)(a). Section VIII.A.8.c.(1)(b) permits a waiver by non-profit organizations in similar circumstances.

For grantees required to provide cash match, section VIII.A.8.c.(2) requires an applicant seeking a waiver to demonstrate that it would be a financial hardship to meet the requirement.

Section VIII.A.8.c.(3) encourages all applicants to provide the largest amount of cash and in-kind match they can, even if it does not meet the level required.

Cash Match. Ordinarily, the Institute will consider the following types of match to be cash match:

- The dedication of funds to support a new employee or purchase new equipment to carry out the project;
- That portion of the grantee's Federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits);
- Any other reduction in the indirect cost rate to be charged to the grant; and
- The application of project income (*e.g.*, tuition or the proceeds of sales of grant products) to grant costs.

Ordinarily, the Institute will consider the donation of time by current staff or advisory committee members to the project to be in-kind match. See section III.L.

Continuation grants. Subject to the granting of a waiver of all or part of the match requirement in a particular year, all grantees will be required to assume a greater share of project support over time. See section VIII.A.8.b.

State and local units of government must provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

Example. If SJI awards a State court $100,000 for the first year of a grant, the court must provide $50,000 in match. If the second-year grant is also $100,000, the court must provide $60,000 in match. A court that wishes to limit its second-year contribution to $50,000 can ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 60% requirement.

All other grantees must provide match equaling at least 25% of the amount provided by SJI in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year.

Example. If SJI awards a non-profit organization $100,000 for the first year

of a grant, the organization must provide $25,000 in match. If the second year grant is also $100,000, the court must provide $30,000 in match. An organization that wishes to limit its second-year contribution to $25,000 can ask SJI for a reduced amount, *i.e.*, $83,333, in order to meet the 30% requirement.

Other comments recommended that the Institute reconsider its proposal to impose a five-year limit on continuation grants. Although the Institute may reconsider that change in future years, depending on its appropriation level and its experience with the change, this year's Final Guideline includes the limitation.

Recommendations to Grantwriters

Recommendations to Grantwriters may be found in Appendix A.

The following Grant Guideline is adopted by the State Justice Institute for FY 2003:

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I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. However, during FY 2003, the Institute will consider applications for funding support that address only the topics included in the following five program categories designated by the Board as being of special interest. Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

A. Special Interest Program Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a *Special Interest* project if it meets the four criteria set forth above and (1) it falls within the scope of the *Special Interest* program categories designated below; or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

The Board has designated the areas set forth below as *Special Interest* program categories. The order of listing does not imply any ordering of priorities among the categories. For a complete list of projects supported in previous years in each of these categories, please visit the Institute's Internet homepage at *http://www.statejustice.org/* and click on *Grants by Category.*

1. Access to the Courts

This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process.

The Institute is particularly interested in supporting innovative projects that:

- Test and evaluate new approaches to enhance public access to the courts,

including demonstrations of innovative collaborative efforts between courts and community institutions (*e.g.*, bar associations, legal service agencies, schools, and public libraries) to enhance access to the courts by people without lawyers (in this regard, however, Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases); and

• Develop and test a range of strategies, methodologies, guidelines, and outcome measures to evaluate the effectiveness of programs established to assist people without lawyers.

2. Application of Technology in the Courts

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels. The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, ''untested'' includes novel applications of technology developed for the private sector that have not previously been applied in the courts.

The Institute is particularly interested in supporting efforts to test and evaluate technologies that, if successfully implemented, would significantly re-engineer the way that courts currently do business, including projects that would:

• Demonstrate and evaluate the delivery of technology to rural courts through an Internet-based ''application service provider'' approach;

• Evaluate approaches for electronically filing pleadings, briefs, and other documents; approaches to integrate electronic filing and electronic document management; and the impact of electronic court record systems on case management and court procedures;

• Test and evaluate the use of Geographic Information System (GIS) software as a means of examining and improving courts' outreach to particular segments of the communities they serve;

• Demonstrate and evaluate innovative applications of voice recognition technologies in the adjudication process;

• Demonstrate and evaluate the use of expert system technology to assist judicial decision-making; and

• Evaluate innovative applications of technology designed to ensure the safety of all who use and work in the courts.

3. Children and Families in Court

This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that would:

• Demonstrate and evaluate innovative approaches to manage and coordinate cases and proceedings involving multiple members of the same family;

• Demonstrate and evaluate the effectiveness of a ''one social worker/one family'' or judge-social worker team approach to handling child abuse and neglect cases;

• Develop and test innovative protocols, procedures, educational programs, and other measures to address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;

• Educate judges about how to interpret and evaluate evidence presented by psychologists, psychiatrists, and other professionals appearing in child custody and visitation cases involving domestic violence between the parents;

• Develop and test the implementation of a differentiated case management system for handling child custody disputes;

• Develop and evaluate educational programs addressing a collaborative community approach to reducing and preventing domestic violence for a multidisciplinary audience that includes judges, prosecutors, defense attorneys, victim advocates, doctors, and social services providers;

• Evaluate the impact of court policies and procedures and collaborative community approaches designed to ensure that juvenile sex offenders have access to an appropriate array of services;

• Create and test educational programs, guidelines, and monitoring systems to assure that the juvenile justice system meets the needs of girls and children of color; and

• Develop and test educational programs to assure that everyone coming into contact with courts serving children and families is treated with dignity, respect, and courtesy.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime [OVC], Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

4. Judicial Branch Education

The Institute is interested in supporting projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into three subsections: (a) Innovative Educational Programs; (b) Judicial Branch Education Technical Assistance Projects; and (c) Scholarships.

a. *Innovative Educational Programs.* This category includes support for the development and pilot-testing of innovative, high-quality educational programs for trial and appellate judges or court personnel that address key issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education.

Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on an assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills participants will acquire (as opposed to a description of what will be taught); incorporate adult education principles and multiple teaching/learning methods; and result in the development of a curriculum as defined in section III.E.

The Institute is particularly interested in supporting the development of educational programs that:

• Educate State court judges, law clerks, and staff counsel about capital case law, DNA evidence, and other legal and scientific issues related to the trial and appeal of capital cases;

• Educate State court judges and court personnel about special problems related to the adjudication of capital cases, including jury voir dire, jury sequestration, sentencing hearings, court security, and media management;

• Educate judges and court officials about the threat of terrorism and steps they can take to effectively protect courthouses against acts of terrorism;

• Assist judges, court managers, community leaders, and other State or local government agency administrators in collaboratively developing and evaluating courthouse security policies

and programs, and disaster recovery plans;

• Develop and test curricula and materials designed to familiarize judges and court managers with the need for and key elements of effective assistance programs for people without lawyers, and the resources required to sustain them; and

• Examine the long-term cognitive effects of substance abuse (including alcohol) and their implications for compliance with court orders, probation conditions, release, visitation orders, *etc.*

b. *Judicial Branch Education Technical Assistance Projects.* The Board is reserving up to $300,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) are to:

(1) Provide State and local courts with expert assistance in developing systematic or innovative judicial branch education programming as well as improved methods for assessing the need for and evaluating the impact of court education programs; and

(2) Enable courts to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix E.

Only State or local courts may apply for JBE TA funding. Application procedures may be found in Section VI.F.

c. *Scholarships for Judges and Court Managers.* The Institute is reserving up to $200,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

• Enhance the skills, knowledge, and abilities of judges and court managers;

• Enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and

• Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in Section VI.G.

5. The Relationship Between State and Federal Courts

This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts.

The Institute is particularly interested in innovative projects that:

• Evaluate State and Federal courts' experiences with capital cases to identify reasons for reversals of trial court convictions, barriers to timely disposition, and steps that can be taken to minimize reversals and undue delay;

• Educate judges about capital case law, DNA evidence, and judicial administration issues arising from death penalty cases, *e.g.,* court security, jury sequestration, and media management;

• Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels; and

• Provide technical assistance nationwide to help court officials develop effective emergency responses to acts of terrorism.

B. ''Think Pieces''

This category addresses the development of essays of publishable quality directed to the court community. The essays should explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public. Grants supporting such projects are limited to no more than $10,000. Applicants should follow the procedures explained in section VI.B. of this Guideline.

Think piece topics are limited to the five Special Interest categories listed in section II.A. of this Guideline.

C. The Solutions Project

1. Overview

The Board of Directors is reserving up to $800,000 to support the Solutions Project, a process intended to infuse the State courts with the ability to develop innovative and creative ways to address the problems they face and provide a mechanism to transfer these ideas throughout the nation. In addition to providing State courts with an array of promising solutions to their most pressing problems, the Solutions Project will generate consensus on projects, ideas, and programs that merit additional Federal funding support because of their broad appeal and promise.

The process will entail five steps:

A. Information collection about the specific needs of the State courts, the efforts the courts have made to date to address those needs, and other possible solutions;

B. Information analysis;

C. A national event, *e.g.* an in-person or virtual conference, to identify the most promising solutions to the State courts' most critical problems;

D. Development of a comprehensive catalogue of promising solutions; and;

E. Distribution of a final product clearly stating both the problems facing State courts, as well as real and promising solutions, to State court leaders and other interested parties.

2. State Court Information Collection Grants

Grants of up to $20,000 are available to State court systems interested in undertaking a town hall meeting, focus groups, survey(s), or other initiatives designed to (a) collect information about the problems facing their courts, (b) assess the effectiveness of the solutions the court system has developed to respond to those problems, or (c) solicit the public's recommendations about other potential solutions. Only State supreme courts or State court administrative offices may apply for these grants. See section VI.C.1. for the application procedures.

A grant or grants will be awarded to support the remaining work outlined in the five steps listed above. Applicants are encouraged to include creative uses of technology to maximize participation in the project and distribution of the final product. Applications should conform to the requirements set forth in section VI.A. for Project Grants.

D. Technical Assistance Grants

The Board will set aside up to $300,000 to support the provision of technical assistance to State and local courts. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than $30,000 each,

and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court may apply for a Technical Assistance Grant. The application procedures may be found in section VI.E.

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. Acknowledgment of SJI Support

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

B. Application

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed 25-page description of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. See section VI. for a complete description of application submission requirements. See Appendix F for the Project Grant application forms.

C. Close-out

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

D. Continuation Grant

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VI.D. for a complete description of continuation application requirements.

E. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

F. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

G. Disclaimer

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section VIII.A.11.a.(2) for the precise wording of this statement.

H. Grant Adjustment

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Ordinarily, changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) should be requested at least 30 days in advance of the implementation of the requested change.

I. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court or its designee.

J. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

K. Judicial Branch Education Technical Assistance (JBE TA) Grant

A grant of up to $20,000 awarded to a State or local court to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. See also section VI.F. for a complete description of JBE TA Grant application requirements.

L. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project; that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits); any other reduction in the indirect cost rate to be charged to the grant; and the application of project income (*e.g.,* tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project.

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

See section VIII.A.8. for the Institute's matching requirements.

M. Products

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines;

videotapes; audiotapes; computer software; and CD–ROM disks.

N. Project Grant

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $200,000 a year; however, a grant in excess of $150,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact. See section VI.A. for a complete description of Project Grant application requirements.

O. Project-Related Income

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, see section IX.G.

P. Scholarship

A grant of up to $1,500 awarded to a judge or court employee to cover the cost of tuition for and transportation to and from an out-of-State educational program within the United States. See section VI.G. for a complete description of scholarship application requirements.

Q. Special Condition

A requirement attached to a grant award that is unique to a particular project.

R. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

S. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

T. Technical Assistance Grant

A grant, lasting up to 12 months, of up to $30,000 to a State or local court to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem.

See section VI.E. for a complete description of technical assistance grant application requirements.

IV. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute supports the following types of grants:

1. Project Grants

See sections II.A. and B., and VI.A. The Institute places no annual limitations on the overall number of project grant awards or the number of awards in each Special Interest category.

As part of the Solutions Project, the Institute will make grants available to State court systems to support the collection of information about the most critical problems facing the State courts, and promising solutions to those problems. See sections II.C. and VI.C.

2. Continuation Grants

See sections III.D. and VI.D. In FY 2003, the Institute is allocating no more than 20% of available Project Grant funds for continuation grants.

3. Technical Assistance Grants

See sections II.D. and VI.E. In FY 2003, the Institute is reserving up to $300,000 for these grants.

4. Judicial Branch Education Technical Assistance Grants

See sections II.A.4.b., III.K., and VI.F. In FY 2003, the Institute is reserving up to $300,000 for Judicial Branch Education Technical Assistance Grants, which includes adaptations of curricula previously developed with SJI funding.

5. Scholarships

See sections II.A.4.c., III.P., and VI.G. In FY 2003, the Institute is reserving up to $200,000 for scholarships for judges and court employees. The Institute will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

C. Maximum Size of Awards

1. Except as specified below, applicants for new Project Grants and continuation grants may request funding in amounts up to $200,000 for 15 months, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only

for highly promising proposals that will have a significant impact nationally.

2. Applicants for Solutions Project Grants may request funding in amounts up to $20,000.

3. Applicants for Technical Assistance Grants may request funding in amounts up to $30,000.

4. Applicants for Judicial Branch Education Technical Assistance Grants may request funding in amounts up to $20,000.

5. Applicants for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily may not exceed 15 months. Absent extraordinary circumstances, no grant awarded in FY 2003 will continue for more than five years.

2. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

VI. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix F for the Project Grant application forms. For a summary of the application process, visit the Institute's Web site (*http://www.statejustice.org*) and click on On-Line Tutorials, then Project Grant.

1. Forms

a. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Forms (Form C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VI.A.4. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section VIII.A.7.)

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.,* to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.,* provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas To Be Covered

The applicant should note the Special Interest category or categories that are addressed by the proposed project (see section II.A.).

c. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluation

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address

the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) *Research.* An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) *Education and Training.* The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) *Demonstration.* The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (*e.g.*, how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (*e.g.*, was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (*e.g.*, what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) *Technical Assistance.* For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.*, no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. Products

The program narrative in the application should contain a description of the products to be developed (*e.g.*, training curricula and materials, videotapes, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (See Appendix C), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) *Dissemination Plan.* The application must explain how and to

whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (*i.e.*, whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VIII.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix C.) Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product (*i.e.*, a written report with a reference to the web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html format.

(2) *Types of Products and Press Releases.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period. (See section VIII.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review.* Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD–ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. (See section VIII.A.11.e.)

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VIII.A.11.a.(2) of the Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. Organizational Capacity

Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts. See Appendix F.

k. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by March 15, 2003.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all

project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.*, the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs

Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. See sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

l. Match

Courts or other units of State or local government (not including publicly supported institutions of higher education) must provide a match from private or public sources of not less than 50% of the total amount of the Institute's award. 42 U.S.C. 10705(d). At least 20% of the required match for a new grant to a court or other unit of State or local government (other than a Solutions Project Information Collection grant) must be cash. All other grantees (except scholarship recipients and individuals receiving ''think piece'' grants) must contribute a match of 25% to a new grant; at least 10% of the required match must be cash.

The applicant should describe the source of the matching contribution and the nature of the match provided. Any additional cash and in-kind contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed would be documented for audit purposes. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (See sections III.L., VIII.A.8., and IX.E.1.)

The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

5. Submission Requirements

a. Every applicant must submit an original and four copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either Form C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

All applications must be sent by first class or overnight mail or by courier no later than February 7, 2003. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

B. ''Think Piece'' Applications

1. Purpose and Scope

''Think pieces'' are essays of publishable quality directed to the court community. They are intended to explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public.

2. Forms

An application for a ''think piece'' must include the same forms required for a project grant. See A.1. above in this section.

3. Program Narrative

The program narrative should be no longer than necessary, but must not exceed 8 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The pages should be numbered. The narrative should:

a. Identify the specific Special Interest category into which the ''think piece'' would fall;

b. Describe the subject it would address;

c. Explain how the essay would advance the current state of the art or knowledge about the subject;

d. Discuss the benefits that would accrue to the State courts generally as a result of the essay's publication; and

e. Outline plans for the publication of the ''think piece,'' *e.g.*, the intended audience, and the types or titles of periodicals or journals to which it would be submitted.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in A.4. above in this section; however, individuals proposing to develop ''think pieces'' are not required to provide match.

5. Submission Requirements

The submission requirements set forth in section VI.A.5 apply to all ''think piece'' applications.

C. Solutions Project Grants

1. State Court Information Collection Grants

Solutions Project Grants of up to $20,000 are available to State court systems to support the costs of town hall meetings, focus groups, surveys, or other information-gathering initiatives designed to (a) identify the critical problems facing the State's courts, (b) assess the effectiveness of the solutions the court system has developed to respond to those problems, or (c) solicit the public's recommendations about other potential solutions.

a. Application Procedures

In lieu of applications, applicants may submit a two-page letter describing how they propose to gather the information on critical problems and promising solutions. The letter must be signed by either the chief justice of the State supreme court or the State court administrator.

b. Application Format

Although there is no prescribed form for the letter, it should describe briefly the nature of the problem(s) sought to be addressed, the mechanism(s) to be used to collect the information sought, who would oversee the collection process, the anticipated time frame required to complete the process, and the manner and form in which the information would be submitted to the Institute.

c. Budget and Matching State Contribution

A completed Form C (Budget) and budget narrative must be included with the letter requesting the Solutions Project Grant. The budget narrative should provide the basis for all costs. If the information-gathering process entails the involvement of a consultant, applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and no consultant will be paid more than $900 per day from Institute funds.

As with all Institute grants to State and local courts, applicants must provide matching support equal to 50% of the amount requested from the Institute; however, no cash match is required for Solutions Project Grants.

Recipients of Solutions Project Grants do not have to submit an audit but must maintain appropriate documentation to support all expenditures (see section VIII.A.3.).

d. Submission Requirements

Letters requesting Solutions Project Grants must be postmarked no later than October 25, 2002. Please mark SOLUTIONS PROJECT on the envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

2. National Solutions Project Grant(s)

A grant or grants will be awarded to support the analysis and dissemination of the information collected by the State court systems. The proposed project design should describe:

• The processes that would be used to analyze the information gathered by the participating State court systems;

• The type and size of national event (*e.g.,* an in-person or virtual conference) that would be held to identify the most promising solutions to the State courts' most critical problems;

• The methods that would be used to compile a comprehensive catalogue of promising solutions; and

• The format of the final product, which should clearly state both the problems facing State courts, as well as real and promising solutions, and how it would be distributed to State court leaders and other interested parties.

a. Application Procedures

Applications should conform to the requirements for Project Grants outlined in section VI.A.

b. Submission Requirements

The submission requirements set forth in section VI.A.5 apply to these applications.

D. Continuation Grant Applications

1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities carried out under a previous grant. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant awarded in FY 2003 will continue for more than five years.

3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in A.2. of this section, a program narrative, a budget narrative, a Certificate of State Approval—Form B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices. See Appendix F for the application forms.

The program narrative should conform to the length and format requirements set forth in section VI.A.3. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff, and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

5. Budget and Budget Narrative

a. Institute Funds

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in VI.A.4. above. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

b. Matching Contribution

i. State and local units of government must provide match equaling at least 50% of the amount provided by the Institute in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

For example, if the Institute awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court would be required to provide $60,000 in match. A State or local unit of government would have to provide at least 20% of the required match in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project).

ii. All other grantees must provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization would be required to provide $25,000 in match. If the second year grant is also $100,000, the court would be required to provide $30,000 in match. A non-profit organization must provide at least 10% of the required match in the form of cash.

iii. For the purpose of calculating match requirements for continuation grants, an award in FY 2003 will constitute the first year of the project, regardless of whether the project was funded initially in a prior year.

iv. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

6. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

7. Submission Requirements

The submission requirements set forth in section VI.A.5., other than the mailing deadline, apply to continuation applications.

E. Technical Assistance Grants

1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site (*www.statejustice.org*) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

3. Application Format

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, Line-Item Budget Form (see Appendix G), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.*, the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

Recipients of Technical Assistance Grants do not have to submit an audit but must maintain appropriate documentation to support expenditures. (See section VIII.A.3.)

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 10, 2003 will be notified of the Institute's decision by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those

submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified by December 12, 2003.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (*i.e.*, by February 7, April 10, July 3, and October 16, 2003).

F. Judicial Branch Education Technical Assistance Grants

1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts to support: (1) Expert assistance in planning, developing, and administering State judicial branch education programs; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a curriculum once (*i.e.*, with one grant) in a given State.

JBE TA Grants may support consultant assistance in developing systematic or innovative judicial branch educational programming. The assistance might include development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State and, in certain cases, in a region, if sponsored by a court.

2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's web site (*www.statejustice.org*) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. For on-site consultant assistance:

(1) *Need for Funding.* What is the critical judicial branch educational need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix F) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

b. For adaptation of a curriculum:

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.,* from across the State, from a single local jurisdiction, from a multi-State region)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of

the court system leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix F.)

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix G) and a budget narrative (see A.4. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 10, 2003 will be notified of the Board's decision by March 28, 2003; those submitting letters between January 11 and February 28, 2003 will be notified by May 30, 2003; those submitting letters between March 1 and June 6, 2003 will be notified by August 29, 2003; and those submitting letters between June 7 and September 26, 2003 will be notified by December 12, 2003.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in late May 2003 should submit its application no later than January 10, 2003, in time for the Board's decision by March 28, 2003.

G. Scholarships

1. Purpose and Scope

The purposes of the Institute scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an educational program in another State. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition and transportation expenses. Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive $.345/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition and transportation expenses in excess of $1,500 and other costs of attending the program—such as lodging, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the Scholarship award process, visit the Institute's web site at *www.statejustice.org* and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A Scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works. The course must be designed to enhance the skills of new or experienced judges and court managers; address any of the topics listed in the Institute's Special Interest categories; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

3. Forms

a. Scholarship Application—Form S–1 (Appendix H)

The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. Scholarship Application Concurrence—Form S–2 (Appendix H)

Judges and court managers applying for Scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix H). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

January 3 and March 3, 2003 for programs beginning between

April 1 and June 30, 2003; April 1 and June 2, 2003 for programs beginning between July 1 and September 30, 2003;

July 7 and August 29, 2003 for programs beginning between October 1 and December 31, 2003; and

October 1 and December 1, 2003 for programs beginning between January 1 and March 31, 2004.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

VII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. Project Grant and Continuation Grant Applications

a. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) The applicant's management plan and organizational capabilities;

(5) The qualifications of the project's staff;

(6) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;

(7) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(8) The reasonableness of the proposed budget;

(9) The demonstration of cooperation and support of other agencies that may be affected by the project; and

(10) The proposed project's relationship to one of the Special Interest categories set forth in section II.A.

b. For continuation grant applications, the key findings and recommendations of evaluations and the proposed responses to those findings and recommendations also will be considered.

c. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section IV.); the availability of financial assistance from other sources for the project; the amount and nature (cash and in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the court;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. The court's commitment to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

a. For on-site consultant assistance:

(1) Whether the assistance would address a critical need of the court;

(2) The soundness of the technical assistance approach to the problem;

(3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

(4) The court's commitment to act on the consultant's recommendations; and

(5) The reasonableness of the proposed budget.

b. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into the State's or local jurisdiction's ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent;

b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project and Continuation Grant Applications

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for

each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for grants. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. Applications will be reviewed competitively by a committee of the Board of Directors. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch Education Technical Assistance Grants to the committee established for each program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

3. Scholarships

Scholarship applications are reviewed quarterly by a committee of the Institute's Board of Directors. The Board of Directors has delegated its authority to approve Scholarships to the committee established for the program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except Scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each Scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for Scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration.

VIII. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles. (See section IX.K. of the Guideline for the requirements of such audits.) Scholarship recipients and recipients of Solutions Project State Court Information Collection Grants, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients and individuals who receive ''think piece'' grants are required to provide match. See section III.L. for the definition of match. The amount and nature of required match depends on the type of organization receiving the grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The amount and nature of unrequired match contributed by applicants is a factor the Board of Directors considers in making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsections a. and b. below.

a. New Project Grants

(1) *State and local units of government.* All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if a State court or executive branch agency receives a $100,000 grant from the Institute, it must provide a $50,000 match (50% of the $100,000 awarded by SJI). At least 20% of the required match for a new grant ($10,000 in the example) must be provided in the form of cash rather than in-kind support (*e.g.,* the value of staff time contributed to the project).

(2) *All other grantees.* All other grantees are required to contribute a match of 25% to a new SJI-funded project. For example, if a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match. A non-profit organization must provide at least 10% of the required match for a new grant ($2,500 in the example) in the form of cash.

b. Continuation Grants

All grantees are required to assume a greater share of project support over time.

(1) *State and local units of government.* State and local units of government are required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court $100,000 for the first year of a grant, the court would be required to provide $50,000 in match. If the second-year grant is also $100,000, the court is required to provide $60,000 in match. A court that wishes to limit its second-year contribution to $50,000 may ask the Institute for a reduced amount, *i.e.,* $83,333, in order to meet the 60% requirement.

(2) *All other grantees.* All other grantees are required to provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization $100,000 for the first year of a grant, the organization must provide $25,000 in match. If the second-year grant is also $100,000, the grantee is required to provide $30,000 in match. An organization that wishes to limit its second-year contribution to $25,000 may ask the Institute for a reduced amount, *i.e.,* $83,333, in order to meet the 30% requirement.

c. Waiver

(1) *Match generally.*

(a) The match requirement for State and local units of government may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

(b) The match requirement for all other grantees required to provide match may be waived in exceptionally rare circumstances upon the request of an appropriate official and approval by the Board of Directors

(2) *Cash match.* For all grantees required to provide cash match, the requirement may be waived upon the applicant's demonstration that providing the required cash match will cause the applicant a financial hardship.

(3) The Board of Directors encourages all applicants to provide the maximum amount of in-kind and cash match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process. See section VII.B.1.c.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

b. Charges for Grant-Related Products/ Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.O. and IX.G. for requirements regarding project-related income realized during the project period.

c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) an electronic version of the product in .html format to the Institute; and

(3) one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in Appendix C. Labels for these libraries are available on the Institute's Web site, *http://www.statejustice.org.*) Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

f. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than Scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A

final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination in section VIII.A.11.d. and e.) and the reporting requirements below:

1. Judicial Branch Education Technical Assistance Grant Reporting Requirements

Recipients of Judicial Branch Education Technical Assistance Grants must:

a. Submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report; and

b. Complete a Technical Assistance Evaluation Form at the conclusion of the grant period, if appropriate.

2. Technical Assistance Grant Reporting Requirements

Recipients of Technical Assistance Grants must:

a. Submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report; and

b. Complete a Technical Assistance Evaluation Form at the conclusion of the grant period.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the Scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program).

Scholarship Payment Vouchers should be submitted within 90 days

after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

IX. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;
3. generating financial data to be used in planning, managing, and controlling projects; and
4. facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *http://www.whitehouse.gov/OMB.)*

1. Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions.
2. Office of Management and Budget (OMB) Circular A–87, Cost Principles for State and Local Governments.
3. Office of Management and Budget (OMB) Circular A–88 (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.
4. Office of Management and Budget (OMB) Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
5. Office of Management and Budget (OMB) Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
6. Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-profit Organizations.
7. Office of Management and Budget (OMB) Circular A–128, Audits of State and Local Governments.
8. Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (See section III.F.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VIII.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by the Institute (see sections K. below and VIII.A.3.)

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a *total project cost* basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section IX.C.2. above.)

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (See section IX.H.2. below.) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a ''check-issued'' basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (*i.e.*, on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be

number 1, the second number 2, etc. (See Appendix B, Answers to Grantees' Frequently Asked Questions, for further guidance.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; A–87, Cost Principles for State and Local Governments; and A–122, Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *http://www.whitehouse.gov/OMB.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval. See section X.A.1.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. See sections III.L. and VI.A.4.k.

a. Approved Plan Available

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.*, accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution

involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant (other than a State court receiving an information collection grant in connection with the Solutions Project) must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128,* or *OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: Follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a new grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship, even when the project will continue under a continuation grant.

2. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments that require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget. See section IX.I.2.d.

For continuation grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period

and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (see section IX.I.2.b.).

14. Consultant rates (see section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section IX.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin, Executive Director.

Appendix A—Recommendations to Grant Writers

Over the past 15 years, the Institute staff has reviewed approximately 1,750 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing an application. Applications should, however, be presented in the format specified in section VI. of the Guideline.

1. What Is the Subject or Problem You Wish To Address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What Do You Want To Do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (*e.g.*, to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (*e.g.*, hold 3 training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper, nor does a clever but uninformative title.

3. How Will You Do It?

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks, and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How Will You Know It Works?

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Applications should present the criteria that will be used to evaluate the project's effectiveness; identify program elements that will require further modification; and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How Will Others Find Out About It?

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings ''will be made available to'' the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What Are the Specific Costs Involved?

The budget in an application should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of ''Other'' or ''Miscellaneous'' items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, If Any, Match Is Being Offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required to contribute a match of at least 50 percent of the funds requested from the Institute for a new grant. At least 20% of the required match must be in the form of cash. All other applicants must contribute a match of 25% to a new SJI-funded project, and at least 10% of that match must be in the form of cash.

The match requirement works as follows: If, for example, a State court system receives a $100,000 grant from the Institute, it must provide a $50,000 match; at least 20% of the required match for a new grant ($10,000 in the example) must be in the form of cash rather than in-kind support (*e.g.*, the value of staff time contributed to the project). If a non-profit organization receives a $100,000 grant from SJI, it must provide a $25,000 match, and at least 10% of that match ($2,500 in the example) must be in the form of cash.

Cash match includes funds directly contributed to the project by the applicant, or by other private or authorized public sources; income generated from tuition fees or the sale of project products during the grant period; and funds dedicated to the project by the grantee's assumption of approved indirect costs.

Non-cash match refers to in-kind contributions by the applicant, or other private or authorized public sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). The nature of the match (cash or in-kind) should be explained, and the tasks and line items for which costs will be covered wholly or in part by match should be specified.

The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.c.

8. Which of the Two Budget Forms Should Be Used?

Section VI.A.1.c. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VI.A.4. of the Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (*e.g.*, Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (*e.g.*, 100 reports x 75 pages each x .05/page = $375.00). Supply and expense estimates offered simply as ''based on experience'' are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What Travel Regulations Apply to the Budget Estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which policies apply to the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the

country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site, may be used. Applicants should arrange travel so as to be able to take advantage of advanced-purchase price discounts whenever possible.

11. May Grant Funds Be Used To Purchase Equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. The Institute's written prior approval is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To What Extent May Indirect Costs Be Included in the Budget Estimates?

If an indirect cost rate has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. A copy of the approved indirect cost rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement and cannot budget directly for all costs, an indirect cost rate proposal should be prepared in accordance with section IX.I.4. of the Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an aud it should budget all project costs directly.)

13. What Meeting Costs May Be Covered With Grant Funds?

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals.

14. Does the Budget Truly Reflect All Costs Required To Complete the Project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (*e.g.*, development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Appendix B—Answers to Grantees' Frequently Asked Questions

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,500 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the Grant Has Been Awarded, When Are the First Quarterly Reports Due?

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—*i.e.*, no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly progress report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, quarterly progress reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, *etc.* The quarterly progress report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a quarterly progress report and attachments should be submitted to the Institute.

Additional quarterly progress report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do Reporting Requirements Differ for Continuation Grants?

Recipients of continuation grants are required to submit quarterly progress and Financial Status Reports on the same schedule and with the same information as recipients of grants for single new projects.

A continuation grant should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant should be designated as number one, the second as number two, and so on, through the final progress and Financial Status Reports due within 90 days after the end of the grant period.

3. What Information About Project Activities Should Be Communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend, if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements, quarterly financial reporting, or payment requests should be addressed to the Institute's Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. Why Are Special Conditions Attached to the Award Document?

Special conditions may be imposed to establish a schedule for reporting certain key information, assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and provide reminders of pertinent Guideline requirements. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Managers any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections VIII., IX., and X. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

5. What Is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents or deobligate funds from the grant.

6. What Schedule Should Be Followed in Submitting Requests for Reimbursements or Advance Payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Continuation Grants?

The basic procedures are the same for any grant. A continuation grant should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant should be designated as number one, the

second as number two, and so on through the final payment request for that grant.

8. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations is expected to allocate funds to a previously unbudgeted cost category or to exceed five percent (5%) of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request prior Institute approval.

The same standard applies to continuation grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the continuation award, or to use continuation grant monies to cover costs incurred during the original grant period.

9. What Is the 90-day Close-out Period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day ''close-out-period.'' Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. Are Funds Granted by SJI ''Federal'' Funds?

The State Justice Institute Act provides that, except for purposes unrelated to this question, ''the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.'' 42 U.S.C.10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grant funds as ''Other Federal Assistance.'' This classification is acceptable to SJI but is not required.

11. If SJI Is Not a Federal Agency, Do OMB Circulars Apply With Respect to Audits?

Unless they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128, and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to ''conduct, or require each recipient to provide for, an annual fiscal audit'' (see 42 U.S.C. 10711(c)(1)), the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section IX.K.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133 to satisfy the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline section IX.K.) Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB Web site at *http://www.whitehouse.gov/OMB.*

12. Does SJI Have a CFDA Number?

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 2001 grantee ''X'' received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act or OMB Circulars A–128 or A–133, and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in section IX.K. of the Grant Guideline.

Appendix C—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court Bldg., 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska Court Libraries 820 W. Fourth Ave., Anchorage, AK 99501, (907) 264–0583

Arizona

State Law Library

Ms. Gladys Ann Wells, Collection Development, Research Division, Arizona Dept. of Library, Archives and Public Records, State Law Library 1501 W. Washington, Phoenix, AZ 85007 (602) 542–4035

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, Little Rock, AR 72201, (501) 682–9400

California

Administrative Office of the Courts

Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts 455 Golden Gate Avenue, San Francisco, CA 94107, (415) 865–4200

Colorado

Supreme Court Library

Ms. Linda Gruenthal, Deputy Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 864–4522

Connecticut

State Library

Ms. Denise D. Jernigan, State Librarian, Connecticut State Library 231 Capital Avenue, Hartford, CT 06106, (860) 566–2516

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building 820 North French Street 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577–8481

District of Columbia

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks, Executive Officer, District of Columbia Courts 500 Indiana

Avenue, NW., Suite 1500, Washington, D.C. 20001, (202) 879–1700

Florida

Administrative Office of the Courts

Ms. Dee Beranek, Deputy State Courts Administrator, Florida Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399–1900, (850) 922–5081

Georgia

Administrative Office of the Courts

Mr. David Ratley, Director, Administrative Office of the Courts, 47 Trinity Avenue, Suite 414, Atlanta, GA 30334, (404) 656–5171

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, 417 South King St., Room 119, Honolulu, HI 96813, (808) 539–4965

Idaho

AOC Judicial Education Library/State Law Library

Ms. Beth Peterson, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court of Illinois Library, 200 East Capitol Avenue, Springfield, IL 62701–1791, (217) 782–2425

Indiana

Supreme Court Library

Mr. Dennis Lager, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232–2557

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Office of the State Court Administrator, State Capital Building, Des Moines, IA 50319–0001, (515) 281–8279

Kansas

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, KS 66612, (913) 296–3257

Kentucky

State Law Library

Ms. Marge Jones, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, KY 40601, (502) 564–4848

Louisiana

State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, LA 70112, (504) 568–5705

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, 43 State House Station, Augusta, ME 04333, (207) 287–1600

Maryland

State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260–1430

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer, Librarian , Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148

Michigan

Michigan Judicial Institute

Dawn F. McCarty, Interim Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, MI 48909, (517) 334–7805

Minnesota

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (612) 297–2084

Mississippi

Mississippi Judicial College

Mr. Leslie Johnson, Director, University of Mississippi, P.O. Box 8850, University, MS 38677, (601) 232–5955

Montana

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, 215 North Sanders, Helena, MT 59620, (406) 444–3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Post Office Box 98910, Lincoln, NE 68509–8910, (402) 471–3730

Nevada

National Judicial College

Mr. Randall Snyder, Law Librarian, National Judicial College , Judicial College Building, University of Nevada, Reno, NV 89550, (775) 784–6747

New Hampshire

New Hampshire Law Library

Ms. Christine Swan, Law Librarian, New Hampshire Law Library, Supreme Court Building, One Noble Drive, Concord, NH 03301–6160, (603) 271–3777

New Jersey

New Jersey State Library

Ms. Marjorie Garwig, Supervising Law Librarian, New Jersey State Law Library, 185 West State Street, P.O. Box 520, Trenton, NJ 08625–0250, (609) 292–6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827–4850

New York

Supreme Court Library

Ms. Barbara Briggs, Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, 401 Montgomery Street, Syracuse, NY 13202, (315) 435–2063

North Carolina

Supreme Court Library

Mr. Thomas P. Davis, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, Dept. 182, 2nd Floor, Judicial Wing, Bismarck, ND 58505–0540, (701) 328–2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Honorable Miguel Sablan Demapan, Chief Justice, Supreme Court of the Commonwealth of the Northern Mariana Islands, P.O. Box 2165 CK, Saipan, MP 96950, (670) 236–9700

Ohio

Supreme Court Library

Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2044

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers, Administrative Director of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450,

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click, State Court Administrator, Office of the State Court Administrator, Supreme Court Building, Salem, OR 97310, (503) 986–5900

Pennsylvania

State Library of Pennsylvania

Ms. Barbara Miller, Collection Management Librarian, State Library of Pennsylvania, Room 218, Forum Building, P.O. Box 1601, Harrisburg, PA 17105, (717) 787–5718

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919,

Rhode Island

Roger Williams University

Ms. Gail Winson, Director of the Library, Roger Williams University, School of Law Library, 10 Metacom Avenue, Bristol, RI 02809

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley, Library Director, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, SC 29208, (803) 777–5944

South Dakota

State Law Library

Librarian, 500 East Capitol, Pierre, South Dakota 57501, (605) 773–4898

Tennessee

Tennessee State Law Library

Honorable Cornelia A. Clark, Director, Administrative Office of the Courts, Tennessee Supreme Court, 511 Union, Nashville, TN 37243–0607, (615) 741–2687

Texas

State Law Library

Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen, Utah State Judicial Administration Library, Administrative Office of the Courts, 450 South State, P.O. Box 140241, Salt Lake City, UT 84114–0241, (801) 533–6371

Vermont

Supreme Court of Vermont

Mr. Paul J. Donovan, Law Librarian, Department of Libraries, 109 State Street, Montpelier, VT 05609, (802) 828–3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin, State Court Administrator, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455

Washington

Washington State Law Library

Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504–0751, (360) 357–2136

West Virginia

Administrative Office of the Courts

Ms. Kathleen Gross, Deputy Director of Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, 1900 Kanawha Boulevard East, Building 1, Room E–100, Charleston, WV 25305, (304) 558–0145

Wisconsin

State Law Library

Ms. Jane Colwin, Director of Public Services, State Law Library 310 E. State Capitol, P.O. Box 7881, Madison, WI 53707, (608) 261–2340

Wyoming

Wyoming State Law Library

Ms. Kathleen B. Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building 2301 Capitol Avenue, Cheyenne, WY 82002, (307) 777–7509

National:

American Judicature Society

Ms. Clara Wells, Assistant for Information and Library Services, 180 North Michigan Avenue, #600, Chicago, IL 60601, (312) 558–6900,

National Center for State Courts

Ms. Peggy Rogers, Acquisitions/Serials Librarian 300 Newport Avenue, Williamsburg, VA 23187–8798, (757) 259–1857

JERITT

Dr. Maureen E. Conner, Executive Director, The JERITT Project, 1407 S. Harrison, Suite 330 Nisbet, East Lansing, MI 48823–5239, (517) 353–8603; (517) 432–3965 (fax); e-mail: *connerm@msu.edu*; Web site: *http://jeritt.msu.edu*

Appendix D—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (517/353–8603 or *jeritt@msu.edu*) for more information about these and other SJI-supported technical assistance projects.

Application of Technology

Technology Plan (Office of the South Dakota State Court Administrator: SJI–99–066).

Children and Families in Court

Expanded Unified Family Court (Ventura County, CA, Superior Court: SJI–01–122).

Trial Court Performance Standards for the Unified Family Court of Delaware (Family Court of Delaware: SJI–98–205).

Court Planning, Management, and Financing

Job Classification and Pay Study of the New Hampshire Courts (New Hampshire Administrative Office of the Courts: SJI–98–011).

A Model for Building and Institutionalizing Judicial Branch Strategic Planning (12th Judicial Circuit, Sarasota, FL: SJI–98–266).

Strategic Planning (Fourth Judicial District Court, Hennepin County, MN: SJI–99–221).

Differentiated Case Management for the Improvement of Civil Case Processing in the Trial Courts of Texas (Texas Office of Court Administration: SJI–99–222).

Dispute Resolution and the Courts

Evaluating the New Mexico Court of Appeals Mediation Program (New Mexico Supreme Court: SJI–00–122).

Improving Public Confidence in the Courts

Mississippi Task Force on Gender Fairness in the Courts (Mississippi Administrative Office of the Courts: SJI–00–108).

Analysis of the Juror Debriefing Project (King County, WA, Superior Court: SJI–00–049).

Improving the Court's Response to Family Violence

New Hampshire Fatality Reviews (New Hampshire Administrative Office of the Courts: SJI–99–142).

Education and Training for Judges and Other Court Personnel

Iowa Supreme Court Advisory Committee on Judicial Branch Education (Iowa State Court Administrator's Office: SJI–01–200).

Appendix E—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. *Please refer to section VI.F. for information on submitting a letter application for a Judicial Branch Education Technical Assistance Grant.* A list of all SJI-supported education projects is available on the SJI Web site (*http://www.statejustice.org*). Please also check with the JERITT project (517/353–8603 or http://jeritt.msu.edu). and your State SJI-designated library (see Appendix C). for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

Alternative Dispute Resolution

Judicial Settlement Manual (National Judicial College: SJI–89–089).

Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277).

Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002).

Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038).

Court Coordination

Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027).

Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88–NIC–001).

Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087).

Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175).

Court Management

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).

Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056).

A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052).

Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043).

Strengthening Rural Courts of Limited Jurisdiction and *Team Training for Judges and Clerks* (Rural Justice Center: SJI–90–014, SJI–91–082).

Interbranch Relations Workshop (Ohio Judicial Conference: SJI–92–079).

Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214).

Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068).

Privacy Issues in Computerized Court Record Keeping: An Instructional Guide for Judges and Judicial Educators (National Judicial College: SJI–94–015).

Managing Mass Tort Cases (National Judicial College: SJI–94–141).

Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).

Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/ National Center for State Courts: SJI–96–159).

Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041).

Courts and Communities

Reporting on the Courts and the Law (American Judicature Society: SJI–88–014).

Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083).

National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013).

Access to Justice: The Impartial Jury and the Justice System and When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide (National Judicial College: SJI–91–054).

You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048).

Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040).

Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI–98–008).

Charting the Course of Public Trust and Confidence in Our Courts (Mid-Atlantic Association for Court Management: SJI–98–208).

Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI–98–268).

Public Trust and Confidence (Arizona Courts Association: SJI–99–063).

Diversity, Values, and Attitudes

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071).

The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058).

Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI–91–043).

Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI–93–028).

Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063).

A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and *The Ethics Fieldbook: Tool For Trainers* (American Judicature Society: SJI–93–068).

Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075).

Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019).

Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006).

Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082).

Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95–245).

Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96–089).

Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150).

When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96–161).

When Judges Speak Up: Ethics, the Public, and the Media (American Judicature Society: SJI–96–152).

Family Violence and Gender-Related Violent Crime

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081).

Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062).

Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003, SJI–98–133 [video curriculum]).

Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255).

Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95–019).

Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274).

Health and Science

Environmental Law Resource Handbook (University of New Mexico Institute for Public Law: SJI–92–162).

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030).

Judicial Education for Appellate Court Judges

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086).

Civil and Criminal Procedural Innovations for Appellate Courts. (National Center for State Courts: SJI–94–002).

Judicial Branch Education: Faculty and Program Development

The Leadership Institute in Judicial Education and *The Advanced Leadership Institute in Judicial Education* (University of Memphis: SJI–91–021).

Faculty Development Instructional Program'' from *Curriculum Review* (National Judicial College: SJI–91–039).

Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233).

Institute for Faculty Excellence in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–96–042; University of Memphis: SJI–01–202).

Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040).

Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028).

A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078).

Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043).

Judicial Review of Administrative Agency Decisions (National Judicial College: SJI–91–080).

New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155).

Magistrates Correspondence Course (Alaska Court System: SJI–92–156).

Computer-Assisted Instruction for Court Employees (Utah Administrative Office of the Courts: SJI–94–012).

Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058).

Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142).

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from ''NACM Core Competency Curriculum Guidelines'' (National Association for Court Management: SJI–96–148).

Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI–98–001).

Caseflow Management from ''Innovative Educational Programs for Judges and Court Managers'' (Justice Management Institute: SJI–98–041.

Juveniles and Families in Court

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017).

Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI 94–321).

Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders (Brandeis University: SJI–99–150).

Strategic and Futures Planning

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI–89–029).

An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045).

Substance Abuse

Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel (Education Development Center, Inc.: SJI–90–051).

Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–91–095).

Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291).

Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030).

BILLING CODE 6820–SC–P

Appendix F

STATE JUSTICE INSTITUTE
APPLICATION

1. APPLICANT
a. Applicant Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

2. TYPE OF APPLICANT *(Circle appropriate letter)*
a. State court
b. National organization operating in conjunction with State court
c. National State court support organization
d. College or university
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Other unit of government
i. Other _____ *(specify)*

3. PROPOSED START DATE _____

4. PROJECT DURATION (Months) _____

5. EMPLOYER IDENTIFICATION # _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____

7. ENTITY TO RECEIVE FUNDS *(if different from above)*
a. Organizational Name _____
b. Organizational Unit _____
c. Street/P.O. Box _____
d. City _____
e. State _____ f. Zip Code _____
g. Phone Number _____
h. Fax Number _____
i. Web Site Address _____
j. Name & Phone Number of Contact Person _____
k. Title _____
l. E-Mail Address _____

8. a. AMOUNT REQUESTED FROM SJI $_____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash match $_____
c. TOTAL MATCH $_____
d. TOTAL PROJECT COST $_____

9. TITLE OF PROPOSED PROJECT

10. CONGRESSIONAL DISTRICT OF: _____
Name of Representative; District Number

_____
Project (if different than applicant):
Name of Representative; District Number

11. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.

_____ SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT
_____ TITLE
_____ DATE

(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)

FOR INSTITUTE USE ONLY

12. a. APPLICATION NUMBER _____ b. CONCEPT PAPER NUMBER _____ c. GRANT NUMBER _____	13. DATE RECEIVED	14. DATE OF ACTION

Form A 09/00

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-l Legal **name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of applicant, including phone and fax numbers and web site address; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award.

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. **Employer Identification #** as assigned by the Internal Revenue Service.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).

7. a-1 **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**

8. a Insert the **amount requested** from the State Justice Institute to conduct the project.

8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.

8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.

8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.

9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.

10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district,** along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.

11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

(Form B)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
Signature *Date*

_____
Name

_____
Title

INSTRUCTIONS

The State Justice Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council.

The term "State Supreme Court' refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs							
Total							

Remarks:

Form C 5/95 *(Instructions on reverse side)*

91853

STATE JUSTICE INSTITUTE

PAGE _____ OF _____

PROJECT BUDGET

(SPEADSHEET FORMAT)

Applicant: _____

Project Title _____

For Project Activity from _____ **to** _____

Total Amount Requested for Project from SJI $ _____

(See instruction regarding column headings)

ITEM							
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs (%)							
SJI Total							
STATE FUNDS							
FEDERAL FUNDS							
APPLICANT FUNDS							
OTHER FUNDS							
IN-KIND FUNDS							
Total							

Form C1 5/95 *(Instructions on reverse side)*

91854

Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE
ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

   a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

   b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

   c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must by properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project:
    This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State of local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

☐ **Yes** ☐ **No** **Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?**

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered **YES** above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

_____

Signature **Name (Typed)**

_____

Title **Date**

Appendix G

(Form E)

STATE JUSTICE INSTITUTE

LINE-ITEM BUDGET FORM

For Judicial Branch Education Technical Assistance and
Technical Assistance Grant Requests*

Category	SJI Funds	Cash Match	In-Kind Match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____

PROJECT TOTAL **$**_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Appendix H

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (MI)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____

6. Congressional District: _____

PROGRAM INFORMATION:

7. Course Name: _____

8. Course Dates: _____

9. Course Provider: _____

10. Location Offered: _____

ESTIMATED EXPENSES:

(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $ _____ Transportation: $ _____

(Airfare, train fare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Amount Requested: $ _____

Are you seeking/have you received a scholarship for this course from another source?

❑ Yes ❑ No. If so, please specify the source(s) and amounts(s) _____

_____

Form S1 (9/98)

SJI SCHOLARSHIP APPLICATION

PAGE 2

ADDITIONAL INFORMATION:

Please attach a current resume or professional summary, and provide the information requested below. (You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

   ❑ 0–1 year ❑ 2–4 years ❑ 5–7 years ❑ 8–10 years ❑ 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ Signature

_____ Date

Please return this form and Form S-2 to:

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

SJI Scholarship Application

Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____,

prepared by _____.
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature

_____
Name

_____
Title

_____
Date

Form S2 (9/98)

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December 2, 2002

Part III

Securities and Exchange Commission

17 CFR Part 205

Implementation of Standards of Professional Conduct for Attorneys; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 205

[Release Nos. 33–8150; 34–46868; IC–25829; File No. S7–45 –02]

RIN 3235–AI72

Implementation of Standards of Professional Conduct for Attorneys

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is soliciting comments on a proposed rule that would establish standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers. Section 307 of the Sarbanes-Oxley Act of 2002 requires the Commission to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. The standards must include a rule requiring an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors. Proposed Part 205 responds to this directive and is intended to protect investors and increase their confidence in public companies by ensuring that attorneys who work for those companies do not ignore evidence of material misconduct.

DATES: Comments should be received on or before December 18, 2002.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or by e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Alternatively, comments may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. 33–8150.wp; this file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Timothy N. McGarey or Edward C. Schweitzer at 202–942–0835.

SUPPLEMENTARY INFORMATION: The Commission is proposing to add a new Part 205 to Title 17, Chapter II, of the Code of Federal Regulations[2] establishing standards of professional conduct for attorneys who appear and practice before the Commission in the representation of issuers, under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Sarbanes-Oxley Act of 2002.

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I. Purpose of This Rule Proposal

The purpose of this release is to solicit comments on proposed Part 205,[3] which prescribes Standards of Professional Conduct for Attorneys who appear and practice before the Commission in any way in the representation of issuers.

Section 307 of the Sarbanes-Oxley Act of 2002 (the ''Act'') (15 U.S.C. 7201 *et seq.*) mandates that the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) Requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) If the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

The proposed rule responds to this directive.[4]

II. Commission Initiatives to Establish Professional Standards for Attorneys Appearing and Practicing Before the Commission

A. The Role of Attorneys Who Appear Before the Commission

Attorneys play a varied and crucial role in the Commission's processes. Attorneys prepare, or assist in the preparation of, materials that are filed with or submitted to the Commission by, or on behalf of, issuers. These materials are relied upon by public investors in making their investment decisions. Thus, the Commission, and the investing public, must be able to rely upon the integrity of in-house and retained lawyers who represent issuers.

Attorneys also play an important and expanding role in the internal processes and governance of issuers, ensuring compliance with applicable reporting and disclosure requirements (including, inter alia, requirements mandated by the federal securities laws). During the floor debate on the amendment that was subsequently adopted and enacted as Section 307 of the Act, Senator John Edwards emphasized the important function attorneys play at public companies. ''This amendment is about making sure those lawyers, in addition to the accountants and executives in the

[1] The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested persons submitting comments should only submit information that they wish to make publicly available.

[2] 17 CFR part 205.

[3] Proposal 17 CFR part 205.

[4] The Act mandates that the Commission issue a rule establishing such minimum standards of conduct for attorneys within 180 days of its enactment. The Act was signed into law by President Bush on July 30, 2002. Accordingly, the new rule must be issued by January 26, 2003. The Commission may, in the event it determines it appropriate in light of the mandate of Section 307, supplement the rule establishing minimum standards after that date.

company, don't violate the law and, in fact, more importantly, ensure that the law is being followed.'' [5] Unfortunately, the actions of some attorneys have drawn increasing scrutiny and criticism in light of recent events demonstrating that at least ''some lawyers have forgotten their responsibility.'' [6] Moreover, existing state ethical rules have not proven to be an effective deterrent to attorney misconduct.[7] The July 16, 2002 *Preliminary Report of the American Bar Association Task Force on Corporate Responsibility* (hereinafter the ''Cheek Report'') noted that ''a disturbing series of recent lapses in corporations involving false or misleading financial statements and alleged misconduct by executive officers' has compromised investors' confidence in both the ''quality and the integrity'of the governance of public companies.[8] Indeed, the Task Force concluded that ''the system of corporate governance at many public companies has failed dramatically.'' Moreover, the Task Force's preliminary report acknowledges that attorneys representing and advising corporate clients bear some share of the blame for this failure.[9]

Moreover, foreign attorneys are playing an ever greater role in connection with their representation of issuers making Commission filings. With the globalization of the U.S. capital markets, there has been a marked increase in the number of companies from non-U.S. jurisdictions registering securities with the Commission.[10] At present, there are over 1,300 foreign private issuers from 59 countries that are filing reports with the Commission under the Exchange Act, as compared with approximately 400 issuers from less than 30 countries in 1990. As a result, it is important to address how the proposed rule would apply to these foreign attorneys.

B. The Commission's Ability To Discipline Attorneys Under Rule 102(e)

Rule 102(e) of the Commission's Rules of Practice has been the primary vehicle available to the Commission to protect its processes and ensure the competence of professionals (including attorneys) who appear and practice before it.[11] The Commission adopted Rule 102(e) as a ''means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence.'' [12] The rule permits the Commission to initiate disciplinary proceedings against attorneys who lack integrity or competence, engage in improper professional conduct,[13] or who are determined to have violated provisions of the federal securities laws. The sanctions available in those proceedings include censure, temporary suspension, and permanent bar.

Professionals against whom the Commission has instituted Rule 102(e) proceedings (particularly accountants) have challenged the Commission's authority to promulgate the rule. Every court that has ever considered the issue has concluded that the Commission possessed the authority to promulgate Rule 102(e), and the courts have recognized that it is appropriate for the Commission to use a disciplinary mechanism like Rule 102(e) to protect the integrity of its processes and to encourage professionals to adhere to minimum standards of competence.[14] Nevertheless, as noted below, the Commission's use of Rule 102(e) has proven to be controversial,[15] and until enactment of the Act, the Commission has never had express statutory authority to promulgate a rule establishing standards of conduct for attorneys representing issuers.[16]

C. Prior Commission Consideration of an Attorney's Obligation to Report Corporate Misconduct to Management

Even before enactment of the Act, the Commission had addressed the responsibility of attorneys appearing and practicing before the Commission to report to management evidence of misconduct of which they become aware during the course of their representation of a public company.

In a 1981 decision, *In the Matter of William R. Carter, Charles J. Johnson, Jr.,* 22 S.E.C. Docket No. 292, 1981 WL 384414, the Commission reversed an initial decision by a Commission Administrative Law Judge that concluded that two attorneys who failed to correct misstatements contained in a client's press releases and Commission filings concerning earnings had aided and abetted their client's violation of the federal securities laws. The Commission

[5] *See* remarks by Senator John Edwards, 148 Cong. Rec. S6552 (July 10, 2002).

[6] *Id.* at S6551. *See also* Speech by SEC Chairman Harvey L. Pitt: Remarks Before the Annual Meeting of the American Bar Association's Business Law Section (Aug. 12, 2002) (''recent events have refocused our attention on the need for the profession to assist us in ensuring that fundamental tenets of professionalism, ethics and integrity work to ensure investor confidence in public companies.''), available at http://www.sec.gov/news/speech/spch579.htm.

[7] *See* remarks by Senator Michael Enzi, 148 Cong. Rec. at S6555 (''I am usually in the camp that believes that [s]tates should regulate professionals within their jurisdiction. However, in this case, the [s]tate bars as a whole have failed. They have provided no specific ethical rule of conduct to remedy this kind of situation. Even if they do have a general rule that applies, it often goes unenforced.'').

[8] *See* Cheek Report at 3–4.

[9] *See* Cheek Report at 7 (''It is a clear failure of corporate responsibility if executive officers aware of potential accounting irregularities sell millions of dollars of stock to public investors who are unaware of [earnings misstatements and self-dealing by corporate officers]. It is a clear failure of corporate responsibility for insiders to borrow enormous amounts from their companies without adequate security beyond inflated stock of the company itself. And it is a clear failure of corporate responsibility when outside directors, auditors and lawyers, who have important roles in our system of independent checks on the corporation's management, fail to avert or even discover—and sometimes actually condone or contribute toward the creation of—the grossest of financial manipulations and fraud.'').

[10] The Commission realizes that the application of Section 307 and the rules we are proposing under Part 205 to foreign law firms, multijurisdictional law firms, and foreign lawyers employed by those law firms and foreign registrants, raises a number of significant and difficult issues. We are requesting comment on a broad range of questions in this area, including whether foreign law firms and foreign lawyers should be exempt from Part 205.

[11] Rule 2(e), the predecessor to Rule 102(e), was promulgated in 1935. Rule 2(e) was redesignated Rule 102(e) in 1995. For the sake of uniformity, the rule will be referred to throughout this release as Rule 102(e).

[12] *Touche Ross & Co.* v. *SEC,* 609 F.2d 570, 582 (2d Cir. 1979). The Commission's existing Rule 102 addresses the conduct of attorneys, accountants, engineers and other professionals or experts who appear or practice before the Commission. 17 CFR 201.102(e)(2) and (f)(2).

[13] Rule 102(e) does not establish professional standards. Rather, the rule enables the Commission to discipline professionals who have engaged in improper professional conduct by failing to satisfy the rules, regulations or standards to which they are already subject, including state ethical rules governing attorney conduct, or generally accepted accounting principles (GAAP) or generally accepted auditing standards (GAAS) governing the conduct of accountants.

[14] *See Touche Ross* v. *SEC,* 609 F.2d 570 (2d Cir. 1979) (Rule 2(e) was validly promulgated pursuant to the Commission's ''broad authority'' to adopt rules and regulations necessary to carry out the Commission's designated functions); *Davy* v. *SEC,* 792 F.2d 1418 (9th Cir. 1986)(concluding that the Commission had statutory authority to adopt Rule 102(e)); *Checkosky* v. *SEC,* 23 F.3d 452, 456 (D.C. Cir. 1994) (''There can be little doubt that the Commission, like any other institution in which lawyers or other professionals participate, has authority to police the behavior of practitioners before it''') (Silberman, J., *quoting Polydoroff* v. *ICC,* 773 F.2d 372, 374 (D.C. Cir. 1985)).

[15] *Compare* Norman S. Johnson & Ross A. Albert, *''Deja Vu All Over Again'': The Securities and Exchange Commission Once More Attempts to Regulate the Accounting Profession Through Rule 102(e) of its Rules of Practice,* 1999 Utah L. Rev. 553, *with* Paul Gonson, *The 1998 Amendment to SEC Rule 102(e) Will Withstand Judicial Scrutiny,* 1999 Utah L. Rev. 609.

[16] In 1998, in response to the opinion from the U.S. Court of Appeals for the District of Columbia Circuit in *Checkosky* v. *SEC,* in which the Court criticized the Commission's interpretation of Rule 102(e) to the extent it was applied to accountants, the Commission amended Rule 102(e) to clarify the Commission's standard for determining when accountants engage in ''improper professional conduct''. The Commission did not at that time amend the rule to address how it would apply the rule to misconduct by attorneys.

concluded that existing ethical standards governing the conduct of attorneys did not unambiguously proscribe the behavior in question, and the Commission therefore did not sanction the attorneys. Nevertheless, the Commission announced that in the future it would interpret Rule 102(e) to require an attorney who learns that a client is ''engaged in a substantial and continuing failure to satisfy'' disclosure requirements prescribed by the federal securities laws to ''take[] prompt steps to end the client's noncompliance'' in order to avoid violating professional standards. 1981 WL 384414 at *29–*31.[17] The Commission indicated that the attorney can initially simply ''counsel[] accurate disclosure'' by the client. However, in the event the client does not cure the deficiency, the Commission stated that an attorney must take additional ''more affirmative steps'' including possibly a ''direct approach to the board of directors or one or more individuals or officers'' or an attempt ''to enlist the aid of other members of the firm's management'' to correct the deficiency. *Id.* at *31. ''What is required, in short, is some prompt action that leads to the conclusion that the lawyer is engaged in efforts to correct the underlying problem, rather than having capitulated to the desires of a strong-willed, but misguided client.'' *Id.* at *31.

The Commission announced in its decision in *Carter and Johnson* that it would solicit comments from the public regarding whether the newly articulated interpretation of ''unethical or improper professional conduct'' should be expanded or modified. *Id.* at *28. The release doing so stated that, based on the comments received, the Commission might or might not expand or modify its interpretation of the phrase ''unethical or improper professional conduct'' in Rule 102(e). ''Until that time, the present interpretation will govern all similar circumstances for purposes of proceedings pursuant to Rule [102](e) if the conduct occurred after February 28, 1981''—the date on which the Commission announced its interpretation in *Carter and Johnson.*[18] The Commission's announcement in *Carter and Johnson* of the standard to be applied to similar cases in the future and its request for written comments engendered strong opposition from the private bar. The Commission, however, never amended the interpretation of ''unethical or improper professional conduct'' articulated in *Carter and Johnson.*[19]

Subsequently, the Commission's then-General Counsel expressed concern in a speech regarding the Commission's lack of either ''the time or expertise'' to fashion a code of professional conduct for attorneys appearing and practicing before it.[20] He further suggested that the Commission should focus its attention on bringing Rule 102(e) proceedings against attorneys when the alleged misconduct represents ''a violation of established state law ethical or professional misconduct rules and has a direct impact on the Commission's internal processes,'' and indicated that the Commission generally should not institute Rule 102(e) proceedings against attorneys absent a judicial determination that the lawyer has violated the federal securities laws.[21]

In 1988, the Commission issued a release announcing adoption of an amendment to Rule 102(e) to provide for public proceedings initiated under the rule. *See Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission,* 1988 SEC LEXIS 1365 (July 7, 1988). The majority of the release discussed the basis for the Commission's conclusion that the benefit of conducting such proceedings in public outweighed the competing privacy concerns. The Commission noted in the release that it ''has generally utilized Rule [102(e)] proceedings against attorneys only where the attorney's conduct has already provided the basis for a judicial or administrative order finding a securities law violation in a non-rule [102(e)] proceeding'' and that it would continue to follow this policy. *Id.* at *22.

Nevertheless, the Commission has continued to assess the actions of attorneys who learn of misconduct by public company clients outside of the context of Rule 102(e). In a subsequent case, *In the Matter of George C. Kern, Jr.,* 50 S.E.C. 596, 1991 SEC LEXIS 1222 (June 21, 1991), a Commission Administrative Law Judge concluded that an attorney serving both as outside counsel and as a director of a company caused his client to violate the Exchange Act by failing to amend his client's prior filing with the Commission to reflect more recent developments during the course of a tender offer. The ALJ nevertheless concluded that he lacked authority to enter an order directing future compliance pursuant to Section 15(c)(4) of the Exchange Act, and discontinued the proceedings. The Commission affirmed the order discontinuing proceedings.

In another case, *In the Matter of John H. Gutfreund, Thomas W. Strauss and John W. Meriwether,* 51 S.E.C. 93 (Dec. 3, 1992), the Commission issued a report of investigation pursuant to its authority under Section 21(a) of the Exchange Act (15 U.S.C. 78u(a)) concerning the actions of the chief legal officer at a broker-dealer who was apprised of criminal wrongdoing by a corporate officer. While the chief legal officer was not named as a respondent, the Commission issued the report to emphasize its views on the supervisory responsibilities of legal and compliance officers who learn of misconduct by their employer or by a co-worker. The Commission concluded that such individuals are ''obligated to take affirmative steps to ensure that appropriate action is taken to address the misconduct,'' including ''disclosure of the matter to the entity's board of directors, resignation from the firm, or disclosure to regulatory authorities.'' *Id.* at 113–114.[22]

[17] The Commission specifically opined that ''[w]hen a lawyer with significant responsibilities in the effectuation of a company's compliance with the disclosure requirements of the federal securities laws becomes aware that his client is engaged in a substantial and continuing failure to satisfy those disclosure requirements, his continued participation violates professional standards unless he takes prompt steps to end the client's noncompliance.'' 1981 WL 384414 at *29.

[18] *Request for Comments on Standard of Conduct Constituting Unethical or Improper Professional Practice Before the Commission,* 1981 SEC LEXIS 730 at *3–*4 (Sept. 21, 1981).

[19] In a previous case, *In the Matter of Keating, Muething & Klekamp,* 1979 SEC LEXIS 1186 (July 2, 1979), the Commission instituted and settled a Rule 102(e) proceeding against a law firm which prepared Commission filings by a financial client. The Commission concluded that virtually every member of the firm knew that disclosures contained in the client's filings were inadequate and misleading, but that the internal procedures at the firm were inadequate to ensure that this information was properly evaluated in connection with the firm's preparation of Commission filings or reflected within the filings. The Commission specifically opined that ''[a] law firm has a duty to make sure that disclosure documents filed with the Commission include all material facts about a client of which it has knowledge as a result of its legal representation of that client.'' *Id.* at *27.

[20] *See* Edward F. Greene, Lawyer Disciplinary Proceedings before the Securities and Exchagne Commission, Remarks to the New York County Lawyers' Association, (Jan. 18, 1982), Fed. Sec. L. Rep. (CCH) ¶ 83,089.

[21] *See* Fed. Sec. L. Rep. (CCH) ¶ 83,089 (''When the attorney's alleged misconduct is predicated on theories of aiding and abetting liability, as it almost always is when the conduct involves the preparation and filing of documents, and the Commission is also proceeding against the principals in a simultaneous injunctive action, I believe that the wisest course for the Commission to follow is to add the attorney to the injunctive action as a co-defendant. If that is not possible for unusual reasons, then an administrative proceeding under Rule [102(e)] could be commenced. And in those administrative proceedings based upon violations of standards of ethical or professional conduct, I believe that the Commission should use existing state law standards.'').

[22] In 1997, the Commission issued another report of investigation in a matter involving officers and

In sum, while the Commission has opined on a case-by-case basis that lawyers appearing and practicing before the Commission have an obligation to report corporate misconduct to appropriate officers and directors, it has not adopted comprehensive standards directing attorneys to report instances of misconduct.

III. Section 307 of the Sarbanes-Oxley Act

In the wake of sensational revelations concerning Enron and other public companies, a group of legal academics forwarded a letter to Chairman Pitt urging the Commission to impose an ''up the ladder'' reporting requirement on attorneys that would oblige attorneys who learn of misconduct at public companies to report this information to the management of the company.[23] In a March 28, 2002 response, the Commission's then-General Counsel did not take issue with the academics' proposals but noted that there are good reasons why ''a significant change in established practice should be undertaken in the context of Congressional legislation, as opposed to agency rulemaking.''[24] Senator John Edwards, the sponsor of Section 307, learned of this exchange of letters and concluded that it was time for Congress to act to provide a context of Congressional legislation for Commission rules imposing an ''up the ladder'' reporting requirement on attorneys representing public companies.[25]

Section 307 of the Act requires the Commission to promulgate minimum ethical standards for attorneys representing issuers, including an ''up the ladder'' reporting requirement on attorneys as originally proposed by the Commission in *Carter and Johnson*[26] as a means of addressing the same types of concerns regarding attorney behavior and shareholder protection as were described in the Cheek Report. The provision directs the Commission to issue rules applicable to all attorneys appearing and practicing before the Commission in the representation of issuers that require attorneys initially to report evidence of a material violation to appropriate officers within the issuer and, thereafter, to the highest authority within the issuer if the initial report does not result in an appropriate response.[27]

IV. Proposed Part 205

A. General Overview

Proposed Part 205 responds to Congress' mandate that the Commission adopt an effective ''up the ladder'' reporting system, and evidences the Commission's intention to implement a robust system in this regard. As set forth in greater detail in the discussion below, the proposed rule would adopt an expansive view of who is appearing and practicing before the Commission. This approach recognizes that attorneys interact with the Commission on behalf of issuer clients in a number of ways, and protects investors by reaching attorney conduct that may threaten the Commission's processes and harm shareholders.

In addition to a rigorous ''up the ladder'' reporting requirement, the proposed rule incorporates several corollary provisions that are not explicitly required by Section 307, but which the Commission believes are important components of an effective ''up the ladder'' reporting system. Under certain circumstances, these provisions permit or require attorneys to effect a so-called ''noisy withdrawal'' and to notify the Commission that they have done so and permit attorneys to report evidence of material violations to the Commission. These provisions embody ethical principles that legal commentators and the ABA have been considering for years,[28] and are similar in important respects to ethical rules that have already been enacted in a number of jurisdictions. At the same time, the proposed rule does not attempt to articulate a comprehensive set of standards regulating all aspects of the conduct of attorneys who appear and practice before the Commission. The Commission does not intend to supplant state ethics laws unnecessarily, particularly in areas (*e.g.*, safeguarding of client assets, escrow procedures, advertising) where the Commission lacks expertise. The Commission believes that the proposed rule will deter instances of attorney and issuer misconduct and where misconduct has occurred, minimize its impact upon issuers and their shareholders.

At the same time, the Commission does not want the rule to impair zealous advocacy, which is essential to the Commission's processes. The Commission also does not want the rule to discourage issuers from seeking and obtaining effective and creative legal advice. Finally, the Commission is cognizant of the ongoing efforts by the ABA and other organizations to address many of the same issues that are covered by the rule, and will continue to monitor those efforts and review the content and operation of the rule, particularly insofar as any measure adopted by the ABA or some other organization or entity extends beyond the scope of Section 307.

directors of W.R. Grace Co. The Commission concluded that these individuals failed to take action to ensure full and prompt disclosure of substantial retirement benefits the company had agreed to pay to its former CEO in the company's annual report, a 10K filing, and a proxy statement. *See Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Concerning the Conduct of Certain Former Officers and Directors of W.R. Grace & Co.,* 1997 SEC LEXIS 2038 (Sep. 30, 1997). The Commission issued the report in order ''to emphasize the affirmative responsibilities of corporate officers and directors to ensure that the shareholders whom they serve receive accurate and complete disclosure of information required by the proxy solicitation and periodic reporting provisions of the federal securities laws.'' 1997 SEC LEXIS 2038, *3. Although none of the officers and directors named in the matter were attorneys, the report emphasizes the affirmative duty of an issuer's management to correct misconduct and make full disclosure of relevant matters to investors. See also cases discussed infra in n.31 and accompanying text.

[23] *See* March 7, 2002 letter to Chairman Pitt from Richard Painter, *et al.*, at http://www.abanet.org/buslaw/corporateresponsibility/responsibility_relatedmat.html.

[24] *See* March 28 letter from David Becker to Painter, *et al.*, at http://www/abanet.org/buslaw/corporateresponsibility/responsibility_relatedmat.html.

[25] *See* 148 Cong. Rec. S6524–02, S6551–6552 (July 10, 2002).

[26] *See* 148 Cong. Rec. S6552 (July 10, 2002).

[27] Although legislative history for Section 307 is limited, comments made by its sponsors in speeches delivered on the Senate floor suggest that the sponsors' immediate goal was to impose an ''up the ladder'' reporting system upon lawyers representing issuers. *See* remarks by Senator John Edwards, 148 Cong. Rec. S6552 (July 10, 2002) (''This amendment is about making sure those lawyers, in addition to the accountants and executives in the company, don't violate the law and, in fact, more importantly, ensure that the law is being followed. * * * If you find out that the managers are breaking the law, you must tell them to stop. If they won't stop, you go to the board of directors, which represents the shareholders, and tell them what is going on. If they won't act responsibly and in compliance with the law, then you go to the board and say something has to be done; there is a violation of the law occurring. It is basically going up the ladder, up the chain of command. * * * This amendment acts in a very simple way. It basically instructs the SEC to start doing exactly what they were doing 20 years ago, to start enforcing this up-the-ladder principle.''). *See also id.* at S6555 (comments by Senator Enzi) (''When their counsel and advice is sought, attorneys should have an explicit, not just an implied, duty to advise the primary officer and then, if necessary, the auditing committee or the board of directors of any serious legal violation of the law by a corporate agent. Currently, there is no explicit mandate requiring this kind of conduct. It is clearly in the best interest of their client to disclose this type of information'') and S6556 (comments by Senator Corzine) (''The bottom line is this. Lawyers can and should play an important role in preventing and addressing corporate fraud. Our amendment seeks to ensure that. It seeks to go back to the old way: when lawyers know of illegal actions by a corporate agent, they should be required to report the violation to the corporation.'').

[28] Indeed, the ABA's ongoing evaluation of the Cheek Report focuses, in large measure, upon a provision which would impose a reporting obligation comparable to that in proposed Part 205. Cheek Report at 27–30.

B. Summary of Part 205

Section 205.3(b) of proposed Part 205 prescribes the duty of an attorney who appears or practices before the Commission in the representation of an issuer to report evidence of a ''material violation.'' The rule's reporting obligation is triggered only when an attorney becomes aware of information that would lead a reasonable attorney to believe a *material* violation has occurred, is occurring, or is about to occur, thus limiting the instances in which the reporting duty prescribed by the rule will arise to those where it is appropriate to protect investors. The attorney is initially directed to make this report to the issuer's chief legal officer (''CLO''), or to the issuer's CLO and chief executive officer (''CEO''). Absent exigent circumstances, the attorney is also obligated to take reasonable steps to document his or her reports, as well as any response received from the CLO or CEO and retain the documentation for a reasonable time. Keeping such documentation will protect the attorney in the event his or her compliance with the proposed rule is put in issue in some future proceeding.

When presented with a report of a possible material violation, the rule obligates the issuer's CLO to conduct a reasonable inquiry to determine whether the reported material violation has occurred, is occurring, or is about to occur. A CLO who reasonably concludes that there has been no material violation must notify the reporting attorney of this conclusion. A CLO who concludes that a material violation has occurred, is occurring, or is about to occur must take reasonable steps to ensure that the issuer adopts appropriate remedial measures and/or sanctions, including appropriate disclosures. Furthermore, the CLO is required to report ''up the ladder'' within the issuer what remedial measures have been adopted or sanctions imposed and to advise the reporting attorney of his or her conclusions.

A reporting attorney who receives an appropriate response within a reasonable time and has taken reasonable steps to document his or her report and the response to it has satisfied his or her obligations under the rule. In the event a reporting attorney does not receive an appropriate response within a reasonable time, he or she must report the evidence of a material violation to the issuer's audit committee, or (if the issuer does not have an audit committee) to another committee of independent directors, or (if the issuer does not have another committee of independent directors) to the full board. If the attorney reasonably believes that it would be futile to report evidence of a material violation to the CLO and CEO, the attorney may report directly to the issuer's audit committee, or (if the issuer does not have an audit committee) to another committee of independent directors, or (if the issuer does not have another committee of independent directors) to the full board. A reporting attorney who has reported a matter all the way ''up the ladder'' within the issuer and who reasonably believes that the issuer has not responded appropriately must take reasonable steps to document the response, or absence thereof.

The proposed rule would also provide an alternative system for reporting evidence of material violations. *See* Section 205.3(c). Issuers may, but are not required to, establish a qualified legal compliance committee (''QLCC'') composed of at least one member of the issuer's audit committee, and two or more independent members of the issuer's board for the purpose of investigating reports of material violations made by attorneys. A QLCC must have the authority and the responsibility to conduct any necessary inquiry into the reported evidence, to require the issuer to adopt appropriate remedial measures to prevent an ongoing, or alleviate a past, material violation, and to notify the Commission of the material violation and disaffirm any tainted document submitted to the Commission. The QLCC would be required to notify the board, the CLO, and the CEO of the results of any inquiry and the remedial measures the QLCC decided were appropriate. In the event the issuer fails to take remedial measures as directed by the QLCC, each member of the QLCC, the CLO, and the CEO would each be individually responsible for notifying the Commission of the material violation and for disaffirming any tainted submission to the Commission. An attorney would satisfy his reporting obligation under the rule by reporting evidence of a material violation to a QLCC. Additionally, a CLO who receives a report of a material violation may refer the report to a QLCC in lieu of conducting his or her own inquiry.

Paragraph 205.3(d) discusses the obligations of an attorney who has not received an appropriate response from the issuer. The provision distinguishes between outside attorneys retained by the issuer and attorneys employed by the issuer. Outside attorneys who have made a report and have not received an appropriate response and who reasonably believe that the reported material violation is ongoing or is about to occur *and* is likely to result in substantial injury to the financial interest of the issuer or of investors are *required* to withdraw from the representation, notify the Commission of their withdrawal, and disaffirm any submission to the Commission that they have participated in preparing which is tainted by the violation. In-house attorneys employed by an issuer who reasonably believe that the reported violation is ongoing or is about to occur *and* is likely to result in substantial injury to the financial interest of the issuer or of investors are *required* to disaffirm any tainted submission they have participated in preparing, but are *not* required to resign. In the event an attorney reasonably believes that a material violation has already occurred and has no ongoing effect, the attorney is *permitted, but not required,* to take these steps, so long as he or she *also* reasonably believes that the reported material violation is likely to have caused substantial injury to the financial interest of the issuer or of investors. Finally, an attorney formerly employed or retained by an issuer who reasonably believes that he or she has been discharged because he or she fulfilled the reporting obligation imposed by the rule *may, but is not required* to, notify the Commission of his or her belief that he or she was discharged for reporting evidence of a material violation and also disaffirm in writing any submission to the Commission that he or she participated in preparing which is tainted by the violation. A notification to the Commission under this section does not breach the attorney-client privilege.

Paragraph 205.3(e) sets forth the specific circumstances under which an attorney is authorized to disclose confidential information related to his or her appearance and practice before the Commission in the representation of an issuer. Pursuant to this provision, an attorney may use the documentation he or she has prepared under the rule to defend against charges of attorney misconduct. Paragraph 205.3(e)(2) also allows an attorney to reveal confidential information to the extent necessary to prevent the commission of an illegal act which the attorney reasonably believes will result either in perpetration of a fraud upon the Commission or in substantial injury to the financial or property interests of the issuer or investors. Similarly, the attorney may disclose confidential information to rectify an issuer's illegal actions when such actions have been advanced by the issuer's use of the attorney's services.

Sections 205.4 and 205.5 detail the respective responsibilities of supervisory and subordinate attorneys, both those employed in-house by the issuer and those serving as outside counsel retained by the issuer. Collectively, these provisions broadly define who is serving as a supervisory attorney, specifically providing that an individual serving as the CLO of an issuer (or who serves in an equivalent role) is a supervisory attorney under the rule. The provision also places the responsibility for compliance with the rule's reporting requirements and documentation obligations upon the supervisory attorney after he or she has been informed of evidence of a material violation by a subordinate. Subordinate attorneys are not exempt from the rule, though they will have complied with it where they report evidence of material violations they learn about to their supervisory attorney. In addition, a subordinate attorney who has reported evidence of a material violation to a supervisory attorney, and who believes that the supervisory attorney has failed to comply with the reporting requirement under the rule is permitted, but not obligated, to report the evidence ''up the ladder'' within the issuer.

Section 205.6 describes the manner in which violations of the rule will be addressed by the Commission. Violation of the proposed rule will subject the violator to all the remedies and sanctions available under the Exchange Act, including injunctions, and cease and desist orders. An attorney who violates a provision of Part 205 will have engaged in improper professional conduct and may also be subject to administrative disciplinary proceedings that can result in a censure, or a suspension or bar from practicing before the agency. Paragraph 205.6(b) incorporates the same state of mind requirements that were adopted for accountants by the Commission in the 1998 amendment to Rule 102(e). Specifically, an attorney is subject to discipline for (1) intentional, including reckless, violations of the Part, and (2) negligent conduct in the form of a single instance of highly unreasonable conduct that results in a violation, or repeated instances of unreasonable conduct resulting in a violation of the Part. The rule provides that the Commission may impose discipline and sanction an attorney who violates the rule, even when the attorney is subject to discipline in the state where he or she practices or is admitted.

V. Section-by-Section Discussion of the Proposed Rule and Request for Comments

The proposing release invites interested persons to submit comments on a large number of specific issues. However, the Commission invites any interested person to submit comments on any aspect of the proposed rule, whether or not comments have been specifically solicited.

Section 205.1 Purpose and Scope

Section 307 of the Act expressly directs the Commission to adopt a rule imposing a reporting requirement upon attorneys ''appearing and practicing before the Commission in any way in the representation of issuers''. Section 307 mandates that the Commission ''shall issue rules * * * setting forth minimum standards of professional conduct * * * including a rule'' imposing an ''up the ladder'' reporting requirement. At the very least, this language directs the Commission to issue a rule requiring attorneys to report material misconduct within an issuer. The Commission may at some future date supplement or amend this rule to expand its scope and address additional ethical issues that are relevant to practice before the Commission.[29] Interested persons are invited to comment on whether the Commission should promulgate additional rules, the issues those rules should address, how, in what form, and why.

Section 205.2 Definitions

Proposed Part 205 includes a section defining a number of terms that appear in the statute and are used throughout the rule. Section 307 of the Act does not define any of its terms. The Act itself defines the term ''issuer,'' and that definition is incorporated into the rule. For several of the terms in the rule, the Commission has adopted the definitions contained in the ABA's Model Rules of Professional Conduct or a variation thereof. For others, the Commission has relied upon statutory definitions or adopted definitions from other sources, including the Restatement (Third) of the Law Governing Lawyers.

For those terms in Section 307 that are included in the proposed rule but not specifically defined in the proposed rule (*e.g.*, ''in any way'' and ''similar violations''), the Commission's intention is that their meaning shall be determined or interpreted according to Commission decisions. Interested persons are invited to comment on whether the Commission should leave these or other terms undefined in the rule or, alternatively, to propose definitions for these or other terms.

(a) *Appearing and practicing* before the Commission includes, but is not limited to, an attorney's:

(1) Transacting any business with the Commission, including communication with Commissioners, the Commission, or its staff;

(2) Representing any party to, or the subject of, or a witness in a Commission administrative proceeding;

(3) Representing any person in connection with any Commission investigation, inquiry, information request, or subpoena;

(4) Preparing, or participating in the process of preparing, any statement, opinion, or other writing which the attorney has reason to believe will be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(5) Advising any party that:

(i) A statement, opinion, or other writing need not or should not be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(ii) The party is not obligated to submit or file a registration statement, notification, application, report, communication or other document with the Commission or its staff.

The definition of the term ''appearing and practicing before'' the Commission is based upon Rule 102(f).[30] The wording of that definition has been modified to clarify and confirm that (as under existing Rule 102(f)) the term includes, among other things, representation of an issuer during the course of an investigation or inquiry conducted by the Commission and that an attorney appears and practices before the Commission if he or she advises an issuer either (1) that a statement, opinion, or other writing does not need to be filed with or incorporated into any type of submission to the Commission or its staff, or (2) that the issuer is not required to submit or file any registration statement, notification, application, report, communication or

[29] The Commission does not propose to create an ''SEC Bar'' with admission requirements, of which attorneys must be members to appear or practice before the Commission. *See* 5 U.S.C. 500(b) (prohibiting agencies from enacting their own supplemental admission requirements for duly admitted members of a state bar). However, the Commission ''like any other institution in which lawyers or other professionals participate, has authority to police the behavior of practitioners appearing before it.'' *Polydoroff* v. *ICC,* 773 F.2d 372, 374 (D.C. Cir. 1985). This authority is confirmed, of course, in the new Section 4C of the Exchange Act and Section 307 of the Sarbanes-Oxley Act.

[30] The definition prescribed in Rule 102(f) is unaffected by the proposed rule.

other document with the Commission or its staff.

Moreover, the definition of the term has also been drafted to make clear that it covers all communications (oral or written) with the Commission or its staff on behalf of an issuer, as well as conduct involving the preparation of any statement, opinion, or other writing which is submitted to Commissioners, the Commission, or its staff which is incorporated into materials submitted to the Commission—or participation in the process of preparing such a statement, opinion, or other writing. Participation in that process covers both adding and excluding information or a particular characterization of information. The definition also makes clear that an attorney who advises an issuer not to make a filing or submission to the Commission is also appearing and practicing before the Commission.

This broad definition is consistent with the position the Commission has taken as amicus curiae in cases involving liability under Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) in which the Commission has argued that attorneys should be held responsible for materials which they have drafted, or participated in drafting, that they knew would be included in a document to be filed with the Commission but which have been submitted without attribution or under another individual's signature.[31] The modification also reflects the reality that materials filed with the Commission frequently contain information contributed, edited or prepared by individuals who are not necessarily responsible for the actual filing of the materials.

An attorney ordinarily does not appear and practice before the Commission if his or her representation of an issuer involves no business or communication with the Commission, no participation in any way in a Commission process, and no assistance in the preparation of at least a portion of a document filed with or submitted to the Commission. The conduct of attorneys in practice specialties other than securities law will be covered by the proposed rule where their representation of an issuer involves contact with the Commission or where they have reason to believe they are assisting in the preparation of a document transmitted to the Commission, or where they supervise an attorney who does appear and practice before the Commission.

The proposed definition of ''appearing and practicing'' is broad enough to include attorneys who do not serve in the legal department of an issuer or do not act in their capacities as attorneys, but who either transact business with the Commission or assist in the preparation of documents filed with or submitted to the Commission.

Interested persons are invited to comment on any aspect of this definition, including its appropriate scope and whether the Commission should exclude any persons from the definition of ''appearing and practicing'' (*e.g.*, in-house corporate attorneys working outside of a legal department who assist in preparing a document to be filed with the Commission). Interested persons are specifically invited to comment on whether, and how, the definition of ''appearing and practicing'' will impact upon attorneys representing issuers during the course of Commission investigations, inquiries, administrative proceedings or civil litigation, and whether and how the definition should be modified in those contexts. Does the definition need to be modified to make clear that an attorney defending an issuer in a civil injunctive action by the Commission in a district court is not appearing and practicing before the Commission, because the issuer is not transacting business with the Commission, even though the defense attorney is in contact with the Commission's staff who are representing the Commission in that litigation? In the event an attorney representing an issuer in an administrative proceeding fails to receive an appropriate response to evidence of a material violation that the attorney has reported, should the attorney's response be governed by the proposed rule or by the Commission's Rules of Practice? Why? Comment is also particularly invited on the breadth of ''participating in the process of preparing'' in paragraph (a)(4) and whether the ''has reason to believe'' standard in that paragraph is too high or too low (*e.g.*, whether an attorney must have actual knowledge or give express consent for a document to be sent to the Commission in order to be appearing and practicing before the Commission).

The concept of ''appearing and practicing'' also raises issues regarding foreign attorneys employed or retained by foreign issuers. Such attorneys may, for example, be involved in the preparation of documents for use in a foreign jurisdiction that might subsequently be used as the basis for other documents prepared by others for filing with the Commission, with or without the knowledge of the foreign attorneys who prepared the original documents. Interested persons are invited to comment on whether such foreign attorneys are ''appearing and practicing'' before the Commission; if not, how the proposed definition might be modified to make that clear; whether an express exclusion for such foreign attorneys is necessary and, if so, how it might be crafted.

(b) *Appropriate response* means a response to evidence of a material violation reported to appropriate officers or directors of an issuer that provides a basis for an attorney reasonably to believe:

(1) That no material violation, as defined in paragraph (i) of this section, is occurring, has occurred, or is about to occur; or

(2) That the issuer has, as necessary, adopted remedial measures, including appropriate disclosures, and/or imposed sanctions that can be expected to stop any material violation that is occurring, prevent any material violation that has yet to occur, and/or rectify any material violation that has already occurred.

The definition of the term ''appropriate response'' emphasizes that the actions of attorneys in evaluating possible instances of material violations and the appropriateness of the response made by an issuer apprised of possible instances of material violations will be evaluated against an objective reasonableness standard. The Commission's intent is to permit attorneys to exercise their judgment as to whether a response to a report is appropriate, so long as their determination of what is an ''appropriate response'' is objectively reasonable.

For example, if an issuer responds to an attorney's report regarding the legality of a particular transaction by informing the attorney that a reputable law firm has reviewed the transaction and concluded that there has been no violation, and if the issuer provides a copy of the opinion to the attorney, the attorney could reasonably believe that the issuer's response was appropriate so long as the opinion satisfactorily addresses all of the reporting attorney's reasonable legal and factual concerns and is otherwise reasonable. Similarly, if an issuer responds to an attorney's report concerning another employee's potentially illegal conduct by, for example, disciplining or terminating the employee, and remedying any impact of the employee's misconduct, the attorney could reasonably believe that the issuer's response was appropriate. If, however, the issuer responds to the attorney's report by peremptorily

[31] The Commission has taken this position in several important recent cases, including Newby, *et al.* v. *Enron Corp.* (C.A. HO–13624) (S.D. Tex) (an ongoing private class action suit in which the Commission has submitted briefs as an amicus curiae) and *Klein* v. *Boyd,* 1998 U.S. App. LEXIS 2004 (3rd Cir. Feb. 12, 1998), *vacated* and *reh'g, en banc, granted,* 1998 U.S. App. LEXIS 4121 (3rd Cir. Mar. 9, 1998).

informing the attorney that the reported matter is not cause for concern, and fails to provide any factual or legal basis for the reporting attorney to conclude there was no violation, such a response may not reasonably be viewed as appropriate by the attorney.

An appropriate response where there has been a disclosure violation would include disclosure of the material information or the correction of any material misstatement. Further, it could include an express directive forbidding the unlawful conduct at issue or, if it has already commenced, ordering that it cease at once. The definition also clarifies that past instances of misconduct may not need to be reported further where that misconduct has been addressed, for example, through the imposition of sanctions or other means. A past instance of misconduct that nevertheless may have an ongoing impact (*e.g.*, a misstatement contained in a prior Commission filing that investors may continue to rely upon) will need to be rectified.

Interested persons are invited to comment on any aspect of what is an appropriate response. Should an attorney's reasonable belief determine whether a response is appropriate? What circumstances would permit an attorney reasonably to believe either that no violation has occurred or that any violation has been rectified? Is there a better objective test to measure whether a response is appropriate and, if so, what is it?

(c) *Attorney* refers to any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

The term ''attorney'' is defined broadly so that the proposed rule applies equally to lawyers employed in-house by an issuer and attorneys retained to perform legal work on behalf of an issuer, and covers persons who hold themselves out as attorneys, even if they are not in fact admitted, licensed, or otherwise qualified to practice law. Interested persons are invited to comment on the impact this definition will have upon attorneys in particular positions, or performing particular functions, and to identify situations in which the definition may reach too broadly. In particular, the Commission requests comment on whether the definition should require, with respect to in-house counsel, that the attorney actually provide legal services to the issuer such that an attorney-client relationship exists, so as to exclude attorneys employed by issuers in non-legal capacities, even if they prepare portions of documents submitted to or filed with the Commission.

The proposed definition of ''attorney'' also covers lawyers licensed in foreign jurisdictions, whether or not they are also admitted to practice in the United States. Under the proposed definition, foreign attorneys who prepare filings or other materials that are submitted to the Commission would be covered by the rule to the extent they are appearing and practicing before the Commission within the meaning of the rule. Potential difficulties related to applying the term ''appearing and practicing'' to foreign attorneys have been discussed above. The Commission also recognizes that significant issues would be raised by application of the proposed rule to foreign attorneys, or attorneys representing or employed by multijurisdictional firms, who may be subject to statutes, rules, and ethical standards in these foreign jurisdictions that are different from, and potentially incompatible with, the requirements of this rule. As noted above, over 1,300 foreign private issuers from 59 countries are registered and reporting with the Commission. These foreign companies are represented by a wide-range of legal counsel. While U.S. lawyers at U.S. law firms often play the principal role in the preparation of disclosure documents filed with the Commission by foreign companies, foreign lawyers can also undertake significant roles in these filings. For example, foreign counsel is often called upon to file a legal or tax opinion as an exhibit to a registration statement filed by a foreign company. In addition, a number of non-U.S.-based law firms (principally firms based in the United Kingdom) have established significant legal practices under the U.S. federal securities laws, and may be the sole law firms representing a particular issuer before the Commission. Generally, such firms have attorneys who are licensed in the United States. Likewise, many U.S. law firms have expanded globally and now employ as partners, counsel and associates lawyers who are admitted to practice solely in jurisdictions outside the United States. These non-U.S. lawyers may play significant roles in connection with Commission filings by both foreign and U.S. issuers. Further, some non-U.S. registrants have employed U.S. or non-U.S. lawyers to serve as their in-house counsel with respect to federal securities law questions.

As proposed, Part 205 would cover lawyers who are licensed in foreign jurisdictions, although only to the extent they ''appear and practice'' before the Commission in the representation of issuers. The Commission recognizes that the application of Part 205 to foreign law firms, multijurisdictional law firms and foreign lawyers raises significant and difficult issues. Because of these issues, the Commission seeks comment on the application of Part 205 to these entities. In particular:

Are there statutes, rules and ethical standards in foreign jurisdictions that govern the conduct of foreign attorneys that are different from, and potentially incompatible with, the requirements of Part 205 and, if so, what foreign authority conflicts with what specific provisions of Part 205?

Are there provisions in Part 205 that could not be given effect (or would be nullified) under statutes, rules, or ethical standards in some foreign jurisdictions? If so, which provisions are affected, and how would this situation affect implementation of Part 205?

How would the ''up the ladder'' rule apply to in-house and retained attorneys in jurisdictions where issuers use different internal corporate structures not contemplated by Part 205?

What difficulties are likely to arise in applying the QLCC alternative to foreign issuers, and how, specifically, could the QLCC alternative be adapted to foreign private issuers?

What are the difficulties in applying Part 205 to law firms that operate in multiple jurisdictions or that have partners, counsel and associates who are admitted to practice law in a foreign jurisdiction but not admitted to practice law in the United States and who participate in the preparation of documents filed with the Commission (or documents that form the basis for documents filed with the Commission)? Are there different considerations in the application of Part 205 in this circumstance depending on whether the law firm in question is principally based in the United States or outside the United States?

What are the difficulties in applying Part 205 to an issuer's in-house attorneys who are admitted to practice law in a foreign jurisdiction but are not admitted to practice law in the United States and who participate in the preparation of documents filed with the Commission (or documents that form the basis for documents filed with the Commission)? Are there different considerations in the application of Part 205 in this circumstance whether the issuer is incorporated in the United States or in a foreign jurisdiction? Any such special difficulties and considerations should be discussed with specificity.

Are there mechanisms that satisfy the objectives of Part 205 that would apply

the rule to a narrower category of foreign-licensed attorneys—for example, by employing a variation of the proposed definitions of supervisory and subordinate attorneys or by identifying attorneys in the United States who would have responsibility for compliance with U.S. securities laws? How, specifically, would such mechanisms work?

With respect to disciplinary proceedings, do foreign jurisdictions maintain procedures for disciplining attorneys for violations of statutes, rules or standards relating to ethical conduct and, if so, how do these procedures operate? Is a Commission proceeding against an attorney that violated Part 205 reconcilable with a disciplinary proceeding in the home jurisdiction?

Should foreign attorneys be exempted in whole or in part from the application of Part 205, and if so, why? Are there protections under foreign statutes, rules and standards relating to ethical conduct that serve as an adequate substitute for the various provisions of Part 205? Should the Commission establish a process under which foreign attorneys may apply for exemptions on a case-by-case basis, and if so, what should this process be (for example, the submission of a legal opinion as to the incompatibility of some or all of Part 205 with foreign statutes, rules and standards, and whether those statutes, rules and standards serve as an adequate substitute for the various provisions of Part 205)?

(d) *Breach of fiduciary duty* refers to any breach of fiduciary duty recognized at common law, including, but not limited to, misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

This definition is intended to identify typical common-law breaches of fiduciary duty. It is not intended to change the law.

Interested persons are invited to comment on any aspect of the definition of ''breach of fiduciary duty,'' including whether the examples given should be expanded or narrowed, and, if so, how.

(e) *Evidence of a material violation* means information that would lead an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur.

This objective standard is intended to preclude reports based on mere suspicion of a material violation while providing reasonable flexibility to attorneys when evaluating their reporting obligations under the proposed rule. An individual attorney is not excused from reporting evidence of a material violation on the grounds that he or she does not personally believe that a material violation has occurred, is occurring, or is about to occur. Under the definition of ''reasonably believes'' in paragraph (l) of Section 205.2, any information that would lead an attorney, acting reasonably, to believe that a material violation has occurred, is occurring, or is about to occur must be reported—whether or not the reporting attorney subjectively believes it. An individual attorney is not, however, required to report within the issuer evidence of a material violation that the attorney thinks is insufficient to lead an attorney, acting reasonably, to believe that a material violation has occurred, is occurring, or is about to occur. The definition does not prescribe a process by which an attorney must evaluate evidence he or she learns about.

Interested persons are invited to comment on any aspect of the definition of ''evidence of a material violation.'' Should a different standard be adopted than that proposed by the Commission and, if so, what should that different standard be? Should the test be subjective rather than objective? Where along the spectrum from actual knowledge to mere suspicion should the line be drawn? Is the correct measure ''beyond a reasonable doubt,'' ''knows or should know,'' ''substantial credible information,'' a ''prima facie case,'' ''more likely than not,'' ''at least as likely as not,'' ''reason to believe,'' ''some credible information,'' ''a mere scintilla of information sufficient to raise suspicion,'' or another test and, if so, what? If reasonable belief is the appropriate standard, what should be reasonably believed: that a material violation has occurred, is occurring, or is about to occur or that a material violation may have occurred, may be occurring, or may be about to occur, or something else? Should the definition be revised to make clearer that the standard is objective rather than subjective and, if so, how?

(f) *In the representation of an issuer* means acting in any way on behalf, at the behest, or for the benefit of an issuer, whether or not employed or retained by the issuer.

The proposed rule includes a broad definition of what constitutes ''in the representation of an issuer.'' A broad definition is essential to protect investors. Accordingly, the term is defined to cover attorneys providing any legal services at the request of, or for the benefit of, an issuer.

For example, an attorney employed or retained by a non-public subsidiary of a public parent issuer is appearing and practicing before the Commission in the representation of an issuer when the subsidiary is covered by an umbrella representation agreement or understanding, whether explicit or implicit, under which the attorney represents the parent company and its subsidiaries, and can invoke privilege claims with respect to all communications involving the parent and its subsidiaries. Similarly, an attorney at a non-public subsidiary appears and practices before the Commission in the representation of an issuer when he or she is assigned work by the parent (*e.g.*, preparation of a portion of a disclosure document) which will be consolidated into material submitted to the Commission by the parent, or if he or she is performing work at the direction of the parent and discovers evidence of misconduct which is material to the parent. The definition of the term is also intended to reflect the duty of an attorney retained by an issuer to report to the issuer evidence of misconduct by an agent of the issuer (*e.g.*, an underwriter) if the misconduct would have a material impact upon the issuer.

An attorney employed by a privately-held investment adviser who prepares, or assists in preparing, materials that the attorney has reason to believe will be submitted to or filed with the Commission by or on behalf of a registered investment company, or will be incorporated into any document filed with or submitted to the Commission, is appearing and practicing before the Commission. Such an attorney, though employed by a privately-held investment adviser, is representing the investment company before the Commission. Where such an attorney discovers evidence of a material violation by an officer of the investment adviser that is related to the investment company, the attorney is obliged to report that evidence to the CLO of the investment company under 205.3(b). The investment adviser is an agent of the investment company and owes the investment company a fiduciary duty under common law and under Section 36 of the Investment Company Act of 1940.[32] Section 307 of the Act requires an attorney to report evidence of a material violation by any agent of an issuer to the issuer's CLO or CEO.

This reporting obligation does no violence to the attorney-client privilege. Because the attorney is providing legal services for the registered investment company, the attorney is reporting to his or her client evidence of a material violation that is related to his or her

[32] 15 U.S.C. 80a–35.

representation of the client.[33] In effect, an attorney employed by the investment adviser and representing the investment company before the Commission has joint clients. Fairness and candor between co-clients regarding matters of common interest normally preclude any expectation of confidentiality regarding communications with their attorney, even regarding a communication of which one co-client was unaware at the time it was made.[34] That analysis must apply with special force where the co-clients are both organizations, with the investment adviser owing a fiduciary duty to the investment company, and where the attorney employed by the investment adviser, like any attorney employed by an organization, represents the investment adviser as an organization, not officers or employees who may have engaged in misconduct injuring the investment company.

Interested persons are invited to comment on the appropriate scope of the term, and its impact upon attorneys. Does the definition provide sufficient clarity and, if not, how could it be improved? Are there factual circumstances the definition would bring in that might better be excluded? Does the definition go far enough to protect investors?

(g) *Issuer* means an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under Section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under Section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

The definition for the term ''issuer'' adopts the definition set forth in Section 2(a)(7) of the Act, which in turn incorporates the definition contained in the Exchange Act. This definition raises a question regarding whether the rule should also apply to attorneys who represent various entities that are subject to comprehensive Commission regulation and oversight, and who regularly appear before the agency, but whose clients are not ''issuers.'' For example, many broker-dealers, investment advisers, self-regulatory organizations, transfer and clearing agents are, by law, required to register with the Commission. Attorneys for these entities prepare documents that are filed with the Commission and interact regularly with the Commission. As a regulated entity that is not an issuer presumably does not have a board of directors or an audit committee, and perhaps not even a chief legal officer, imposing the proposed rule on such entities may be inappropriate.

Certain foreign governments have listed debt securities that are registered under Section 12(b) of the Exchange Act. These foreign governments are thus issuers under the Act's definition. These foreign governments, however, may not have the organizational structure contemplated by the proposed rule in that the foreign governments may not have reasonable equivalents to a CEO, an audit committee, independent directors, or a board of directors. Thus, it may be difficult or inappropriate to apply the new Part 205 to such foreign issuers. It may be necessary for the Commission to create an exception or exemption for foreign governments that are issuers of listed debt securities.

The Commission invites interested persons to comment on any aspect of this definition, including: whether some form of ''up the ladder'' reporting should be implemented for attorneys employed by regulated entities that are not issuers; whether there is good reason or a legal basis to alter the definition in Section 2(7) of the Act; and whether the Commission should create an exemption for foreign issuers—providing, for example, that ''Part 205 shall not apply to foreign governments that are eligible to register [or ''that register''] securities under Schedule B of the Securities Act of 1933''—or should modify the definition of ''issuer'' to exclude foreign issuers—and, if so, how.

(h) *Material* refers to conduct or information about which a reasonable investor would want to be informed before making an investment decision.

The definition for the term ''material'' is derived from Supreme Court precedent, and is consistent with the remarks of Senator John Edwards, the sponsor of Section 307, who stated that ''the obligation to report is triggered only by violations that are material—violations that a reasonable investor would want to know about.''[35]

Interested persons are invited to comment on this definition, particularly whether it provides sufficient clarity or, alternatively, whether another formulation would be preferable.

(i) *Material violation* means a material violation of the securities laws, a material breach of fiduciary duty, or a similar material violation.

The rule defines the term ''material violation'' to clarify that the term ''material'' in Section 307(b) modifies all three succeeding references to violations (*i.e.*, ''violation of securities law,'' ''breach of fiduciary duty,'' and ''similar violation''), and that only evidence of material misconduct triggers the rule's reporting obligation.

The rule does not define what constitutes a ''violation of securities law'' since the term is well-understood. The Commission believes that the term covers violations of the federal securities laws, as defined in Section 2(a)(15) of the Act, as well as violations of state securities laws. The rule separately defines ''breach of fiduciary duty'' to cover those forms of breach of fiduciary duty recognized at common law, including misfeasance, nonfeasance, abdication of duty, abuse of trust and the approval of unlawful transactions.

The rule does not define the term ''similar violation.'' However, it appears from the context in which it is used in Section 307 that the term is intended to extend beyond a breach of fiduciary duty or a violation of the securities laws.

Interested persons are invited to comment on any aspect of the definition. Is there good reason to exempt violations of state securities laws from the definition? Should the term ''similar violation'' be defined and, if so, how? Does the definition encompass conduct about which the Commission should not be concerned? Would an alternate test be better? What test, and why?

(j) *Qualified legal compliance committee* means a committee of an issuer that:

(1) Consists of at least one member of the issuer's audit committee and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, ''interested persons'' as defined in Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19));

[33] *See Restatement (Third) of the Law Governing Lawyers,* section 14 and Comment c (''a client-lawyer relationship results when legal services are provided''), and Virginia Supreme Court Rule 6:1–1(B) (''Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill.''). *See also* 205.3(d)(2) (permitting an attorney appearing and practicing before the Commission in any way in the representation of an issuer to disclose client confidences to the Commission under specified circumstances).

[34] *See Restatement (Third) of the Law Governing Lawyers,* section 75 and Comment d (explaining that in a subsequent proceeding in which the co-clients' interests are adverse there is normally no attorney-client privilege regarding either co-client's communications with their attorney during the co-client relationship).

[35] *See* 148 Cong. Rec. at S6552 (July 10, 2002). *See also TSC Indus.* v. *Northway, Inc.,* 426 U.S. 438 (1976); *Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988); Staff Accounting Bulletin 99, 99 WL 1123037.

(2) Has been duly established by the issuer's board of directors and authorized to investigate any report of evidence of a material violation by the issuer, its officers, directors, employees or agents;

(3) Has established written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under § 205.3(c);

(4) Has the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in § 205.3(b)(5));

(ii) To decide whether an investigation is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur and, if so, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation under paragraph (j)(4)(ii) of this section, to:

(A) Direct the issuer to adopt appropriate remedial measures, including appropriate disclosures, and/or to impose appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under paragraph (j)(4)(ii) of this section and the appropriate remedial measures to be adopted; and

(5) Each member of which individually, together with the issuer's chief legal officer and chief executive officer (or the equivalents thereof) individually, has the authority and responsibility, in the event the issuer fails in any material respect to take any of the remedial measures that the qualified legal compliance committee has directed the issuer to take, to notify the Commission that a material violation has occurred, is occurring or is about to occur and to disaffirm in writing any document submitted to or filed with the Commission by the issuer that the individual member of the qualified legal compliance committee or the chief legal officer or the chief executive officer reasonably believes is false or materially misleading.

A ''qualified legal compliance committee'' (''QLCC''), as here defined, is part of an alternative procedure for reporting evidence of a material violation. That alternative procedure is set out in Section 205.3(c) of the proposed rule and is discussed below. Excluding ''interested persons'' of a registered investment company from the investment company's QLCC is intended to ensure that the members of such a QLCC will be truly independent, as explained further in the discussion of Section 205.3(b)(4) below.

Interested persons are invited to comment on any aspect of the definition of a QLCC, considered in light of Section 205.3(c), specifically including whether any changes should be made to the definition, either in light of Section 205.3(c) as proposed or in light of changes that the interested persons believe should be made to that section. Should the written procedures for the retention of reports, which a QLCC must establish pursuant to paragraph 205.2(j)(3), require the QLCC to retain paper or electronic copies of all reports submitted by attorneys? Should this requirement be expanded to obligate the QLCC to retain paper or electronic copies of responses to attorney reports?

(k) *Reasonable* or *reasonably* denotes the conduct of a reasonably prudent and competent attorney.

The definition of ''reasonable'' or ''reasonably'' is taken from Rule 1.0(h) of the ABA's Model Rules of Professional Conduct. Interested persons are invited to comment on whether this definition is sufficiently clear and whether alternative language would be an improvement.

(l) *Reasonably believes* means that an attorney, acting reasonably, would believe the matter in question.

This definition is based on the definition of ''reasonable belief'' or ''reasonably believes'' in Rule 1.0(i) of the ABA's Model Rules of Professional Conduct, modified to eliminate any implied subjective element. It is intended to define when belief is objectively reasonable. Interested persons are invited to comment on whether this definition is sufficiently clear and whether alternative language would be an improvement and, if so, what alternative language interested persons would propose. Would the definition of ''reasonable belief'' by New Jersey's Supreme Court, for example, be clearer: ''Reasonable belief for purposes of R[ule of]P[rofessional] C[onduct] 1.6 is the belief or conclusion of a reasonable lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in paragraphs (b) or (c)''?

(m) *Report* means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

This definition emphasizes that an attorney who is obligated to report evidence of a material violation must do so directly rather than indirectly. Although the attorney is not required to communicate in person with the appropriate individual, the Commission believes that it is essential for any report to be made directly rather than through a third party to ensure clarity. In light of the report's importance, most attorneys would want to report directly in any event.

Interested persons are invited to comment on any aspect of this definition. Should the attorney be required to make a written report, or to memorialize the substance of the report in writing shortly after making it? Should the attorney be required to keep a record of the report, including all supporting documentation? Should the Commission require that the report be made in person? Should the Commission prescribe a format for the report? Should the Commission require that a witness be present for each report? Should an attorney be permitted to delegate his or her reporting requirement to another and, if so, under what circumstances?

Section 205.3 Issuer as Client

Section 205.3 is at the core of the Commission's proposed ''Standards of Professional Conduct for Attorneys.'' It sets out the rule on reporting ''evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof,'' as required by the Act. It also sets out related provisions addressing an attorney's obligations to the issuer.

Representing an Issuer

Section 205.3(a) provides:

(a) *Representing an issuer.* An attorney appearing and practicing before the Commission in the representation of an issuer represents the issuer as an organization and shall act in the best interest of the issuer and its shareholders. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

This paragraph of the proposed rule makes explicit that the client of an attorney representing an issuer before the Commission, in any way, is the issuer as an entity, not the issuer's individual officers or employees that the attorney regularly interacts with and advises on the issuer's behalf. Those officers and other employees, like the attorney, have a fiduciary duty to act in the best interests of the issuer and its shareholders.

This paragraph is grounded in a lawyer's well-established duty to act with reasonable competence and diligence in representing a client and to take steps to prevent reasonably foreseeable harm to the client—

including harm from persons who work for the client.[36] As the Cheek Report explains (at 27), the premise of the ABA's equivalent rule (Model Rule 1.13) is that, when a lawyer represents an organization (such as an issuer),

> the organization is the lawyer's client and * * * the lawyer owes that client an obligation of protection from harm. Harm can result when an officer breaches a duty to the corporation (*e.g.* wastes or misappropriates corporate assets), when the corporation will be caused to injure a third party who will then have a claim against the corporation or when the corporation will be exposed to a fine or penalty. In any such case the lawyer's duty to protect the corporate client from harm requires the lawyer to serve the interest of the corporation and its shareholders rather than the interests of the individual officers or employees who are acting for the corporation.

The attorney representing an issuer does not represent the issuer's officers and employees simply because the attorney necessarily interacts with them in representing the issuer, and the attorney should make that clear to those officers and employees. Any attorney-client privilege for information related to the issuer's affairs that the officers and employees communicate to the attorney belongs to the issuer.[37]

Interested persons are invited to comment on any aspect of this paragraph, including whether it should be expanded to address under what circumstances an attorney for the issuer may also represent officers, directors and employees, and, if an attorney does so, the related questions of: (1) The responsibilities of an attorney when there is a potential for a conflict of interest; (2) obtaining waivers from clients when there is a conflict of interest; and (3) terminating representation when an actual conflict arises.

Reporting Within the Issuer Evidence of a Material Violation

Section 205.3(b) of the proposed rule clarifies and codifies an attorney's duty to protect the interests of the issuer the attorney represents by reporting within the issuer evidence of a material violation by any officer, director, employee, or agent of the issuer.

Paragraph (b)(1) provides:

> (b) *Duty to report evidence of a material violation.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report any evidence of a material violation to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or to the equivalents thereof) forthwith (unless the issuer has a qualified legal compliance committee and the attorney chooses instead to report the evidence of a material violation to that committee under paragraph (c) of this section). An attorney does not reveal client confidences or secrets by communicating information related to the attorney's representation of an issuer to the issuer's officers or directors.

Paragraph (b)(1) describes the first step that an attorney representing an issuer is required to take after he or she becomes aware of information that would lead an attorney reasonably to believe that a material violation by an issuer or by any of the issuer's officers, directors, employees, or agents has occurred, is occurring, or is about to occur (unless the issuer has a qualified legal compliance committee, and the attorney chooses to report to it).[38] In utilizing this standard, the rule seeks to balance the likelihood of increased compliance with the law as a result of having an appropriate triggering standard that prompts the bringing of potentially illegal conduct to the attention of the issuer's management against the likelihood of decreased compliance resulting from reduced consultation with an issuer's attorneys through adoption of too high a standard.

As paragraph (b)(1) itself expressly states, an attorney does not reveal client confidences or secrets (or breach the attorney-client privilege) by communicating to the issuer's officers or directors information related to the attorney's representation of the issuer. This legal principle is not controversial.[39] The Cheek Report, however, recommends incorporating into the ABA's Model Rule 1.13 a clear statement that Model Rule 1.6 does not prohibit communicating client confidences or secrets ''to higher authority *within* the corporation.'' [40] The consensus of the Cheek Task Force was that the existing language of Model Rule 1.13(b) ''tends to discourage action by the lawyer to prevent or rectify corporate misconduct'' generally and to ''discourage[] a lawyer from seeking review by higher corporate authority,'' even though the lawyer's goal ought to be to ''minimiz[e] harm resulting from the misconduct.'' *Id.* The Commission has incorporated such an explicit statement of the legal principle into paragraph (b)(1) of this section.

The report required in Section 205.3(b) to prevent or minimize the harm to an issuer resulting from a material violation is internal. It involves no disclosure of confidential information outside the issuer.[41] The

[36] *See, e.g., Restatement (Third) of the Law Governing Lawyers* (2000) section 96; Model Rules 1.1 and 1.2; *FDIC* v. *O'Melveny & Myers,* 61 F.3d 17, 19 (9th Cir. 1995) (incorporating verbatim the applicable section of its earlier opinion); *FDIC* v. *O'Melveny & Myers,* 969 F.2d 744, 748–49 (9th Cir. 1992), *rev'd on other grounds,* 512 U.S. 79 (1994).

[37] *See, e.g., United States* v. *Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO,* 119 F.3d 210, 215–17 (2d Cir. 1997).

[38] This appears to have been the expectation of the Senators who drafted Section 307 of the Act. *See* 148 Cong. Rec. S6552 (July 10, 2002) (statement of Sen. Edwards) (''the SEC shall make one rule in particular, and it is a simple rule with two parts. No. 1, a lawyer with evidence of a material violation has to report that evidence either to the chief legal counsel or the chief executive officer of the company. No. 2, if the person to whom that lawyer reports doesn't respond appropriately by remedying the violation, by doing something that makes sure it is cured, that lawyer has an obligation to go to the audit committee or to the board. It is that simple. * * * If the CEO can do a short investigation, for example, and figure out that no violation occurred, then the obligation stops there. But if there is a serious violation of the law, the appropriate response is clear: The CEO has to act promptly to remedy the violation. If he doesn't, the lawyer has to go to the board. It is that simple.''). *Accord id.* at S6555 (statement of Sen. Enzi) (''This amendment instructs the Commission to establish rules that require an attorney, with evidence of material legal violation by the corporation or its agent, to notify the chief legal counsel or the chief executive officer of such evidence and the appropriate response to correct it. If these officers do not promptly take action in response, the Commission is instructed to establish a rule that the attorney then has a duty to take further appropriate action, including notifying the audit committee of the board of directors or the board of directors themselves, of such evidence and the actions of the attorney and others regarding this evidence.''), S6556 (statement of Sen. Corzine) (''when lawyers are aware of a potential violation, they do have a duty to investigate. And if they determine there is a material violation of law—not some small violation, some insignificant rule—that violation should be remedied by the corporation. If it is not remedied, it is the duty of the lawyer, under our language, to report it to the board.'').

[39] Information related to the issuer's affairs communicated to the attorney is effectively communicated to the issuer. The officer or employee thus cannot have any reasonable expectation of confidentiality against the issuer regarding such information, and the attorney breaches no confidence in communicating the information to the issuer's CLO, CEO, or directors. *See, e.g., Int'l Bhd. of Teamsters,* 119 F.3d at 215–17.

[40] *Id.* at 28 (original emphasis). The Cheek Report is available at *http://www.abanet.org/buslaw/corporateresponsibility/preliminary_report.pdf.* It reflects the consensus of the task force appointed by the ABA's President in March 2002 to re-examine ''the framework of laws and regulations and ethical principles governing the roles of lawyers, executive officers, directors, and other key participants'' so that the ABA could contribute to legislative and regulatory reform aimed at improving corporate responsibility after the Enron bankruptcy; as the report notes, however, not every member of the task force endorses every recommendation. Cheek Report at 1–2. The Cheek Report recommends amending Model Rules 1.2, 1.6, 1.13, 1.16, and 4.1, especially Rules 1.6 and 1.13. *Id.* at 27–33, 45–46.

[41] *See also* discussion, above, of disclosure to the CLO, CEO, or directors of a registered investment company regarding misconduct by officers or

Continued

report, moreover, is intended to prevent, if possible, misconduct that would injure the issuer and its shareholders, or at least to limit the injury. Accordingly, awareness of information leading an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur appears to be the appropriate trigger for the obligation to make an internal report of the evidence of a material violation.

As the reporter for the ABA's Commission of Evaluation of Professional Standards (''Kutak Commission'') wrote in 1984, explaining why he considered the ABA's present Model Rule 1.6 (on disclosure of confidential information *to outsiders*) inadequate,

> there is an unavoidable tension between the proposition that the lawyer should act early, to prevent the fraud, and the requirement that he should act only on the basis of solid information. The longer the wait, the more solid the information, but also the greater the likelihood of the client's deeper *inculpation.*[42]

Requiring more than ''a reasonable basis'' for believing that a client intends to commit, or has committed, fraud before allowing the lawyer to reveal confidential client information *to outsiders* ''would virtually preclude the possibility of the lawyer's action except in most egregious situations.'' *Id.* at 285–86. That analysis would appear to apply with even greater force where the disclosure is within an issuer, as required by Section 205.3(b).

Proposed Section 205.3(b) would require an attorney representing an issuer to report within the issuer evidence of ''a material violation by the issuer or by any officer, director, employee, or agent of the issuer.'' The internal report of evidence of a material violation is not comparable to a judicial determination that a material violation actually occurred. There must, however, be some factual basis that would lead an attorney to reasonably believe that a material violation has occurred, is occurring, or is about to occur. The internal report then allows responsible officers of an issuer to consider the reported evidence, investigate where appropriate, and take actions necessary to prevent or minimize any threatened harm to the issuer.[43]

The ABA's Model Rule 1.13 includes a similar but narrower reporting requirement for attorneys representing an organization, applicable only when the attorney *knows* that a violation is occurring or going to occur that is likely to result in substantial injury to the organization:

> If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization.

Even though a securities lawyer ''may be taken as knowing what an alert lawyer would know upon looking with a professional eye at the totality of circumstances there to be seen,''[44] the ABA's Model Rule appears to set too high a standard for reporting within an issuer evidence of a material violation, both in requiring an attorney to *know* that an officer, employee or other person associated with the issuer organization is engaged in or intends a material violation and in requiring that material violation to result in substantial injury to the issuer. Such a high threshold for internal reporting would be inconsistent with Section 307's emphasis on the public interest and protecting investors.

The proposed rule obligates an attorney to report information he or she has become aware of that would lead an attorney, acting reasonably, to believe that a material violation has occurred, is occurring or is about to occur. In the Commission's decision in *Carter and Johnson* and the order entered in *Keating, Muething & Klekamp,* the Commission addressed the responsibilities of an attorney who ''knows'' of a violation of law by the issuer or its officers. Because those cases dealt with situations where the attorneys knew, or should have known, about their client's misconduct, the Commission's discussion in both cases focused upon an attorney's obligation in that situation. Neither case, however, established actual knowledge of a client's misconduct as a minimum threshold for triggering an attorney's duty to report such misconduct. A rule which obligates an attorney to report only a material violation of which he or she ''knows'' could be interpreted as imposing an initial investigative obligation upon the attorney which he or she may be poorly situated to perform, and which section 307 indicates should be borne by appropriate personnel within the issuer after an attorney has made a report.

When an attorney ''becomes aware'' of information that would lead an attorney reasonably to believe in the existence of a material violation would turn, at least in part, on the attorney's training, experience, position and seniority. Attorneys are not necessarily expected to identify issues they are not equipped to see. What the reasonable, experienced securities lawyer might regard as a clear violation of the law may appear different—or not appear at all—to an unseasoned attorney with a different level of expertise.[45]

The evidence of a material violation that an attorney first becomes aware of may be the tip of an iceberg and, may, on its face, appear unlikely to result in substantial injury to the issuer. For example, evidence indicating that an issuer controls one or two of many special-purpose entities, which individually do not qualify for the off-balance-sheet treatment they have been given, might indicate a material misstatement in the issuer's financial statements, and a material violation of securities law, but not, without more, a material violation likely to result in substantial injury to the issuer.[46]

The proposed rule, however, is not intended to impose upon an attorney, whether employed or retained by the issuer, a duty to investigate evidence of a material violation or to determine whether in fact there is a material violation. Of course, nothing in the proposed rule is intended to discourage any such inquiry. On the other hand,

employees of its investment adviser under Section 205.2(f).

[42] Geoffrey C. Hazard, Jr., *Rectification of Client Fraud: Death and Revival of a Professional Norm,* 33 Emory L.J. 271, 286 (1984).

[43] Senator Edwards foresaw that a CEO to whom the evidence was reported might ''do a short investigation, for example, and figure out that no violation occurred.'' 148 Cong. Rec. S6552 (July 10, 2002).

[44] Hazard, *Rectification of Client Fraud,* 33 Emory L.J. at 283 (citing cases). *See also* Cheek Report at 33–35.

[45] *See* letter from SIA Ad Hoc Committee to Securities and Exchange Commission, dated Oct. 22, 2002.

[46] The massive fraud perpetrated by O.P.M. Leasing Services, Inc. in the 1970s and early 1980s unraveled after an attorney noticed that payments for computers leased from O.P.M. by one of O.P.M.''s largest customers were being paid directly to O.P.M., even though the lease agreement called for the payments to be made to the lender that was providing financing. Investigation over several months turned up no documentation for two of the many leases at issue. Copies of the missing documentation supplied by the lender revealed that O.P.M. had fabricated the leases and related title documents. O.P.M. had arranged to have the customer's relatively small payments channeled through O.P.M. so that O.P.M. could use its own funds to make the inflated payments due to the lender on the fabricated leases. *See* Report of the Trustee Concerning Fraud and Other Misconduct in the Management of the Affairs of the Debtor at 24–26, *In re O.P.M. Leasing Services, Inc.,* Reorg. No. 81–B–10533, (Bankr. S.D.N.Y., filed April 25, 1983). Clearly, even two fabricated leases were qualitatively material. However, they were arguably unlikely, by themselves, to result in substantial injury to O.P.M.

the attorney cannot ignore evidence of a material violation of which he or she is aware.

In proposing this rule, the Commission does not intend to inhibit the consultative process between an issuer and its attorney. The duty to report ''up the ladder'' under section 205.3(b)(2) does not arise from a consultation in which an attorney advises an officer or employee of an issuer that the law regarding a proposed course of action is unsettled and there is some possibility that a court might hold in the future that the action violated the securities laws. Nor does it arise where an officer actually pursues a course of action despite being advised by the attorney that the course of action has been held illegal by courts in three states, in none of which the issuer does business, even if the attorney thinks there is a reasonable argument that other courts would also be likely to find it illegal. The course of action is not clearly illegal, because its legality has not been addressed by courts in any state where the issuer does business. The duty to report does not even arise where the officer tells the attorney that he or she intends to pursue a course of action that the attorney thinks is clearly illegal where the issuer does business, because the officer might reconsider and not do what he or she said he or she would do. The attorney's reporting obligation is not triggered until the attorney can be sure that the officer or employee will actually pursue an illegal course of action.

Interested persons are invited to comment on: Whether the ''reasonably believes'' standard is an appropriate standard to trigger the requirement that an attorney make a report or whether the requirement should be triggered only in instances where the attorney ''knows'' or ''reasonably should know'' of a material violation; and whether the standard should also address the quantity and/or quality of evidence required to trigger a report.

The Commission also does not intend the proposed rule to chill zealous advocacy by an issuer's defense counsel. Under certain circumstances, however, the proposed rule would require an attorney defending an issuer to report ''up the ladder'' to the issuer's CLO evidence of any material violation that the attorney becomes aware of while defending the issuer. That reporting obligation exists whether or not the evidence of a material violation is directly related to a matter under inquiry or investigation by the Commission. Evidence of a material violation that an attorney learns about while defending an issuer does not pose any less a threat to the issuer and to investors than does evidence of a material violation that an attorney becomes aware of under other circumstances, and requiring defense counsel to report such evidence to the issuer-client's CLO—or even, under extraordinary circumstances, to appropriate directors of the issuer—should not chill an attorney's ability to provide effective representation to the issuer. Indeed, the intended deterrent effect of the proposed rule would be significantly compromised if the rule did not apply when an attorney appears and practices during Commission inquiries, investigations and administrative proceedings. (As a rule of reason, the proposed rule should not be construed to require defense counsel to report to the CLO evidence of a material violation that the CLO has made the defense counsel aware of.)[47]

Moreover, the rule's reporting obligation is consistent with defense counsel's ethical obligations to the issuer-client. ABA Model Rule 1.4 *requires* an attorney to ''keep a client reasonably informed about the status of a matter'' as ''reasonably necessary to permit the client to make informed decisions regarding the representation.''[48] In the context of a Commission inquiry, investigation, or administrative proceeding, the issuer cannot make informed decisions without knowing about evidence that its officers or employees are responsible for a material violation and, if so, what steps would be required to rectify it. In such a context, the issuer's CLO needs to be aware of information indicating that a material violation has occurred, is occurring, or is about to occur in order to participate intelligently with defense counsel in making decisions about the objectives of the representation and how to pursue them. In the context of an inquiry, investigation, or administrative proceeding by the Commission, one of the affected issuer's objectives should be to determine whether there has been any violation and, if so, to decide how best to rectify it. Accordingly, it should be important to ensure that the issuer's CLO knows about any evidence of a material violation.

In an administrative proceeding, even where the Commission's staff asserts it has evidence of a material violation by an issuer, an attorney defending an issuer may assert any relevant and colorable affirmative defense on the issuer's behalf, and may require the Commission staff to prove its case against his or her client. It would not be an inappropriate response to reported evidence of a material violation for an issuer's CLO to direct defense counsel to assert either a colorable defense or a colorable basis for contending that the staff should not prevail. Such directions from the CLO, therefore, would not require defense counsel to report any evidence of a material violation to the issuer's directors under section 205.3(b)(4) of the proposed rule. On the other hand, if the CLO's *sole* response to reported evidence of a material violation from defense counsel is to direct defense counsel to argue in the proceeding that no violation has occurred and the CLO is conducting no internal inquiry and considering no remedial steps, defense counsel, acting reasonably, would probably believe that the CLO's response to the evidence of a material violation is inadequate and would be obligated to report the evidence of a material violation to the issuer's CEO under section 205.3(b)(1) or to appropriate directors under Section 205.3(b)(4) of the proposed rule.[49] Such reporting ''up the ladder,'' however, would constitute—not chill—zealous representation of the issuer's best interest. Responsible defense counsel should probably make such a report under those circumstances in any

[47] The fundamental purpose of reporting to the CLO, as Section 205.3(b)(3) makes clear, is to have the CLO ''cause such inquiry into the evidence of a material violation as he or she reasonably believes is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur.'' Defense counsel may be effectively part of the issuer's own investigation. Because the defense counsel is investigating, there should be no need for defense counsel to report separately each piece of evidence that the defense counsel becomes aware of. Moreover, the ''noisy withdrawal'' provisions in Section 205.3(d) are triggered only when the issuer's response to evidence of a material violation is not appropriate. What response is appropriate must depend on the particular circumstances. Circumstances in which the Commission is already investigating an issuer and the attorney is defending the issuer may well be fundamentally different from circumstances in which an issuer is preparing a filing with or submission to the Commission and the attorney is participating in preparing that filing or submission.

[48] As comment [1] to Model Rule 1.4 explains, ''[t]he client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.''

[49] Moreover, if the attorney becomes aware during an administrative proceeding that the issuer intends to commit a fraud upon the Commission (*e.g.*, by offering testimony which the attorney knows to be false), then the attorney would be obligated to take appropriate remedial steps to prevent or correct such fraud. The attorney could also report to the Commission pursuant to Section 205.3(e)(2)(ii) of the proposed rule to prevent the client from committing an illegal act, such as suborning perjury, that would perpetrate a fraud on the Commission.

event.[50] The attorney's client is the issuer, not the issuer's CLO. A prudent defense counsel should report ''up the ladder'' in this situation to ensure that upper management is aware of the evidence and has an opportunity to take appropriate action. As the rule makes clear, reporting potential violations to officers and directors of the issuer does not reveal any client confidences.

If the attorney defending an issuer reports the matter all the way ''up the ladder'' within the issuer and does not receive an appropriate response even from the issuer's directors, and if the material violation is ongoing or about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investor, section 205.3(d)(1)(i) obligates an attorney retained by an issuer, even as an advocate, to withdraw from representation and notify the Commission that such withdrawal was for ''professional considerations.'' Section 205.3(d)(2)(i) permits, but does not require, an attorney retained by the issuer to take these steps if he or she reasonably believes the material violation has occurred and is not ongoing and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors. The ABA's Model Rule 1.16 *requires* even an advocate in a criminal case to withdraw, unless ordered not to by a court, where continuing the representation ''will result in violation of the rules of professional conduct,'' as asserting frivolous defenses would, under Model Rule 3.4.

An attorney defending an issuer in a civil injunctive action by the Commission in a district court would not be appearing and practicing before the Commission, because the issuer would not be transacting business with the Commission, even though the attorney may be interacting with Commission staff assigned to the litigation. However, if that attorney is also appearing and practicing before the Commission by defending the issuer in a Commission inquiry or investigation and becomes aware of evidence of a material violation by the issuer, the attorney will have the reporting responsibilities under the proposed rule discussed above, whether or not the evidence is related to the subject matter of the litigation. If the evidence of a material violation relates to the subject of the litigation, the attorney should also observe his or her duty of candor to the court.

The Commission invites interested persons to comment on whether there is a potential chilling effect inherent in requiring an attorney to report within the issuer evidence of a material violation or make a ''noisy withdrawal'' while representing an issuer in an inquiry, investigation, or administrative proceeding by the Commission, and invites interested persons to suggest how to address this situation. Should the definition of the term ''appropriate response'' in 205.2(b) be modified to explicitly recognize an attorney's obligation to continue to defend an issuer client in a Commission administrative proceeding, even if the attorney does not believe the client has a meritorious defense? Should the definition be modified to state that an issuer's decision to require the Commission to establish its claims against the issuer in an administrative proceeding constitutes an ''appropriate response'' by an issuer, notwithstanding the fact that an attorney learns of evidence during the proceeding which indicates that the Commission's claims are valid? Should paragraphs 205.3(d)(1)(i) and 205.3(d)(2)(i) be revised to explicitly state that an attorney is not required, or even permitted, to effect a ''noisy withdrawal'' under these circumstances?

Maintaining a Contemporaneous Record

Paragraph (b)(2) of the proposed rule provides:

(2) The attorney reporting evidence of a material violation shall take steps reasonable under the circumstances to document the report and the response thereto and shall retain such documentation for a reasonable time.

Absent exigent circumstances, the attorney retained or employed by an issuer who reports ''up the ladder'' within the issuer evidence of a material violation is required to take reasonable steps to make and retain a contemporaneous record of his or her report and the response it receives.[51] A subordinate attorney who reports evidence of a material violation to his or her supervising attorney is also required to take such steps. Such contemporaneous records would typically include the date, time, location, manner, and substance of the report and the response and the identity of witnesses to either. Much or all of this information would likely be included in the report or the response itself, if the report or the response is in written form. Requiring such a contemporaneous record of the report may protect the attorney in any proceeding in which his or her compliance with this rule is at issue by demonstrating that the attorney acted properly under the circumstances.[52] The rule does not establish any requirement for documentation of an attorney's determination that information does not constitute evidence of a material violation (except where a supervisory attorney believes the information reported to the supervisory attorney by a subordinate attorney is not evidence of a material

[50] *See* ABA Model Rules 3.1 (''A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.'') and 1.4 (quoted above). As comments [1] and [2] to Model Rule 3.1 elaborate:

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[51] Section 205.4(d) of the proposed rule would require a supervisory attorney to document the subordinate attorney's report and the supervisory attorney's response to it only where the supervisory attorney believes the information reported by the subordinate attorney is not evidence of a material violation.

[52] *See* Section 205.3(d)(1) of the proposed rule and *Meyerhofer* v. *Empire Fire & Marine Ins. Co.,* 497 F.2d 1190, 1192–93 (2d Cir. 1974) (Friendly, J.), *cert. denied,* 419 U.S. 998 (1974) (associate attorney who had resigned from a law firm because the partners ignored his concerns about the adequacy of disclosures in registration statements, parts of which the associate had worked on, was entitled to disclose to plaintiffs in a subsequent law suit, claiming that one of those registration statements was fraudulent and naming the former associate as a defendant, an affidavit that the associate had previously given to the SEC and that contained confidential client information; the affidavit convinced the plaintiffs' attorney that the associate had not participated in the fraud, and the associate was dropped as a defendant); Hazard, *Rectification of Client Fraud,* 33 Emory L.J. at 283–85 (explaining why ''an innocent lawyer—however competent and however watchful—is inevitably at risk in any transaction where the client could commit fraud'' and why ''the notion that competent lawyers can take care of themselves under a confidentiality rule that does not have an exception concerning client fraud'' cannot be taken seriously).

violation). In close cases, it would be prudent for an attorney to do so.

In certain limited circumstances it may not be practicable or reasonable for the attorney to prepare a written record at the time. The attorney, for example, may learn of possible misconduct in the course of a fast-moving corporate deal. In this situation, it may appear more important to bring the evidence to the CLO's attention immediately than to memorialize it. Other exigent or extenuating circumstances also may result in the lack of a contemporaneous record, although the Commission believes that such cases will be rare. In some cases, the CLO's or management's written response may provide adequate documentation of the report as well as the response. Where it does provide adequate documentation, retaining a copy of the CLO's report would satisfy the requirements of (b)(2) and (7). Where it does not, the reporting attorney should endeavor to make a record of his or her report as soon as possible.

Where a report is directed to an issuer's audit committee, to some other committee of the issuer's board of directors, or to the full board—either because the reporting attorney considered it necessary to bypass the CLO and CEO or because the response from the CLO or CEO was inappropriate or was unreasonably delayed—those circumstances may make it important for the reporting attorney to make and retain a contemporaneous record of his or her report.

In the extreme and unlikely event that the issuer's audit committee, some other committee of the issuer's board of directors, or the full board of directors does not provide an appropriate response within a reasonable time, it may be essential for the reporting attorney to prepare and retain a contemporaneous written record documenting those circumstances. Accordingly, in that unlikely event, paragraph (b)(8) of the proposed rule would require the reporting attorney to take reasonable steps to document the response—typically preserving a copy of a written response—the attorney believes inappropriate, and to retain that documentation for a reasonable time. What is a reasonable time will depend on the circumstances but would probably not be shorter than the statute of limitations applicable to the material violation at issue.

A prudent attorney is likely to make such a contemporaneous record whether or not the Commission requires it, and all attorneys should do so under the circumstances covered by Sections 205.3 (b)(1), (4), and (5) and 205.5(c). Section 205.3(d)(1) expressly authorizes an attorney who has made and retained such contemporaneous records under the proposed rule to use them in self-defense in the event his or her conduct is called into question.

Interested persons are invited to comment on: (1) Whether the rule should require the attorney making a report to maintain a written record of that report; (2) whether the rule should prescribe in detail the form and content of the report, and if so, what form and content should or should not be prescribed; and (3) whether the rule should prescribe specific time deadlines for the preparation of the report, and if so, what time deadlines would or would not be appropriate.

Chief Legal Officer's Duty To Investigate

Paragraph (b)(3) of the proposed rule would provide:

(3) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur. If the chief legal officer reasonably believes no material violation has occurred, is occurring, or is about to occur, he or she shall so advise the reporting attorney. If the chief legal officer reasonably believes that a material violation has occurred, is occurring, or is about to occur, he or she shall take any necessary steps to ensure that the issuer adopts appropriate remedial measures, including appropriate disclosures, and/or imposes appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred. The chief legal officer shall promptly report the remedial measures adopted and/or sanctions imposed to the chief executive officer, to the audit committee of the issuer's board of directors, or to the issuer's board of directors, and to the reporting attorney. The chief legal officer shall take reasonable steps to document his or her inquiry and to retain such documentation for a reasonable time. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section. If the issuer fails in any material respect to take any remedial measure that the qualified legal compliance committee directs the issuer to take in order to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred, the chief legal officer shall notify the Commission that a material violation has occurred, is occurring or is about to occur and shall disaffirm in writing any documents submitted to or filed with the Commission by the issuer that the chief legal officer reasonably believes are false or materially misleading.

Paragraph (b)(3) would clarify the obligations of the issuer's CLO (or equivalent) under the proposed rule. The Commission has not imposed on attorneys making reports under Section 205.3(b) a duty to investigate independently the evidence before making their reports. Attorneys employed by the issuer or retained as outside counsel are often not in a position to conduct such an inquiry. In many cases, attorneys may lack the experience, resources, and access to records and other employees necessary to conduct an appropriate inquiry. Such an inquiry may be beyond the scope of outside counsel's representation. The issuer's CLO, however, is in a position to conduct an internal inquiry when appropriate. Moreover, a CLO has a clear duty to protect the issuer—as opposed to its other officers and employees—in every possible way.[53] The proposed rule, accordingly, would expressly make the CLO responsible for having an inquiry conducted in response to a report under paragraph (b), unless the CLO makes a reasonable determination that it is not necessary to do so.

Where an issuer has no general counsel or chief legal officer, the ''equivalent'' would be the chief executive officer, who would, under the proposed rule, be responsible for having an inquiry conducted in response to a report under 205.3(b), unless he or she makes a reasonable determination that it is not necessary to do so. In most such cases, the CEO would probably authorize whatever attorneys the issuer normally uses for its legal work to conduct the inquiry or retain another law firm to do so.

Interested persons are invited to comment on whether: (1) The chief legal officer should have an obligation to conduct an inquiry in response to a report and, if so, whether he or she should be permitted to retain or assign other counsel to conduct the inquiry; (2) the ''reasonably believes'' standard is appropriate for determining whether the chief legal officer must cause an inquiry to be conducted; (3) the ''reasonably believes'' standard is an appropriate guide for the chief legal officer's determination regarding whether a material violation has occurred: (4) the rule should further address when it is necessary for the issuer to take ''necessary steps'' in response to a material violation; (5) the rule should further address when remedial measures and/or sanctions are appropriate and the kinds of sanctions and remedial

[53] See O'Melveny & Myers, 969 F.2d at 748–49 (holding that outside counsel had such a duty).

measures that are acceptable under different circumstances; and (6) the rule should address what steps by an issuer are sufficient to ''stop,'' ''prevent'' or ''rectify'' a material violation.

Reporting a Material Violation to the Issuer's Directors

Paragraph (b)(4) of the proposed rule would provide:

(4) If an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has not provided an appropriate response, or has not responded within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, ''interested persons'' as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, ''interested persons'' as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

This paragraph applies where the issuer's CLO and/or CEO fail to respond appropriately to the reported evidence of a material violation, requiring the reporting attorney to report the evidence to the issuer's audit committee, another committee of independent directors, or to the full board of directors. The term ''appropriate response'' is defined in Section 205.2(b) and identifies the steps a CLO or CEO must take in responding to a report of evidence of a material violation, including making appropriate disclosures when the reported evidence demonstrates the existence of a disclosure violation.

The statutory language refers to situations in which a CLO or CEO ''does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation).'' The proposed rule makes clear that providing no response at all within a reasonable time may be equivalent to not providing an appropriate response and no response may, under certain circumstances, require the attorney to report to a higher level of authority within the issuer—when, for example, a filing or submission that the attorney reasonably believes contains a misstatement of material fact is to be made the next day.

The direction that the attorney must report ''up the ladder'' to the audit committee of the issuer's board of directors, if there is one; if there is no audit committee, then to another committee of the issuer's board of directors consisting solely of independent directors, if there is one; and if there is no committee of independent directors, then to the full board of directors is intended to implement the statutory language on reporting ''up the ladder'' [54] while avoiding a situation in which one attorney might report some evidence of a material violation to one committee of directors while another attorney might report other evidence of a material violation to a second committee, obscuring the full, cumulative significance of reported evidence.

Requiring that the committee of a registered investment company's board of directors to which an attorney is allowed to report evidence of a material violation—here and in paragraph (b)(5) of this section—must exclude ''interested persons'' is intended to assure that the report will go to independent directors. That exclusion has the same rationale here as does excluding ''interested persons'' from an investment company's QLCC, as defined in Section 205.2(j). Usually, a director who is *not* ''employed directly or indirectly by the issuer'' is an independent director of the issuer. However, registered investment companies (including mutual funds) constitute an important group of issuers that typically are managed externally. As a result, a director of a registered investment who is ''not employed directly or indirectly'' by the investment company but is employed by the investment company's investment advisor may well not be independent. Independent directors of a registered investment company thus cannot include any ''interested person'' of the investment company as defined in Section 2(a)(19) of the Investment Company Act of 1940.

The Commission solicits comment on any aspect of this section, including whether: (1) The ''reasonably believes'' standard is appropriate for the reporting attorney to determine whether he or she has received an ''appropriate response'' and, if not, what alternative standard should be used; (2) the ''reasonable time'' standard is appropriate or whether the rule should contain a more specific deadline (or deadlines) or one that is linked to the complexity of the issues presented by the report; and (3) the rule should specifically prescribe the form and content of any report to the audit committee or the board of directors and, if so, what form and content would or would not be appropriate.

Paragraph (b)(5) of the proposed rule would provide for circumstances under which it may be appropriate to bypass the CLO and CEO:

(5) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report the evidence of a material violation as provided under paragraph (b)(4) of this section.

In the interest of expediting any required corrective action within the issuer, paragraph (b)(5) permits, but does not require, an attorney to bypass the CLO or CEO of an issuer and report evidence of a material violation directly to appropriate directors of an issuer—to the audit committee of the issuer's board of directors, if there is one; if there is no audit committee, then to another committee of the issuer's board of directors consisting solely of independent directors, if there is one; and if there is no committee of independent directors, then to the full board of directors—where the attorney reasonably believes that it is likely to be futile to report the evidence to the CLO or CEO. It provides a shortcut under the circumstances implicit in paragraph (b)(4), where the inappropriate response of a CLO and/or CEO can reasonably be anticipated. Reporting to the CLO or CEO might appear futile where those officers appear to be involved in the wrongdoing to be reported. Indeed, a report to participants in the wrongdoing might enable them to destroy relevant evidence. This is an amendment that the Cheek Report (at 29–30) recommends to Model Rule 1.13.

Interested persons are invited to comment on any aspect of this section, including whether: (1) The rule should contain a bypass provision, such as this, allowing a reporting attorney to forego reporting evidence to the chief legal officer and, if so, what its advantages and disadvantages would be; (2) a reporting attorney's ability to bypass the chief legal officer should be limited to instances where it is ''futile'' or whether it should be expanded to other situations, what those other situations should be, and why; (3) the ''reasonably

[54] Section 307 of the Act calls for a rule requiring an attorney to ''report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.''

believes'' standard is appropriate and, if not, what standard or standards would be appropriate; and (4) the rule should provide that the reporting attorney ''may'' bypass the chief legal officer or should it require that he or she do so under certain circumstances.

Attorneys Retained or Directed To Investigate a Reported Material Violation

Paragraph (b)(6) of the proposed rule would address circumstances in which those to whom evidence of a material violation is reported direct others, either in-house attorneys or outside attorneys retained for that purpose, to investigate the possible violation:

(6) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(4), or (b)(5) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve the officers or directors of the issuer to whom the evidence of a material violation has been reported under paragraph (b)(1), (b)(4), or (b)(5) of this section of the duty to respond to the reporting attorney.

Paragraph (b)(6) makes two points. First, the investigating attorneys would themselves be appearing and practicing before the Commission. They would therefore be bound by the requirements of the proposed rule. Second, the officer or directors who caused them to investigate remain obligated to respond to the attorney who initially reported the evidence of a material violation. Either the issuer's officer or directors or, under the officer's or directors' instructions, the investigating attorneys would make the reporting attorney aware of the inquiry, to keep the reporting attorney from concluding mistakenly that the required response was unreasonably delayed.

Interested persons are invited to comment on all aspects of this section, including: (1) Whether it is appropriate for an attorney retained or directed to investigate a report to be deemed to be appearing and practicing before the Commission; and (2) to what extent, if any, the rule should permit the retained or directed attorney to fulfill the issuer's obligation to respond to the reporting attorney.

Assessment of the Issuer's Response to the Reported Evidence of a Material Violation

Paragraph (b)(7) of the proposed rule would provide for circumstances in which the attorney receives an appropriate and timely response to the evidence he has reported:

(7) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section from the issuer's chief legal officer, chief executive officer, audit committee, another committee of the issuer's board of directors consisting solely of directors not employed, directly or indirectly, by the issuer, or the issuer's board of directors and who has taken reasonable steps to document his or her report and the response thereto under paragraph (b)(2) of this section need do nothing more under this section regarding the evidence of a material violation.

This paragraph confirms that the attorney would fully comply with proposed Section 205.3 once the attorney has reported evidence of a material violation and reasonably believes that the issuer's response to that reported evidence is appropriate, so long as there is a record of the report and the response.

Interested persons are invited to comment on any aspect of this section, including whether the rule should have such a ''safe harbor'' and, if so, its scope.

Paragraph (b)(8) of the proposed rule would provide for circumstances in which the attorney does not receive an appropriate response to the evidence he has reported or does not receive any response in a reasonable time:

(8) If the attorney reasonably believes that the issuer has not made an appropriate response to the report or reports made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section, or the attorney has not received a response in a reasonable time, the attorney shall:

(i) Explain his or her reasons for so believing to the chief legal officer, chief executive officer, or directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(4), or (b)(5); and

(ii) Take reasonable steps to document the response, or absence thereof, and to retain such documentation for a reasonable time.

It should be truly extraordinary for an attorney reporting evidence of a material violation to receive an inappropriate response—one, for example, that simply asserted that the reported evidence is no cause for concern without any hint of evaluation or inquiry—or to receive no response at all within a reasonable time. Any attorney who believes that the response to evidence of a material violation is not appropriate or is unreasonably delayed is obligated to the client-issuer to explain to the responsible officers or directors why he or she so believes. Where the attorney's explanation is unavailing and the attorney continues to believe that the issuer's response is not appropriate, that extraordinary event should be documented, and the attorney should retain that documentation for a reasonable time.[55]

Interested persons are invited to comment on any aspect of the rule, including: (1) Whether the ''reasonably believes'' standard is appropriate and, if not, what is an appropriate standard; (2) whether the rule should prescribe what is a ''reasonable time'' to permit the issuer to respond to a report; and (3) whether it is important to provide a ''safe harbor'' from civil suits for the attorney who reports evidence of a material violation under paragraph (b) or paragraph (c).

Section 205.3(c) of the proposed rule would provide an alternative to the reporting requirements of paragraphs 205.3(b) and to requirements under 205.3(d) that become applicable where an attorney reporting evidence of a material violation under 205.3(b) does not receive an appropriate response:

(c) *Alternative reporting procedures for attorneys retained or employed by an issuer with a qualified legal compliance committee.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence of a material violation to a qualified legal compliance committee, if the issuer has duly formed such a committee. Except as provided in paragraph (b)(3) of this section, an attorney who reports evidence of a material violation to a qualified legal compliance committee has satisfied his or her obligation to report evidence of a material violation within the issuer, is not required to assess the issuer's response to the reported evidence of a material violation, and is not

[55] *See* Cheek Report at 28 (characterizing situations in which directors within a corporate client fail to act under such circumstances as ''extreme''); Thomas Riesenberg, *Trying to Hear the Whistle Blowing: The Widely Misunderstood ''Illegal Act'' Reporting Requirements of Exchange Act Section 10A*, 56 Business Lawyer 1417, 1444–45 (2001) (noting that SEC received less than a dozen reports that an issuer had failed to take appropriate remedial action under Section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1, in four years). Statements by Senators Edwards, Enzi, and Corzine in the floor debate regarding Section 307 of the Act indicate that they believed that an issuer's directors, once notified of evidence of a material violation, could be counted on to remedy it. *E.g.,* 148 Cong. Rec. S6552 (July 10, 2002) (statement of Sen. Edwards), S6555 (statement of Sen. Enzi), S6556 (statement of Sen. Corzine). If that assumption is correct, Section 205.3(d) would never be applicable. *But see Lincoln Savings & Loan Ass'n* v. *Wall,* 743 F. Supp. 901, 910 (D.D.C.1990) (Sporkin, J.) (finding that the directors of Lincoln Savings & Loan ''completely abdicated their duties to Lincoln'' by paying $94 million of Lincoln's assets to Lincoln's corporate parent, payments that the parent was ''under no circumstances'' entitled to and that ''led to a substantial dissipation of Lincoln's assets'').

required to take any action under paragraph (d) of this section regarding the evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(3) of this section. Thereafter, pursuant to the requirements under § 205.2(j), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c) of this section.

This alternative to the reporting requirements of paragraphs Sections 205.3(b) and (d) would allow, though not require, an attorney to seek expedited assessment of reported evidence of a material violation. It would also relieve the reporting attorney of any further obligation once he or she had reported such evidence to an issuer's QLCC. Such a provision may well encourage attorneys to report evidence of a material violation more promptly, since the reporting attorney would not have to worry that he or she might ultimately be obliged to decide whether the issuer's response was ''appropriate,'' and, if the attorney concluded the issuer's response was not appropriate, to go outside the issuer and provide notice of ''noisy withdrawal'' to the Commission. Junior attorneys employed by an issuer might be especially concerned about having to second-guess their superiors, and yet those junior attorneys might also be the first to find evidence of a material violation that the issuer would want to know about.

The QLCC—itself a committee of the issuer's board of directors with special authority and special responsibility—is responsible for carrying out all the steps required by Section 307 of the Act: notifying the CLO of the report of evidence of a material violation (except where such notification would have been excused as futile under 205.3(b)(5)); causing an investigation where appropriate; determining what remedial measures are appropriate where a material violation has occurred, is occurring, or is about to occur; reporting the results of the investigation to the CLO, the CEO, and the full board of directors; and notifying the Commission if the issuer fails in any material respect to take any of those appropriate remedial measures.

More generally, the QLCC institutionalizes the process of reviewing reported evidence of a possible material violation. That would be a welcome development in itself.[56] It may also produce broader synergistic benefits, such as heightening awareness of the importance of early reporting of possible material violations so that they can be prevented or stopped.

Probably the most important respects in which Section 205.3(c) differs from Sections 205.3(b) and 205.3(d) taken together is that Section 205.3(c) relieves an attorney who has reported evidence of a material violation to a QLCC from any obligation ''to assess the issuer's response to the reported evidence of a material violation,'' to alert the Commission as to the material violations, or even to withdraw silently. If the issuer fails, in any material respect to take any remedial action that the QLCC has directed it to take, each member of the QLCC, as well as the CLO and the CEO, is individually responsible for notifying the Commission that a material violation has occurred, is occurring or is about to occur and for disaffirming any document submitted to or filed with the Commission by the issuer that the individual member considers false or materially misleading.

Unlike Sections 205.3(b) and (d), Section 205.3(c) does not address a situation where an issuer's directors fail to stop, prevent, or rectify a material violation, or where it might be reasonable to consider an investigation unreasonably prolonged. On the other hand, Congress itself did not explicitly direct the Commission to address by rule what an attorney who had reported evidence of a material violation should do in the event that an issuer's directors did not respond appropriately. It might thus be argued that Section 205.3(c) of the proposed rule more accurately reflects Congressional intent than do Sections 205.3(b) and (d).

Interested persons are invited to comment on any aspect of this section, including whether: (1) Section 205.3(c) better implements Congressional intent than do Sections 205.3(b) and (d) taken together; (2) Section 205.3(c) reasonably incorporates the two-step process for review of evidence of a material violation described in Section 307 of the Act; (3) Section 205.3(c) is a valuable alternative to Sections 205.3(b) and (d), as it does not impose a requirement beyond reporting evidence of a material violation to an issuer's audit committee, a committee of independent directors, or its full board of directors; (4) Section 205.3(c) should specify circumstances under which an attorney may or should use that alternative and, if so, what would be appropriate circumstances; (5) Section 205.3(c) should indicate circumstances, if any, under which an attorney must *not* or should *not* use that alternative and, if so, what such circumstances should be; (6) an issuer's CLO should be able to make the same use of a QLCC as any other attorney employed by an issuer, with no obligation to assess the results of an investigation by outside attorneys who might be retained specifically to investigate evidence of a material violation; and (7) the QLCC alternative can be reasonably adapted to small issuers and, if so, how.

Notification to the Commission Where There Is No Appropriate Response

Section 205.3(d) of the proposed rule would address the rare situation in which an attorney reasonably believes an issuer's directors have either made no response (within a reasonable time) to reported evidence of a material violation or have not made an appropriate response. That section of the proposed rule is broadly based on the ABA's Model Rules 1.13 and 1.16 and on Section 10A of the Exchange Act. It distinguishes between material violations that have already occurred and are not ongoing and material violations that are either ongoing or have not yet occurred and between outside attorneys retained by an issuer and in-house attorneys employed by an issuer.

Section 205.3(d)(1) of the proposed rule would provide:

(d) *Notice to the Commission where there is no appropriate response within a reasonable time.* (1) Where an attorney who has reported evidence of a material violation under paragraph 3(b) of this section rather than paragraph 3(c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report, and the attorney reasonably believes that a material violation is ongoing or is about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investors:

(i) An attorney retained by the issuer shall:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Within one business day of withdrawing, give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Promptly disaffirm to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer shall:

[56] *See, e.g.,* Cheek Report at 37–41 (encouraging institutional changes providing for regular communications between a company's general counsel, outside counsel, and directors that would facilitate early disclosure of possible misconduct).

(A) Within one business day, notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Promptly disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has withdrawn that the previous attorney's withdrawal was based on professional considerations.

Although such extreme situations should be rare, the proposed rule would probably be incomplete if it did not provide for them. Providing notification to the Commission, however, goes beyond what the Act expressly directed the Commission to do. The proposed rule, accordingly, sets a higher standard for notifying the Commission than for reporting ''up the ladder'' within the issuer. Paragraph (d)(1) addresses material violations that are ongoing or have yet to occur and distinguishes between in-house attorneys employed by an issuer and outside attorneys retained by the issuer. It requires the reporting attorney to take certain actions that paragraph (d)(2)—addressing past material violations that have no continuing effect—merely permits. Paragraph (d)(1), however, does not require even an outside attorney retained by the issuer to disclose evidence of the reported material violation, only to make a ''noisy withdrawal.''[57] An attorney would not be obligated to withdraw and notify the Commission unless paragraph (d)'s higher threshold is met.

The Commission is aware that the ABA is currently addressing the issues raised by this section and the Commission will be monitoring the progress of the ABA's efforts in assessing whether there is a need for the Commission's rule to reach this issue.

Outside Attorneys

Where the material violation at issue is ongoing or has yet to occur, Section 205.3(d)(1) of the proposed rule would require an outside attorney appearing and practicing before the Commission in the representation of the issuer to give notice to the Commission of the issuer's inappropriate response to the reported evidence through the ''signal'' or ''flag waving'' of ''noisy withdrawal'' that has long been recognized as a compromise between silent withdrawal and disclosure of specific confidential information.[58] It requires that signal, however, only when the attorney actually believes that the material violation of which the attorney reported evidence is occurring or is about to occur and is, *in addition*, likely to result in substantial injury to the financial interest or property of the issuer or of investors.

That is, where the issuer's directors have responded inappropriately to evidence of a material violation that is ongoing or has yet to occur, *and* this additional threshold is met, an attorney retained by the issuer is required, under paragraph (d)(1)(i), to withdraw from representing the issuer, in all matters, ''forthwith.'' Within one business day after withdrawing, the attorney is required to notify the Commission that he or she has withdrawn and was required to do so for ''professional considerations.'' Use of the phrase ''professional considerations'' to explain the withdrawal keeps confidential the particular facts underlying the withdrawal while signaling that the withdrawal reflects substantially more than a disagreement about the best legal strategy or a dispute over the cost of representation.[59] A purely silent withdrawal would be likely to assist an issuer in carrying out an ongoing or intended violation.

Under these circumstances, the attorney retained by an issuer is also required, ''promptly,'' to disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading.

The distinction between ''forthwith'' in 205.3(d)(i)(A), ''within one business day'' in 205.3(d)(i)(B), and ''promptly'' in 205.3(d)(i)(C) recognizes that it may be impractical for an attorney to accomplish withdrawal, notification thereof, and disaffirmance of false or misleading statements in filings with or submissions to the Commission in a single day.

The limited disclosure involved in the ''noisy withdrawal'' required by Section 205.3(d) should provide such a powerful incentive for an issuer to take actions appropriate to prevent or rectify a material violation that such ''noisy withdrawals'' should be rare. Requiring such ''noisy withdrawal'' appears appropriate to protect shareholders and investors, where the reported material violation appears likely to result in substantial financial injury to the issuer or investors, by effectively requiring an issuer's directors to act and by virtually ensuring an immediate inquiry by the Commission if they do not.

In-House Attorneys

Even where the higher threshold under 205.3(d)(1) has been met and the material violation at issue is ongoing or has yet to occur, an attorney employed by the issuer is *not* required to resign. The in-house attorney is, however, required to notify the Commission that he or she intends to disaffirm an opinion or document within one business day of concluding that the issuer's response to the evidence reported by the attorney is inappropriate or unreasonably delayed, and is thereafter required to disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading. If the in-house attorney has not prepared or assisted in preparing any such submission or filing, the in-house attorney is not required to notify the

[57] Senator Enzi stated in the floor debate over Section 307 of the Act that ''[t]he amendment [he] support[ed] would not require the attorneys to report violations to the SEC, only to corporate legal counsel or the CEO, and ultimately, to the board of directors.'' 148 Cong. Rec. S6555 (July 10, 2002). He was, however, contrasting the reporting requirement in what would be Section 205.3(b) of the proposed rule with the reporting requirement in Section 10A(3) of the Exchange Act. As Senator Enzi explained, requiring an attorney to report evidence of a material violation first to senior officers of an issuer, and then, if they do not rectify the violation, to the board of directors, as Section 205.3(b) would, is ''less onerous'' than Section 10A's requirement that an accountant must, as the Senator put it, ''report, *both to the client's directors and simultaneously to the SEC*, an[] illegal act if management fails to take remedial action.'' *Id.* (emphasis added). Senator Enzi nowhere suggested that an attorney representing an issuer should not be required (1) to withdraw in the unlikely and extreme event that the issuer's board of directors failed to prevent an ongoing material violation and (2) to notify the Commission that he had withdrawn for ''professional considerations.''

[58] *See* Comment [14] to the ABA's Model Rule 1.6, Comment [3] to Model Rule 1.16, and the discussion of the history of the ''signal'' of ''noisy withdrawal'' in Hazard, *Rectification of Client Fraud*, 33 Emory L.J. at 301–07. *See also* ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 92–366 (explaining that the ABA's Model Rules permit ''noisy'' withdrawal, which involves disavowing work product, only when the client's fraud is continuing or intended, not when it is past).

[59] *See* Comment [2] to Model Rule 1.16, Comment [10] to Model Rule 1.2 and Comment [3] to Model Rule 4.1.

Commission. Requiring an in-house attorney employed by the issuer to resign when that attorney receives an inappropriate response to the attorney's reported evidence of an ongoing or impending material violation appears to be unreasonably harsh.

Notice to Successor Attorneys

Paragraph (d)(1)(iii) of this section would require the issuer to notify any attorneys retained or employed to replace the attorney who has withdrawn that the previous attorney withdrew based on professional considerations. The purpose of this paragraph is to avoid a situation in which successor attorneys are unaware that the previous attorney waved a red flag in withdrawing. Under such circumstances, an issuer engaged in fraud may shift work previously done by outside attorneys to its own in-house legal staff, over which it has more control, and it may take the successor attorneys some time to become aware of the evidence of material violations that led the previous attorneys to withdraw.[60] To provide substantial assurance that successor attorneys will be alerted to a potential material violation, the proposed paragraph (d)(1)(iii) would require the issuer's chief legal officer to inform any attorney retained or employed to replace the attorney who has withdrawn that the previous attorney's withdrawal was based on professional considerations.[61] Proposed paragraph (d)(2)(iii) would impose the same obligation on the issuer's chief legal officer where an attorney has chosen to withdraw based on professional considerations regarding the issuer's response to evidence of a past material violation.

Past Material Violations

Section 205.3(d)(2) of the proposed rule would provide for situations in which the reported material violation has already occurred and is not ongoing. Here too, the threshold for action by the attorney is higher than for reporting ''up the ladder'' within the issuer and corresponds to the higher threshold in 205.3(d)(1):

(2) Where an attorney who has reported evidence of a material violation under paragraph (b) rather than paragraph (c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report under paragraph (b) of this section, and the attorney reasonably believes that a material violation has occurred and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors but is not ongoing:

(i) An attorney retained by the issuer may:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal was based on professional considerations;

(B) Give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Disaffirm to the Commission, in writing, any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(ii) An attorney employed by the issuer may:

(A) Notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

If the material violation at issue has already occurred and is not ongoing, the actions required of the attorney are more limited than if the violation is ongoing or has yet to occur. Under the proposed rule, an ongoing violation includes an inaccurate disclosure in a filing with or submission to the Commission that has not been corrected and may be relied on by investors. If the past material violation at issue has already occurred and is not ongoing and is likely to have resulted in substantial financial injury to the issuer, Section 205.3(d)(2)(ii) of the proposed rule would allow, but not require, the reporting attorney to withdraw, notify the Commission, and disaffirm false or misleading filings or submissions the attorney has prepared or assisted in preparing. The attorney's silence, under those circumstances, would not assist the violation. To the extent investors may continue to rely upon false or misleading statements in earlier filings or submissions, which have not been disaffirmed, the material violation would be ongoing and Section 205.3(d)(1) would apply.

The Commission once again distinguishes between the obligations of outside attorneys retained by an issuer and in-house attorneys employed by an issuer because it believes that in-house attorneys, as a practical matter, have less freedom of action than outside attorneys and that requiring an attorney to resign is more severe than requiring an attorney to withdraw from a particular representation.

Paragraph (d)(3) restates what is largely settled law:

(3) The notification to the Commission prescribed by this paragraph (d) does not breach the attorney-client privilege.

''Noisy withdrawal'' signals that something is wrong *without* revealing any privileged communication between attorney and client.[62] ''Noisy withdrawal'' under Section 205.3(d), moreover, presupposes that the attorney actually believes that the material violation of which the attorney reported evidence has occurred, is occurring, or is about to occur and, *in addition,* likely resulted or will result in substantial injury to the financial interest of the issuer or of investors. Under such circumstances, nearly forty states, adopting the 1981 recommendation of the Kutak Commission, permit disclosure of confidential information to the extent an attorney reasonably believes necessary to prevent a criminal or fraudulent act or to rectify the

[60] When the law firm representing O.P.M. Leasing Services finally withdrew because of O.P.M.''s continuing fraud, after being informed by the attorney for the head of O.P.M.''s in-house accounting department that O.P.M. ''could not survive without continuing wrongdoing,'' the law firm agreed to characterize its withdrawal as a ''mutual determination'' to terminate the relationship. Report of the Trustee Concerning Fraud and Other Misconduct in the Management of the Affairs of the Debtor at 33–35, *In re O.P.M. Leasing Services, Inc.,* Reorg. No. 81–B–10533, (Bankr. S.D.N.Y., filed April 25, 1983). As the law firm anticipated, O.P.M. retained replacement outside counsel and relied more heavily on its in-house legal staff, but neither the new CLO or the new outside counsel had any inkling of the reasons for the previous attorneys' withdrawal. *Id.* at 405–06, 411–13, 417–188. Those successor attorneys, in-house and outside, handled over $15 million in fraudulent transactions in last months of 1981, after O.P.M.''s original law firm withdrew. *Id.* at 405, 408.

[61] Both O.P.M.''s new outside law firm and its new chief legal officer wanted to know why the previous law firm had withdrawn. O.P.M. told both its new outside law firm and its new CLO that it had agreed not to discuss the reasons for the withdrawal but nevertheless led both to believe that it was the previous law firm's reputation that would be damaged by discussion because the parting of the ways had resulted from the law firm's exorbitant fees and its inability (because it was too small) to handle the ''peaks and valleys'' of work for O.P.M. *Id.* at 413, 418.

[62] *See* Comment [14] to the ABA's Model Rule 1.6, Comment [3] to Model Rule 1.16, and the discussion of the history of the ''signal'' of ''noisy withdrawal'' in Hazard, *Rectification of Client Fraud,* 33 Emory L.J. at 301–07. *But see* ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 92–366 (explaining that the ABA's Model Rules permit ''noisy'' withdrawal, which involves disavowing work product, only when the client's fraud is continuing or intended, not when it is past).

consequences of a criminal or fraudulent act in which the attorney's services were used.[63] The Commission's proposed rule would make clear that the attorney thus does not violate the attorney-client privilege in making the disclosures at issue here. Moreover, the attorney is not acting as the issuer's agent and accordingly also does not waive the issuer's attorney-client privilege in the information disclosed or any other privilege or protection that the issuer is entitled to assert regarding that information.[64] These disclosures should in most cases also be covered by the whistleblower protections of 18 U.S.C. 1514A.

Interested persons are invited to comment on any aspect of Section 205.3(d)(1)–(3), including:

(1) Whether the proposed rule should include any provision permitting or requiring notification to the Commission when an attorney receives an inappropriate response or whether this is a matter best left to the ABA or state bar associations;

(2) Whether a higher standard should apply to notification to the Commission than to reporting ''up the ladder'' within the issuer and, if so, how much higher it should be;

(3) Whether ''noisy withdrawal'' should be mandatory under some circumstances but permissive under others and, if so, what circumstances should make ''noisy withdrawal'' mandatory and what circumstances should make ''noisy withdrawal'' permissive, or whether ''noisy withdrawal'' should be mandatory under all circumstances covered by Section 205.3(d) or should be permissive under all such circumstances;

(4) Whether it is appropriate to distinguish between material violations that are ongoing or impending and material violations that are past and have no continuing effect;

(5) Whether a distinction between material violations that are ongoing or impending and material violations that are past and have no continuing effect is meaningful regarding investors;

(6) Whether the attorney who has reported evidence of a material violation to which the issuer has not made an appropriate response must know that the reported material violation has occurred, is occurring, or is about to occur before the attorney is required, or allowed, to make a ''noisy withdrawal'';

(7) Whether an attorney should be required, or permitted, to make a ''noisy withdrawal'' where the attorney has not received an appropriate response to reported evidence of a material violation, and the attorney reasonably believes that the reported material violation has occurred, is occurring, or is about to occur;

(8) Whether there is a sufficient basis for a ''noisy withdrawal,'' under those circumstances, where the attorney believes that the reported material violation is likely to have occurred, to be occurring, or to be about to occur;

(9) Whether there is a sufficient basis for a ''noisy withdrawal,'' under those circumstances, where the attorney believes that the reported material violation may have occurred, may be occurring, or may be about to occur;

(10) Whether substantial injury to the financial interest of investors is an appropriate prerequisite to a ''noisy withdrawal'';

(11) Whether substantial injury to the financial interest of the issuer-client is an appropriate prerequisite to a ''noisy withdrawal'' and, if so, whether such substantial injury to a financial interest must be certain, or likely, or merely possible;

(12) Whether the rule should distinguish between outside attorneys and those employed by the issuer and, if so, under what circumstances, how, and why;

(13) Whether an attorney who is employed by an investment adviser and who is appearing and practicing before the Commission in the representation of the investment company should be treated as an outside attorney retained by the investment company under paragraph (d)(1)(i) or should be treated as an in-house attorney under paragraph (d)(1)(ii);

(14) Whether the rule should distinguish between United States and foreign attorneys;

(15) Whether the rule should specify the content of a disaffirmance of an opinion or representation;

(16) Whether the rule should require that any disaffirmance be in writing;

(17) Whether there are any actions the rule should require an attorney to take when the attorney does not receive an appropriate response to his or her report of evidence of a material violation and, if so, which and why;

(18) Whether it would be reasonable to require an attorney making a ''noisy withdrawal'' to take all required steps within one business day;

(19) Whether it is important to require any successor attorney to be notified that the previous attorney withdrew based on ''professional considerations'' and, if so, whether there is a better way to require such notification be made than is proposed in paragraph (d)(1)(iii);

(20) Whether such notification should be required where ''noisy withdrawal'' is merely permissive; and

(21) Whether it is important to provide a ''safe harbor'' from civil suits for the attorney who notifies the Commission that he or she has withdrawn based on professional considerations under paragraph (d).

Discharge of an Attorney for Reporting a Material Violation

Section 205.3(d)(4) of the proposed rule addresses the situation where an issuer attempts to obstruct the proposed rule's notification requirements by discharging an attorney after the attorney had reported evidence of a material violation under 205.3(b) but before the attorney was obligated to notify the Commission under 205.3(d)(1) or allowed to do so under 205.3(d)(2). Under such circumstances, paragraph (d)(4) permits but does not require an attorney who reasonably believes he or she has been discharged for reporting evidence of a material violation to notify the Commission:

(4) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this section and reasonably believes that he or she has been discharged for so doing may notify the Commission that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section and may disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading.

The Commission was prompted to add this provision to Section 205.3 by a decision of the Board of Governors of the Florida Bar Association in August 2002, holding, by a vote of 22–15, that a Florida attorney who had been discharged by a large corporation could not report his concerns about improper accounting to the SEC.[65] The attorney

[63] *See* Kutak Commission's Final Draft of the Model Rules of Professional Conduct, Rule 1.6 and related discussion of ''Disclosure Adverse to Client''; Thomas D. Morgan & Ronald D. Rotunda, *Model Code of Professional Responsibility, Model Rules of Professional Conduct, and Other Selected Standards* (2001), at 146 (stating that 41 states either permit or require disclosure to prevent criminal fraud; 18 either permit or require disclosure to rectify prior criminal fraud in which the attorney's services were used; and 40 require disclosure to rectify a prior fraud on a tribunal).

[64] *See, e.g., Restatement (Third) of the Law Governing Lawyers* (2000) Section 67 and comment c.

[65] Gary Blankenship, *May Lawyers Report Past Corporate Misconduct?,* Florida Bar News, September 15, 2002, at 1. From the reported

Continued

believed that the profits of the corporation he worked for had been inflated by several million dollars, preventing a slump in the price of its publicly-traded stock, when the company amortized over several years an expense that should have been recognized immediately. After taking his concerns to the company's ''top executives''—in effect reporting evidence of a material violation ''up the ladder'' as in proposed Section 205.3(b)—the attorney was fired. The Ethics Department of the Florida Bar decided that the attorney was prohibited from revealing confidential information about these improper accounting practices because it viewed them as past misconduct by a company that the attorney had learned about in connection with his prior representation of that company (even though the past misconduct had an ongoing effect). The Professional Ethics Committee agreed with the Ethics Department. The Board Review Committee on Professional Ethics voted 4–1 to endorse that opinion (because the continuing crime could not be disclosed without also disclosing the past crime). And the Board of Governors voted to bar disclosure.

There is no reason to think such a scenario would not recur. Almost twenty years ago, the Reporter for the ABA's Kutak Commission wrote that ''an innocent lawyer—however competent and however watchful—is inevitably at risk in any transaction where the client could commit fraud.'' [66]

Interested persons are invited to comment on any aspect of this section of the rule, including: (1) Whether the reporting attorney's reasonable belief that he or she has been discharged for making a report is an appropriate standard and, if not, what alternative standard would be more appropriate; (2) Whether the permissive disclosure to the Commission should be limited to ongoing or future violations or should extend to past violations.

Disclosure of Issuer Confidences

Section 205.3(e) would allow an attorney to disclose, under specified circumstances, confidential information related to his appearing and practicing before the Commission in the representation of an issuer. Paragraph (e)(1) would provide:

(e) *Issuer confidences.* (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof), may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

Paragraph (e)(1) would make clear that an attorney may use the contemporaneous records required by Sections 205.3(b) and 205.4(d) to defend himself or herself against charges of misconduct. It is effectively equivalent to the ABA's present Model Rule 1.6(b)(3), and corresponding ''self-defense'' exceptions to client-confidentiality rules in every state. The Commission believes that it is important to make clear in its proposed rule that the contemporaneous records that the rule would require attorneys to prepare can be used to protect honest attorneys, and are meant to be so used.

Interested persons are invited to comment on any aspect of this section, including whether: (1) The rule should have a provision allowing the attorney to use documents generated under this rule in self-defense; and (2) the types of proceedings in which the documents may be used should be expanded or limited and, if so, why and in what way.

Paragraph (e)(2) would provide:

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services had been used.

Paragraph (e)(2) corresponds to the ABA's Model Rule 1.6 as proposed by the ABA's Kutak Commission in 1981–1982 [67] and by the ABA's Commission of Evaluation of the Rules of Professional Conduct (''Ethics 2000 Commission'') in 2000,[68] and as adopted in the vast majority of states.[69] It would provide additional protection for investors by allowing, though not requiring, an attorney to disclose confidential information relating to his appearing and practicing before the Commission in the representation of an issuer ''to the extent the attorney reasonably believes necessary (1) to prevent the issuer from committing an illegal act that the lawyer reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors; (2) to prevent the issuer from committing an illegal act that the lawyer reasonably believes is likely to perpetrate a fraud upon the Commission; or (3) to rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services were used.

New Jersey's Rule of Professional Conduct 1.6(b) *requires* an attorney to reveal confidential ''information relating to the representation of a client''

to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client:

(1) From committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in * * * substantial injury to the financial interest or property of another;

(2) From committing a criminal, illegal or fraudulent act that the lawyer reasonably

decision, it is not clear that the Florida attorney would be covered by the proposed rule, because it is not clear that the Florida attorney was appearing and practicing before the Commission.

[66] Hazard, *Rectification of Client Fraud,* 33 Emory L.J. at 283–84. Section 806 of the Act foresaw that employees of an issuer might be discharged for providing information, or causing information to be provided, regarding fraudulent misconduct by an issuer's employees or agents and sought to protect such a discharged employee by adding 18 U.S.C. 1514A to provide for a civil action to obtain relief.

[67] *Final Draft: Model Rules of Professional Conduct,* pullout supplement to the November 1982 issue of the *American Bar Association Journal,* proposed a version of Model Rule 1.6(b)—ultimately rejected by the House of Delegates—providing that a lawyer may reveal confidential information relating to the representation of a client ''to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result in * * * substantial injury to the financial interests or property of another;

(2) to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services had been used. * * * '' Law Governing Lawyers (2000) section 67 and comment c.

[68] *Report of the Commission on Evaluation of the Rules of Professional Conduct* (November 2000) recommended permitting a lawyer to disclose confidential ''information relating to the representation of a client to the extent the lawyer reasonably believes necessary * * * to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services.''

[69] Thirty-seven states permit an attorney to reveal confidential client information in order to prevent the client from committing criminal fraud. *See Restatement (Third) of the Law Governing Lawyers* (2000) section 67, Comment f, and Thomas D. Morgan & Ronald D. Rotunda, *Model Code of Professional Responsibility, Model Rules of Professional Conduct, and Other Selected Standards,* at 146 (reproducing the table prepared by the Attorneys' Liability Assurance Society (''ALAS'') cited in the Restatement). The ABA's Model Rule 1.6, which prohibits disclosure of confidential client information even to prevent a criminal fraud, is a minority rule. In its *Carter and Johnson* decision (1981 WL 384414 at n.78), the Commission expressly did not address an attorney's obligation to disclose a client's intention to commit fraud or an illegal act.

believes is likely to perpetrate a fraud upon a tribunal.

(Emphasis added.) The corresponding rule in Wisconsin is virtually identical to New Jersey's, though it makes no reference to ''proper authorities.''[70] Florida's Rule of Professional Conduct 4–1.6 requires a lawyer to reveal confidential information ''to the extent the lawyer reasonably believes necessary * * * to prevent a client from committing a crime.''[71]

The ABA's Cheek Task Force recommended making such disclosures mandatory in 2002.[72] Even the ABA's Canons of Professional Ethics, in effect until 1970, provided in Canon 37:

> The announced intention of a client to commit a crime is not included within the confidences [a lawyer] is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened;

and in Canon 41:

> When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it; at first by advising his client, and if his client refuses to forego the advantage thus unjustly gained, he should promptly inform the injured person or his counsel, so that they may take appropriate steps.[73]

The ''noisy withdrawal'' provision in Section 205.3(d) probably makes permissive disclosure of confidential information under the circumstances in Section 205.3(e) sufficient to protect investors.

Moreover, the rules requiring disclosure in New Jersey, Wisconsin, and Florida raise a question about ''conflicts'' between such states' rules and the permissive disclosure provisions in the proposed rule. So do the rules forbidding disclosure in jurisdictions such as the District of Columbia.

In theory, an attorney could simultaneously comply with the Commission's proposed rule permitting disclosure of confidential information and a state's rule forbidding disclosure by not disclosing the information, just as an attorney could simultaneously comply with the Commission's proposed rule permitting disclosure of confidential information and a state's rule requiring disclosure by disclosing the information. However, a Commission rule permitting disclosure would appear to preempt a state's rule forbidding disclosure. Accordingly, an attorney appearing and practicing before the Commission who is admitted in a jurisdiction that forbids disclosure of confidential information under circumstances where the proposed rule would permit disclosure, may disclose the information to the Commission, notwithstanding the contrary state rule.

A different case exists when a state rule requires disclosure in a case where the proposed rule would merely allow it. In such a case there will likely be no conflict between the Commission rule and the state rule, and the attorney should thus be bound by the state rule requiring disclosure.[74] The Commission, however, invites comments on whether an attorney appearing and practicing before the Commission and admitted in a jurisdiction that requires disclosure of confidential information under circumstances where the proposed rule would merely permit disclosure is required to disclose the information to the Commission.

Paragraph 205.3(e)(2)(ii) permits an attorney to reveal client information to the Commission to the extent the attorney reasonably believes necessary to prevent an issuer from committing ''an illegal act'' likely to ''perpetrate a fraud'' upon the Commission. The term ''illegal acts'' in this paragraph refers to acts proscribed in 18 U.S.C. 1001, as well the commission and subornation of perjury (proscribed, respectively, in 18 U.S.C. 1621 and 1622). The term ''perpetrate a fraud'' in this paragraph is intended to cover conduct involving the knowing misrepresentation of a material fact to, or the concealment of a material fact from, the Commission with the intent to induce the Commission to take, or not to take, a particular action. Therefore, this paragraph would not apply to filings or submissions to the Commission which satisfy a general requirement imposed upon issuers by the Commission (*e.g.*, 10-K or 10-Q filings). Rather, this paragraph is intended to apply to more specific submissions or contacts with the Commission by issuers which attempt to persuade the Commission to take, or not to take, particular actions, including, among other things, Wells submissions, applications for relief, and requests for ''no action'' letters.

Interested persons are invited to comment on any aspect of this section, including whether: (1) The rule should permit an attorney to disclose client confidences in any circumstances or only in some, or all, of the instances in the proposed rule; (2) the Commission should delay any action on this section until the ABA has had an opportunity to determine its position on Model Rule 1.6 in connection with its current reconsideration of the Ethics 2000 proposal; (3) an attorney should be permitted to act under (e)(2)(i) to prevent other misconduct besides that which is ''illegal'; (4) ''substantial injury to the financial interest or property'' is an appropriate standard and, if not, what is an appropriate standard; (5) the rule should be limited to instances where only the issuer may be financially harmed; (6) the rule should specify when and in what way an attorney may rely upon the rule ''to rectify'' the consequences of an illegal act; and (7) the rule should provide that disclosures to the Commission under this section are protected by the whistleblower provisions of 18 U.S.C. 1514A, added by the Act.

Paragraph (e)(3) would provide:

(3) Where an issuer, through its attorney, shares with the Commission, pursuant to a confidentiality agreement, information related to a material violation, such sharing of information shall not constitute a waiver of any otherwise applicable privilege or protection as to other persons.

This paragraph would set forth the Commission's position on an unsettled question: whether an issuer waives attorney-client privilege and/or other protection (such as work-product protection) by sharing with the Commission, pursuant to a confidentiality agreement, confidential information regarding misconduct by the issuer's employees or officers?[75]

[70] Wisconsin Supreme Court Rule 20:1.6 (available at *http://www.courts.state.wi.us/supreme/sc_rules.asp).*

[71] Available at *http://www.flabar.org/* under ''Regulation.''

[72] The Kutak Commission and the Ethics 2000 Commission, in their proposed versions of Rule 1.6(b)(2), both recommended permitting a lawyer to disclose confidential information to outsiders under similar circumstances. The Kutak Commission recommended permitting an attorney to reveal confidential information relating to representation of a client where New Jersey and Wisconsin require disclosure. The Ethics 2000 Commission recommended permitting disclosure ''to the extent the lawyer reasonably believes necessary . . . to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services.'' The Ethics 2000 Commission considered the ABA's Model Rule 1.6 to be ''out of step with public policy and the values of the legal profession as reflected in the rules currently in force in most jurisdictions.'' Reporter's Explanation of Changes.

[73] Reprinted in Morgan & Rotunda, Selected Standards, at 811–12.

[74] *See* the general discussion of preemption under Section 205.6 below.

[75] *See In re Columbia/HCA Healthcare Corp. Billing Practices Litigation,* 293 F.3d 289, 294–95 (case law on selective waiver of attorney-client privilege ''in a state of hopeless confusion'') (citation and internal quotation marks omitted), 304–05 (work-product protection may survive where attorney-client privilege has been waived) (Moore & Russell, JJ.), 307–08 (case law both limited

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Allowing issuers to produce internal reports to the Commission—including, but not limited to, those prepared in response to reports under 205.3(b)—without waiving otherwise applicable privilege or protection serves the public interest because it significantly enhances the Commission's ability to conduct expeditious investigations and obtain prompt relief, where appropriate, for defrauded investors.[76] Even cooperative issuers are generally reluctant to produce internal reports to the Commission for fear that production will waive otherwise applicable privilege or protection as to third parties. Some parties to Commission investigations, however, have produced otherwise privileged or protected reports where they believe only the government—and not adversaries in private litigation—will have access to them.

Obtaining such otherwise privileged or protected reports furthers the public interest—and does not circumvent courts' rejection of the selective waiver doctrine—because the Commission enters into confidentiality agreements only when it has reason to believe that obtaining the reports will allow the Commission to save substantial time and resources in conducting investigations and/or provide more prompt monetary relief to investors.[77] Limiting those instances where producing documents to the Commission will not waive privilege or protection to circumstances where the Commission enters into a confidentiality agreement, as the proposed rule would, should curtail any abuse of this provision by issuers, because the Commission intends to abide by its current practice of entering into confidentiality agreements only when it is in the public interest to do so.

Although the Commission must verify that internal reports are accurate and complete and must conduct its own investigation, doing so is far less time-consuming and less difficult than starting and conducting investigations without the internal reports. When the Commission can conduct expeditious and efficient investigations, it can then obtain appropriate remedies for investors more quickly. The public interest is clearly served when the Commission can promptly identify illegal conduct and provide compensation to victims of securities fraud.[78]

Moreover, preserving the privilege or protection for internal reports shared with the Commission does not harm private litigants or put them at any kind of strategic disadvantage. At worst, private litigants would be in exactly the same position that they would have been in if the Commission had not obtained the privileged or protected materials.[79] Private litigants may even benefit from the Commission's ability to conduct more expeditious and thorough investigations. Indeed, many private securities actions follow the successful completion of a Commission investigation and enforcement action. ''Without the exception, much otherwise disclosed material would stay completely in the dark, under the absolute cover of privilege.'' *Columbia/HCA,* 293 F.3d at 312 (Boggs, J., dissenting). Consequently, allowing the Commission access to otherwise privileged and inaccessible internal reports but denying access to others would not be unfair to private litigants but is appropriate in the public interest and for the protection of investors.

These arguments apply with special force to internal reports and responses to them that the Commission would require under the proposed rule.

The Commission believes that Congress authorized it to adopt a regulation providing for such an exception, by directing the Commission to ''promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act''—as the Commission believes such an exception is. Moreover, such a rule would be consistent with the confidentiality provisions that Congress itself enacted regarding investigations by the Public Company Accounting Oversight Board (the ''Board'') in Section 105 of the Act, 15 U.S.C. 7215.

Section 105(b)(1) of the Act authorizes the Board to ''conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm * * * regardless of how the act, practice, or omission is brought to the attention of the Board.'' Section 105(b)(5)(A) of the Act further provides that documents and information ''received by * * * the Board * * * shall be confidential and privileged'' until the documents or information are used in a public proceeding. Section 105(b)(5)(B) of the Act provides that documents and information received by the Board continue to be confidential and privileged, even if the Board shares them with the Commission—and even if the Board discloses them to the Attorney General of the United States, an appropriate Federal regulator, state attorneys general, or any ''appropriate State regulatory authority''—so long as the Board determines that those disclosures are ''necessary to accomplish the purposes of this Act or to protect investors.'' The Attorney General, appropriate Federal regulators, state attorneys general, and appropriate State regulatory authorities with which the Board shares confidential information are required to keep it confidential. *Id.*

The Commission's proposed rule would establish a provision for attorneys and the officers and directors of an issuer consistent with Section 105(b)(5)'s provision for accountants and accounting firms. Like Section 105(b)(5) of the Act, proposed section 205.3(e)(3) would facilitate investigations by the Commission and protect investors by maintaining the

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and conflicting, with circuit courts of appeals ''deeply split on whether a disclosure of privileged information to the government, in the course of an investigation, waives the privilege as to all other parties'') (Boggs, J., dissenting) (6th Cir. 2002); *Saito* v. *McKesson HBOC, Inc.,* No. 18553, 2002 WL 31458233, at *6-*11 (adopting a selective waiver rule for disclosures made to law enforcement agencies pursuant to a confidentiality agreement because such a rule ''encourages cooperation with law enforcement agencies without any negative cost to society or to private plaintiffs'') (Del. Ch. Oct. 25, 2002).

[76] *See, e.g., amicus* briefs filed by the Commission during the last two years in *Saito* v. *McKesson HBOC, Inc.*, No. 18553 (Del. Ch.); *United States* v. *Bergonzi & Gilbertson,* No. CR–00–05050MJJ (N.D. Cal.); *Adler* v. *McKesson HBOC, Inc.,* No. 99–C–7980–3 (Gwinnett County, Georgia) (S–01–347-GC); *McKesson HBOC, Inc.* v. *Adler*, No. A01A1836 (Ga. Ct. App.) (all arguing that sharing with the Commission, pursuant to confidentiality agreements, reports of internal investigations by outside lawyers does not waive work-product protection). In these briefs, the Commission has taken no position on selective waiver of the attorney-client privilege.

[77] *Cf. SEC* v. *Jerry T. O'Brien, Inc.*, 467 U.S. 735, 745–46, 750–51 (1984) (recognizing the importance of speed in the Commission's enforcement of the securities laws).

[78] In one case, the Commission subpoenaed over forty boxes of documents related to a complex scheme that had defrauded investors. Through a confidentiality agreement, it also obtained notes and interview memoranda from an internal investigation that had cost the company over $9 million, and Commission staff benefitted from presentations by the internal investigators that explained the scheme and helped the staff understand the subpoenaed materials more quickly. That otherwise protected work product allowed the Commission to file civil enforcement actions and obtain disgorgement of millions of dollars (ultimately distributed to investors and other injured parties) sooner than it otherwise could have.

[79] *See Westinghouse Electric Corp.* v. *Republic of the Philippines,* 951 F.2d 1414, 1426 (3d Cir. 1991) (refusing to adopt the rationale that ''it is inherently unfair for a party to selectively disclose privileged information in one proceeding but not another'' when rejecting the selective waiver theory because ''when a client discloses privileged information to a government agency, the private litigant in subsequent proceedings is no worse off than it would have been had the disclosure to the agency not occurred'').

privileged or protected status of internal reports shared with the Commission.[80]

Interested persons are invited to comment on any aspect of this section, including: (1) Whether the rule should contain such a provision; (2) the disadvantages and advantages of such a provision and its potential impact on private securities litigation where plaintiffs may seek to discover such documents from the issuer or the Commission; (3) whether the rule should reflect the Commission's long-standing policy of not entering into confidentiality agreements covering purportedly privileged materials except where it believes it would be in the public interest to do so; (4) whether the rule should reflect that even where the Commission enters into such confidentiality agreements, such agreements do not impact the Commission's ability to use the privileged materials in performing its statutory responsibilities; and (5) whether the rule should be limited to certain types of privileged or protected information and, if so, which ones.

Section 205.4 Responsibilities of Supervisory Attorneys

Section 205.4 would provide:

(a) An attorney supervising, directing, or having supervisory authority over another attorney is a supervisory attorney. An issuer's chief legal officer (or the equivalent) is a supervisory attorney under this rule.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in § 205.5(a), that he or she supervises, directs, or has supervisory authority over in appearing and practicing before the Commission conforms to this rule and complies with the statutes and other rules administered by the Commission. To the extent a subordinate attorney appears and practices before the Commission on behalf of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in § 205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who reasonably believes that information reported to him or her by a subordinate attorney under § 205.5(c) is not evidence of a material violation shall take reasonable steps to document the basis for the supervisory attorney's belief.

Proposed Section 205.4 is based, in part, on Rule 5.1 of the ABA's Model Rules, which (1) mandates that supervisory attorneys (including partners at law firms and attorneys exercising similar management responsibilities at law firms) must make reasonable efforts to ensure that attorneys at the firm conform to the Rules of Professional Conduct; and (2) provides that a supervisory attorney may be held liable for violative conduct by another attorney which he or she knowingly ratifies or which he or she fails to prevent when able to do so.

Paragraphs 205.4(a) and (b) of the proposed rule are similar in concept in that they define who is a supervisory attorney, and obligate a supervisory attorney to make reasonable efforts to ensure compliance with the rule by subordinate attorneys. However, these paragraphs broaden the formulation from Rule 5.1 beyond attorneys who are actually supervising other attorneys to include attorneys ''directing or having supervisory authority over another attorney''. This expansion was intended to clarify that individuals who may exercise authority over subordinate attorneys for a particular matter, but who do not routinely supervise that attorney, are supervisory attorneys under the proposed rule. Paragraph 205.4(a) also states that an issuer's chief legal officer is a supervisory attorney, and cannot avoid responsibility under the rule by claiming a lack of knowledge of, or supervision over, the actions of subordinate attorneys.

Paragraph 205.4(b) obligates a supervisory attorney to take affirmative steps to ensure that subordinates comply with the proposed rule. While the rule imposes an obligation on the supervisory attorney to take affirmative steps, it leaves to the professional judgment of the supervisory attorney how best to accomplish that goal. Particularly in a large organization, the Commission would expect that these steps would include the creation of procedures for subordinate attorneys to report evidence of material misconduct they learn about and, perhaps, periodic meetings for the purpose of discussing how to address such matters. In addition, the provision affirms that the supervisory attorney of a subordinate attorney who appears and practices before the Commission also appears and practices before the Commission. Sections 205.4 and 205.5 place the burden of compliance with Section 205.3's reporting requirement on the supervisory attorney once he or she has received a report of a material violation from a subordinate.

Paragraph 205.4(c) affirmatively states that a supervisory attorney assumes the responsibility for compliance with section 205.3's reporting requirement when a subordinate attorney reports evidence of a possible material violation. The Commission believes that this provision is consistent with common practice. A supervisory attorney is expected to be in a better position (as a result of a presumed higher level of experience and/or expertise) than a subordinate attorney to evaluate whether the evidence of potential wrongdoing obtained by the subordinate needs to be reported. Moreover, the issuer (either a client or the employer of the supervisory attorney) is likely to assume (and, indeed, may reasonably expect) that a subordinate attorney will discuss the evidence of potential wrongdoing with the supervisor before reporting it to the issuer. Finally, an issuer is probably more likely to respond diligently to a report of potential wrongdoing under section 205.3 received from a supervisory attorney than from a subordinate attorney.

Finally, paragraph 205.4(d) obligates a supervisory attorney who believes that evidence of potential wrongdoing presented by a subordinate does not need to be reported under Section 205.3 to take reasonable steps to document the basis for that belief. The reporting requirement under section 205.3 will be weakened, if not entirely undermined, unless a supervisory attorney is required to memorialize a unilaterally arrived at conclusion that evidence of purported wrongdoing does not need to be reported to an issuer. Moreover, a supervisory attorney to whom a subordinate attorney presents evidence of potential wrongdoing will as a matter of good practice typically memorialize his or her conclusion that the evidence does not need to be reported, and the bases for that conclusion. Accordingly, as with the prior paragraph, this requirement is consistent with how responsible attorneys will conduct themselves.

Interested persons are invited to comment on any aspect of this section of the proposed rule including: (1) Whether the definition of a ''supervisory attorney'' in 205.4(a) is too broad and should be curtailed, or whether it is too narrow and should be expanded, and, if so, how; (2) whether the rule imposes too much responsibility upon supervisory attorneys for the actions of subordinate attorneys and, if so, how the rule should be revised; (3) whether

[80] Section 307 of the Act does not contain a similar confidentiality provision, but the Act's treatment of attorneys is much briefer and much less detailed than its treatment of accountants, we believe in part because the treatment of accountants in Section 10A of the Exchange Act is much more detailed than the treatment of attorneys. (*Compare, e.g.*, the treatment of accountants and attorneys in 17 CFR 201.102.) Section 105(b)(5) of the Act indicates that a similar confidentiality provision is an appropriate part of proposed Part 205, which elaborates on standards of conduct that attorneys appearing and practicing before the Commission must meet.

the responsibility for complying with the rule's reporting obligation should be placed upon supervisory attorneys at all and, if not, why imposing that responsibility upon supervisory attorneys is inappropriate, and how the rule should be amended to insure that the reporting obligation is satisfied; (4) whether the Commission's premise that supervisory attorneys are in a better position to report evidence of material violations ''up the ladder'' with the issuer than subordinate attorneys is correct; and (5) whether supervisory attorneys should be required to document their conclusion that evidence presented by a subordinate does not need to be reported.

Section 205.5 Responsibilities of a Subordinate Attorney

Section 205.5 would provide:

(a) An attorney under the supervision, direction, or supervisory authority of another attorney is a subordinate attorney.

(b) A subordinate attorney is bound by this rule notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with § 205.3 of this rule if the subordinate attorney reports to his or her supervising attorney under paragraph (3)(b) of that section evidence of a material violation that the subordinate attorney becomes aware of in the course of appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by § 205.3(b), (c), and (d) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under § 205.3(b) has failed to comply with § 205.3.

Paragraphs 205.5 (a) and (b) of the proposed rule are based on Rule 5.2 of the ABA's Model Rules (which provides that subordinate attorneys remain bound by the Model Rules notwithstanding the fact that they acted at the direction of another person). These proposed paragraphs define who is a subordinate attorney, and confirm that subordinate attorneys are responsible for complying with section 205.3. The Commission believes that subordinate attorneys should not be exempted from the application of the rule merely because they operate under the supervision or at the direction of another person (who may or may not be an attorney), and that creation of such an exemption would seriously undermine Congress' intent to provide for the reporting of evidence of material violations to issuers. Indeed, because subordinate attorneys frequently perform a significant amount of work on behalf of issuers, the Commission believes that subordinate attorneys are at least as likely (indeed, potentially more likely) to learn about evidence of material violations as supervisory attorneys.

Paragraph 205.5(c), which obligates subordinate attorneys to report evidence indicating a material violation to their supervisor, is related to paragraph 205.4(c), which provides that a supervisory attorney is charged with the responsibility for compliance with Section 205.3(b)'s reporting requirement when a subordinate attorney reports evidence of a material violation. As with paragraph 205.4(c), paragraph 205.5(c) is premised upon the concept that supervisory attorneys are in a better position than subordinate attorneys to report instances of possible material violations to appropriate individuals in the issuer.

A subordinate attorney is obligated under Section 205.3(b)(2) to maintain a record of a report made to the supervisory attorney, as supervisory attorneys are by paragraph 205.4(d). The Commission believes that the requirement imposed by this provision simply replicates the practice which responsible attorneys would adopt in any event.

Paragraph 205.5(d) provides that a subordinate attorney who reasonably believes that a supervisory attorney to whom he or she has reported evidence of a possible material violation has failed to comply with the reporting requirements of section 205.3 may report the evidence to appropriate officers and directors of the issuer pursuant to paragraph 205.3(b) or to the issuer's QLCC, if the issuer has established such a committee, and may carry out a ''noisy withdrawal'' under the circumstances specified in paragraph 205.3(d). The Commission is confident that supervisory attorneys will satisfy their reporting obligations under the rule, and that instances when a subordinate attorney disagrees with the supervisory attorney's actions will be exceedingly rare. The Commission also notes that this paragraph is permissive rather than mandatory. Nevertheless, the Commission believes that inclusion of such a provision is both appropriate and necessary to address those situations where it is clear that a supervisory attorney has neither made the report permitted by paragraph 205.3(c) nor complied with the reporting obligations imposed by paragraphs 205.3(b) and (d), and the subordinate attorney believes he or she must act to prevent harm to the issuer and its shareholders.

Interested persons are invited to comment on any aspect of this section of the proposed rule, including whether: (1) The definition of who is a subordinate attorney in 205.5(a) is too broad (or too narrow) and should be curtailed (or expanded); (2) the rule should distinguish between supervisory attorneys and subordinate attorneys at all or should do so in some other ways and, if so, what those other ways should be; (3) both subordinate and supervisory attorneys should be held to the same obligation to report evidence of material violations ''up the ladder'' within the issuer, and if so, why; (4) subordinate attorneys should have any obligations under the rule; (5) the rule should permit subordinate attorneys to report evidence of material violations if they reasonably believe that a supervisory attorney has failed to comply with the rule.

Section 205.6 Sanctions

Section 205.6 would provide:

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and any such attorney shall be subject to the same penalties and remedies, and to the same extent, as for a violation of that Act.

(b) With respect to attorneys appearing and practicing before the Commission on behalf of an issuer, ''improper professional conduct'' under section 4C(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d-3(a)) includes:

(1) Intentional or knowing conduct, including reckless conduct, that results in a violation of any provision of this part; and

(2) Negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of any provision of this part; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of a provision of this part.

(c) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices.

Part 205 sets forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in the representation of issuers. As discussed above, some of the provisions of the proposed rule are permissive; others are mandatory. When an attorney fails to comply with a mandatory provision of the proposed rule, that failure will be treated as a violation of a substantive rule and will subject the attorney to enforcement and/or disciplinary action by the Commission.

Proposed paragraph 205.6(a), which tracks the language of Section 3(b) of the

Act, expressly states that a violation of the proposed rule shall be treated as a violation of the Exchange Act, subjecting any person committing such a violation to the same penalties as are prescribed for violations of the Exchange Act. Thus, if an attorney violates the proposed rule, the Commission may commence a civil action seeking injunctive and other appropriate equitable relief, as well as civil money penalties, pursuant to Section 21(d) of the Exchange Act. Alternatively, the Commission may commence a cease-and-desist proceeding against the violator, and any other person who was a cause of the violation, pursuant to Section 21C of the Exchange Act.

The Commission does not believe, however, that violations of the proposed rule would, without more, meet the standard prescribed in Section 32(a) of the Exchange Act (15 U.S.C. 78ff), which provides for the imposition of criminal penalties.

In the event that an injunction is entered against an attorney for violating this rule, the Commission may initiate administrative proceedings to determine an appropriate disciplinary sanction. Even when no injunctive action is brought against an attorney under this rule, the Commission may bring an original administrative proceeding for a cease-and-desist order and/or seeking an appropriate disciplinary sanction for a violation of this rule.

The Commission notes that nothing in Section 307 creates a private right of action against an attorney. Indeed, statements by the sponsors of the provision unequivocally demonstrate that there was never an intention to create a right of action by third parties for violation of the rule. [81] Similarly, the Commission does not intend that the provisions of Part 205 create any private right of action against an attorney based on his or her compliance or non-compliance with its provisions.

Paragraph (b) of this section reflects the fact that Section 602 of the Act amends the Exchange Act by adding Section 4C(a), which incorporates that portion of the text of Rule 102(e) which provides that the Commission may discipline professionals for improper professional conduct. Accordingly, an attorney who violates any provision of Part 205 engages in improper professional conduct. The Commission may proceed against such an attorney in the manner described above.

Paragraph (b) of this section incorporates the state-of-mind requirements prescribed in Section 4C(b)(2). The ''[i]ntentional or knowing conduct, including reckless conduct'' standard articulated in 205.6(b)(1) is the standard which has been applied by the Commission in Rule 102(e) cases brought against accountants since the amendment to the rule in 1998. The ''negligent conduct'' standard prescribed in 205.6(b)(2) is similar to the standard adopted by the Commission in the 1998 amendment to Rule 102(e).[82] Accordingly, a single, highly unreasonable instance of attorney misconduct, or repeated instances of unreasonable attorney misconduct which result in violation of the rule will constitute improper professional conduct. Paragraph 205.6(b) evidences that the Commission will not proceed against attorneys when conduct that amounts to no more than simple negligence results in a failure to comply with a provision of Rule 205.

In proposing Part 205, the Commission does not intend to rescind Rule 102(e). While the Commission has employed Rule 102(e) as a disciplinary tool to protect the Commission's processes from improper professional conduct, Part 205 may serve both an enforcement and a disciplinary function. As noted, the Commission intends to proceed against individuals violating Part 205 as it would against other violators of the Exchange Act. In addition, when appropriate, the Commission may initiate proceedings under this rule seeking the imposition of an appropriate disciplinary sanction. At present, the Commission intends to limit its use of Part 205 to address only misconduct arising under that rule. Rule 102(e) will continue to be used to address the same types of misconduct it has been traditionally relied upon for, except those that would now fall under Part 205. The Commission intends to revisit this issue at such time as it determines whether to promulgate more comprehensive standards of professional conduct. In the event it does implement such rules, it may be necessary to reconsider whether it is appropriate to continue prosecuting disciplinary actions under Rule 102(e).

Interested persons are invited to comment on (1) the interaction between Part 205 and Rule 102(e), and (2) whether (and if so, how) the Commission should amend Rule 102(e) in light of the adoption of Part 205.

Paragraph (c) of the Act recognizes that the Commission may discipline attorneys who violate the rule, regardless whether the attorney is subject to prosecution or discipline for violation of a state ethical rule which applies to the same conduct. Accordingly, in the event that an attorney's conduct violates Part 205 as well a state ethical rule, the Commission may bring proceedings against the attorney regardless of whether the state proceeds against the attorney.

The prospect of simultaneous Commission and state disciplinary proceedings for the same misconduct raises the question of the impact of the rule upon state ethical rules and regulations. Due to the breadth and specificity of the Congressional mandate to the Commission to implement an ''up the ladder'' reporting system applicable to attorneys representing issuers, the Commission is considering whether Congress intended for the agency's rule to ''occupy the field'' on this issue, and whether Part 205 would preempt any state rules governing the reporting of evidence of a material violation by attorneys representing issuers before the Commission. Commission preemption of any state ethical rules as topics covered by Part 205 would have the salutary benefit of creating a single uniform standard which attorneys in all jurisdictions must satisfy; and it would also resolve the dilemma faced by attorneys who practice in multiple jurisdictions, and thereby subject themselves to different (and potentially conflicting) standards prescribed in the ethical rules adopted by those jurisdictions. Alternatively, the Commission is considering whether those provisions of the rule which are necessary to effectively implement an ''up the ladder'' reporting system may preempt conflicting state ethical rules which impose a lower obligation upon the attorney (or impose no obligation at all).[83] In those limited circumstances in which a state rule actually imposes a higher obligation than Part 205 (*e.g.*, by requiring an attorney to take some step

[81] See statement by Senator Edwards, 148 Cong. Rec. S6552 (''Nothing in this bill gives anybody a right to file a private lawsuit against anybody. The only people who can enforce this amendment are the people at the SEC.''); see also statement by Senator Enzi, *id.* at S6555 (''[T]his amendment creates a duty of professional conduct and does not create a right of action by third parties.'').

[82] Exchange Act Section 4C(b)(2) defines the term ''improper professional conduct'' to include negligent conduct by an accountant in the form either of a single instance of highly unreasonable behavior or repeated instances of unreasonable conduct which results in a violation of applicable professional standards and indicates a lack of competence.

[83] *See Crosby* v. *National Foreign Trade Council,* 530 U.S. 363, 372 (2000) (Court will find preemption ''when it is impossible for a private party to comply with both state and federal law, and where under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress''); *City of New York* v. *FCC,* 486 U.S. 57, 64 (1989) (agency regulations can preempt state laws).

which Part 205 does not mandate), the attorney would remain free to comply with the state rule.

Interested persons are invited to comment on any aspect of this section of the rule. With respect to state-of-mind requirements, parties are invited to comment on the following issues: (1) What the state-of-mind requirement for violations of the rule should be; (2) what the required mental state should be in an injunctive action for violation of the rule; (3) whether attorneys who violate the rule should also be subject to disciplinary proceedings under Rule 102(e) for improper professional conduct; (4) whether the state-of-mind requirements for disciplinary proceedings set forth in paragraph 205.6(b) provide adequate guidance to attorneys, and whether they are appropriate; (5) whether the same state of mind requirements for accountants should also apply to attorneys and, if not, why.

With respect to the issue of preemption, interested persons are invited to comment on: (1) whether the internal reporting requirements within the issuer proposed by Section 307 and Part 205 should be interpreted to ''occupy the field'' so as to preempt all state regulation of an attorney's internal reporting evidence of a material violation; and (2) whether the reporting requirements preempt only conflicting state ethical rules.

The Commission has not established a ''safe harbor'' provision within the rule similar to Section 10A(3)(c) of the Exchange Act (15 U.S.C. 78j–1(3)(c)), which proscribes private suits against auditor's for statements or conclusions expressed in notices to the Commission mandated by Section 10A(b)(3). Interested persons are invited to comment on whether the Commission should include a similar provision within the proposed rule prohibiting private actions challenging an attorney's decision to take, or not to take, action under the proposed rule, when taken in good faith. Would inclusion of such a provision promote effective operation of the proposed rule by protecting attorneys who make a good faith effort to comply with the rule, and preventing ancillary litigation for alleged violations of the rule? Why or why not?

VI. Paperwork Reduction Act

The proposed rule contains a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[84] The title for this collection of information is ''Reports of Evidence of Material Violations.'' We have submitted the collection of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The proposed rule would impose an ''up the ladder'' reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. As discussed in greater detail elsewhere in this release, an attorney must report such evidence to the issuer's chief legal officer (''CLO'') or to both the chief legal officer and chief executive officer (''CEO''), and must take reasonable steps to document his or her report and the response received, and retain this documentation for a reasonable time. A subordinate attorney complies with the proposed rule if he or she reports evidence of a material violation to his or her supervisory attorney (who is then responsible for complying with the proposed rule's requirements). A subordinate attorney may also take the other steps described in the proposed rule if the supervisor fails to comply. Additionally, when a supervisory attorney believes that information reported to him or her by a subordinate attorney is not evidence of a material violation, the supervisory attorney must take reasonable steps to document the basis for his or her belief.

If the CLO, after investigation, reasonably believes that there is no violation, he or she must so advise the reporting attorney. If the CLO reasonably believes that there is a violation, he or she must ensure that the issuer adopts remedial measures and/or imposes sanctions appropriate to stop, prevent or rectify any violation. The CLO must also promptly report on the remedial measures or sanctions to the CEO, the audit committee or the board of directors, and the reporting attorney. The CLO must take reasonable steps to document his or her inquiry and to retain such documentation for a reasonable time.

As described in detail elsewhere in this release, the proposed rule also requires attorneys to take certain steps if the CLO or CEO does not provide an appropriate response to a report of evidence of a violation. These steps include reporting the evidence ''up the ladder'' to the audit committee, another committee consisting solely of outside directors if there is no audit committee, or to the board of directors if there is no such committee, and taking reasonable steps to document the report and response and to retain the documentation for a reasonable time. If the attorney believes that the issuer has not made an appropriate response to the report, the attorney must explain the reasons for his or her belief to the CEO, CLO or directors to whom the report was made, and take reasonable steps to document the response, or absence thereof, and retain the documentation for a reasonable time. In addition, outside counsel must, if the violation is ongoing or about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or investors (or may, if the violation is not ongoing and is likely to have resulted in substantial injury to the financial interest or property of the issuer or investors): (1) Withdraw from the representation and notify the issuer that the withdrawal is based on professional considerations, (2) notify the Commission in writing of the withdrawal indicating that the withdrawal was based on professional considerations, and (3) disaffirm in writing any tainted documents filed with the Commission. In these circumstances, in-house attorneys must or may, depending on whether the violation is ongoing or not, notify the Commission in writing that they intend to make a disaffirmation and make the disaffirmation. The issuer's CLO must also inform any attorney retained or employed to replace an attorney who withdrew under these circumstances that the withdrawal was based on professional considerations. An attorney who reasonably believes that he or she has been discharged for making a report covered by the proposed rule may notify the Commission of this belief and may also disaffirm in writing any tainted documents.

Alternatively, if an attorney other than a CLO reports the evidence to a qualified legal compliance committee (''QLCC''), he or she need take no further action under the proposed rule. The QLCC would have written procedures for the receipt, retention, and consideration of reports of material violations, and would be authorized and responsible to notify the CLO and CEO of the report, determine whether an investigation is necessary and, if so, to notify the audit committee or the board of directors. The QLCC would also initiate an investigation to be conducted by the CLO or outside attorneys, and retain any necessary additional expert personnel. At the conclusion of the investigation, the QLCC would direct the issuer to adopt appropriate remedial measures and/or impose sanctions, and would notify the CLO, CEO, and board of directors of the results of the inquiry and appropriate remedial measures to

[84] 44 U.S.C. 3501 *et seq.*

be adopted. Where an issuer failed to take the remedial measures directed by the QLCC, each member of the QLCC, along with the CEO and CLO, would have the authority and responsibility to notify the Commission of the material violation and disaffirm in writing any false or misleading documents. A CLO may also refer a report of evidence of a material violation to a QLCC, which then would have responsibility for taking the steps required by the rule. In the case of such a referral from the CLO, if the issuer fails to take any remedial measures directed by the QLCC, the CLO must notify the Commission of the violation and disaffirm in writing any tainted documents.

The information collection is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the proposed rule and required by Section 307 of the Sarbanes-Oxley Act of 2002. Specifically, the collection of information is intended to ensure that evidence of violations is communicated to appropriate officers and/or directors of issuers, so that they can adopt appropriate remedies and/or impose appropriate sanctions. In the rare cases in which issuers do not act appropriately, the information would be communicated to the Commission, so that the Commission could take appropriate action. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

We believe that the burden imposed by the proposed collection of information would be minimal. The respondents to this proposed collection of information would be attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. For the most part, and except as described below, we believe that these respondents are already making the types of reports and retaining the records contemplated by the proposed rule. In providing quality representation to issuers, attorneys already report evidence of violations to others within the issuer, including the CLO, the CEO, and, where necessary, the directors. We believe that attorneys also generally document their advice to clients and the responses to that advice that they receive. In addition, officers and directors already investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Officers and directors generally also document these actions. Except as discussed below, we therefore believe that the reporting and recordkeeping requirements imposed by the proposed rule are ''usual and customary'' activities that do not add to the burden that would be imposed by the collection of information.[85]

Certain aspects of the collection of information would, however, impose a new burden. As described above, if an issuer chooses to establish a QLCC, the QLCC would have to establish written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation. Additionally, outside attorneys might, in certain cases, notify the Commission and the issuer that their withdrawal from representation is based on professional considerations, and disaffirm any tainted filings. Similarly, in-house attorneys might, in certain cases, notify the Commission that they must make a disaffirmation and make a disaffirmation. CEOs, CLOs and QLCCs, as well as attorneys who believe that they were discharged for making a report under the proposed rule, might, depending on the circumstances, notify the Commission of a violation and make a disaffirmation. Finally, in cases of an ongoing violation, a CLO would notify any successor attorneys retained or employed to replace an attorney who withdrew that the withdrawal was based on professional considerations.

We estimate for purposes of the PRA that there are approximately 18,200 issuers that would be subject to the proposed rule.[86] Of these, we estimate that approximately one quarter, or 4,550 will choose to establish a QLCC. Establishing the written procedures required by the proposed rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend 6 hours every three-year period on the procedures. This would result in an average burden of 2 hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by this aspect of the collection of information would be 9,100 hours.

We cannot estimate with precision how many attorneys will be subject to the rule's requirements or how frequently they will be required to make the ''up the ladder'' reports required by the proposed rule. There are approximately 18,200 issuers that may employ or retain attorneys that would be subject to the rule. These issuers may employ in-house attorneys, outside counsel, or a combination of both. We believe, however, that it will be the rare occasion when, as a last resort, a disclosure will be made to the Commission. In the vast majority of cases, we expect that problems will be resolved at the corporate level, and the Commission will not be notified. We therefore estimate for the purposes of the PRA that approximately 10 attorneys, CLOs, CEOs, or QLCCs per year will make one disclosure to the Commission per year. Depending on the circumstances, the disclosure could consist of a notice of withdrawal (and a similar notice to the issuer and a CLO's notice to successor attorneys), a notice of material violations, a notice of discharge, a notice of disaffirmation, a disaffirmation, or some combination thereof. The burden hours for the disclosure will obviously vary depending on the circumstances. None of the components of the disclosure would, however, require a significant amount of time to compile. We therefore estimate, for purposes of the PRA that, on average, each disclosure would require 10 burden hours. Under these assumptions, this aspect of the collection of information would impose approximately 100 annual burden hours.

The total annual burden hours imposed by the collection of information would therefore be 9,200. Assuming half of the burden hours will be incurred by outside counsel at a rate of $300 per hour would result in a cost of $1,380,000.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those

[85] *See* 5 CFR 1320.3(b)(2).

[86] This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10–K (8,484), Form 10–KSB (3,820), Form 20–F (1,194) or Form 40–F (134) during the 2001 fiscal year, and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (100). In addition, we estimate that approximately 4,500 investment companies currently file periodic reports on Form N–SAR.

who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirement should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. 33–8150.wp. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. 33–8150.wp, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its review of the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the collection of information requirements is, as described above, in some cases mandatory and in some cases voluntary depending upon the circumstances. As described above, in certain cases, records must be retained for a reasonable time; in other cases, there is no mandatory retention period. Responses to the requirements to make disclosures to the Commission will not be kept confidential.

VII. Costs and Benefits

We are proposing Part 205 to implement Section 307 of the Sarbanes-Oxley Act. Part 205 will affect all attorneys who appear and practice before the Commission in the representation of an issuer and who learn of evidence that tends to show that a material violation of the federal securities laws, a material breach of fiduciary duty, or a similar material violation by the issuer or an officer, director, agent, or employee of the issuer has or may have occurred or may occur. The rule that we are proposing today implements a Congressional mandate. We recognize that any implementation of the Sarbanes-Oxley Act will likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of our proposal. We discuss these costs and benefits below.

Part 205 would implement an ''up the ladder'' reporting requirement upon attorneys representing an issuer before the Commission who become aware of potential misconduct of which a reasonably prudent investor in the issuer would want to be informed. It is expected that, in the vast majority of instances of such reports, the situation will be addressed and remedied before it causes significant harm to investors. Where the potential impropriety is ongoing and not taken care of internally following a report mandated by the rule, Part 205 mandates that the covered attorney, if retained by the issuer, effectuate a ''noisy withdrawal'' from representation of the issuer and disaffirm to the Commission any tainted documents, which will alert the Commission to investigate the issuer. In the same circumstance, if the attorney is employed by the issuer, the attorney must disaffirm to the Commission any tainted documents.

In addition to these requirements, the rule would authorize a covered attorney to reveal to the Commission confidences or secrets relating to the attorney's representation of an issuer before the Commission to the extent the attorney reasonably believes it necessary to: (i) Prevent the issuer from committing an illegal act likely to cause substantial financial harm to the issuer or investors; (ii) prevent the issuer from perpetrating a fraud upon the Commission; or (iii) rectify the consequences of the issuer's illegal act that the attorney's services had furthered.

A. Benefits

Part 205 is designed to improve the accuracy and reliability of corporate disclosures made pursuant to the securities laws and foster investor confidence in the securities markets. This may lower the cost of capital. In addition, Part 205 should, in some instances, prevent or mitigate illegal conduct and hasten the apprehension of wrongdoers whose misconduct injures investors and others. These benefits are difficult to quantify.

Interested persons are invited to comment upon this benefits analysis. Are there other foreseeable benefits? What is the likely economic impact of these benefits? Can the benefits be quantified in any meaningful way? If so, how and what conclusions should be drawn?

B. Costs

Part 205 will impose costs on issuers and law firms representing them. For issuers, the proposed rule will require the chief legal officer of an issuer to investigate and, where necessary, cause remedial actions and/or sanctions to be taken and/or imposed. It also will cause the chief executive officer, qualified legal compliance committee, and board of directors of the issuer to review evidence of possible impropriety. For the most part, we believe that most issuers already have procedures for reviewing evidence of reports of misconduct. Similarly, we expect that most issuers already incur costs with investigating and documenting such reports.

Those companies that choose to form a qualified legal compliance committee to implement this provision will incur a cost. These might include increased compensation for QLCC members, and administrative costs to establish the committee. Additionally, for purposes of the PRA, we assume that one-quarter of issuers will form such a committee and incur an annualized paperwork cost of 2 hours for a total annual burden of 9,100 hours. Assuming outside counsel accounts for half of these hours at a cost of $300 per hour, and inside counsel accounts for the other half at $110 per hour would result in a cost of $1,865,500.

For lawyers, the proposal could have an effect upon malpractice insurance premiums, which could, in turn, increase the cost of attorney services to issuers. It may also encourage issuers to handle more legal matters in-house to avoid the possibility of a noisy withdrawal. The proposal will also impose some costs to make and document required reports and responses. For purposes of the Paperwork Reduction Act, we assume that attorneys already document most important legal advice given to corporate clients. We also assume that the number of times an attorney, CEO, CLO or QLCC will report potential illegal conduct outside the issuer will be rare—for purposes of that analysis we estimate a total of ten times a year (although we cannot, of course predict how many will actually be submitted). Further, we estimate in that analysis that preparing the various notices and disaffirmations will on average take 10 hours to prepare. We assume for the purposes of the PRA that half of these hours would be incurred by in-house counsel, QLCCs, CEOs and CLOs, and half would be incurred by outside counsel. Assuming an outside attorney charges $300 an hour, and the cost of in-

house personnel is $110 an hour, these reporting requirements would impose a cost of $20,500.

There may also be some additional costs of the proposal imposed on the market that are exceedingly difficult to predict or quantify. To the extent the obligation to report some illegal conduct outside the issuer creates an incentive on issuers not to share confidences with a lawyer, the lawyer may not be able to avoid, remedy or report illegal conduct. While we recognize that such an effect would decrease the rule's effectiveness, we have no data to suggest that the rule would create such an incentive. We request data on this issue. In addition, there may also be some incentives to maximize use of inside counsel rather than retained attorneys, or small firms rather than large firms, or the reverse, for issuers that presently have no attorney employees to hire at least one attorney, and for issuers to reduce or eliminate reliance upon attorneys in some circumstances. Additionally, there may be economic consequences of ''noisy withdrawals'' that may occur under the rule.

Interested persons are invited to comment upon this costs analysis. Are there other foreseeable costs? What is the likely economic impact of these costs? Can the costs be quantified in any meaningful way? If so, how and what conclusions should be drawn? Interested persons are invited to address all aspects of costs and benefits attributable to proposed Part 205. The Commission requests data to quantify the expected costs and the value of the anticipated benefits.

VIII. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act (15 U.S.C. 78w(a)(2)) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) of the Securities Act, Section 3(f) of the Exchange Act, and Section 2(c) of the Investment Company Act require us when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

Part 205 is intended to assure that attorneys representing issuers before the Commission are governed by standards of conduct that increase disclosure of potential impropriety within an issuer so that prompt intervention and remediation can take place. Doing so should boost investor confidence in the financial markets. We anticipate that these proposals would enhance the proper functioning of the capital markets and promote efficiency by reducing the likelihood that illegal behavior would remain undetected and unremedied for long periods of time. Part 205 would apply to all issuers and attorneys appearing before the Commission and is therefore unlikely to affect competition.

Interested persons are invited to comment upon any aspect of this analysis. We request comment on whether Part 205, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603.

A. Reasons for the Proposed Action

We are proposing Part 205 to comply with Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*)(''the Act'').

B. Objectives

Section 307 of the Act requires the Commission to prescribe ''minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers.'' The standards must include a rule requiring an attorney to report ''evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof'' to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors.

C. Legal Basis

We are proposing Part 205 under the authority set forth in Section 19 of the Securities Act of 1933, Sections 3(b), 4C, 13, and 23(a) of the Securities Exchange Act of 1934, Sections 38 and 39 of the Investment Company Act of 1940, Section 211 of the Investment Advisers Act of 1940, and Sections 3(a), 307 and 404 of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to Proposed Part 205

Proposed Part 205 would affect issuers and law firms that are small entities. Exchange Act Rule 0–10(a) (17 CFR 240.0–10(a)) defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of October 23, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[87] We estimate that there are 211 small investment companies that would be subject to the proposed rule. The proposed revisions would apply to any small entity that is subject to Exchange Act reporting requirements.

Proposed Part 205 also would affect law firms that are small entities. The Small Business Administration has defined small business for purposes of ''offices of lawyers'' as those with under $6 million in annual revenue.[88] Because we do not directly regulate law firms appearing before the Commission, we do not have data to estimate the number of small law firms that practice before the Commission or, of those, how many have revenue of less than $6 million. We request data on that issue.

E. Reporting, Recordkeeping, and Other Compliance Requirements

Paragraph 205.3(b) of proposed Part 205 prescribes the duty of an attorney who appears or practices before the Commission in the representation of an issuer to report evidence of a material violation that has or may have occurred, or may occur. The attorney is initially directed to make this report to the issuer's chief legal officer (''CLO''), or to the issuer's CLO and chief executive officer (''CEO''). Absent exigent circumstances, the attorney is also obligated to take reasonable steps to make and retain a contemporaneous written record of his or her reports, as well as any response received from the CLO or CEO. Requiring the attorney to keep a contemporaneous written record will protect the attorney in the event his or her compliance with the proposed rule is put in issue at some future proceeding.

[87] 17 CFR 270.0–10.

[88] 13 CFR 121.201.

When presented with a report of a possible material violation, the rule obligates the issuer's CLO to conduct a reasonable inquiry to determine whether the reported material violation has occurred, is occurring or may occur. A CLO who reasonably concludes that there has been no material violation must advise the reporting attorney of this conclusion, and must also preserve all relevant documentary evidence that supports that conclusion. A CLO who concludes that a material violation has occurred, is occurring or is about to occur must take reasonable steps to ensure that the issuer adopts appropriate remedial measures and/or sanctions—including appropriate disclosures. Furthermore, the CLO is required to report ''up the ladder'' within the issuer and to the reporting attorney what remedial measures have been adopted. A reporting attorney who receives an appropriate response within a reasonable time has satisfied all obligations under the rule. In the event a reporting attorney does not receive an appropriate response within a reasonable time, he or she must report the evidence of a material violation to the issuer's audit committee, to another committee of independent directors if the issuer has no audit committee, or to the full board if the issuer has no such committee. Similarly, if the attorney reasonably believes that it would be futile to report evidence of a material violation to the CLO and CEO, the attorney may report directly to the issuer's audit committee, another committee of independent directors, or to the full board. A reporting attorney who has reported a matter all the way ''up the ladder'' within the issuer and who reasonably believes that the issuer has not responded appropriately must take reasonable steps to document and retain the response or lack thereof.

Alternatively, issuers may (but are not required to) establish a QLCC, consisting of at least one member of the issuer's audit committee, and two or more independent members of the issuer's board for the purpose of investigating reports of material violations made by attorneys. Such a QLCC would be authorized to require the issuer to adopt appropriate remedial measures to prevent ongoing, or alleviate past, material violations, and empowered to notify the Commission of the material violation and disaffirm any document submitted to the Commission which has been tainted by the material violation. The QLCC would be required to notify the board of the results of any inquiry. An attorney other than a CLO may satisfy entirely his reporting obligation under the rule by reporting evidence of a material violation to a QLCC. Further, a chief legal officer to whom a report of a material violation has been made may refer the matter to a QLCC.

Paragraph 205.3(d) discusses the obligation of an attorney who has not received an appropriate response from the issuer and, in certain instances, requires or permits a ''noisy withdrawal.'' The provision distinguishes between outside attorneys retained by the issuer and attorneys employed by the issuer. A provision which obligates a reporting attorney under certain circumstances to disaffirm a submission to the Commission which the attorney believes has been tainted by a material violation (and permits the attorney to disaffirm under other circumstances) is also important to the effective operation of the reporting obligation in those instances where an issuer does not respond appropriately. The provision imposes an affirmative obligation on attorneys to disaffirm a document or filing where they believe a violation is ongoing or prospective because of the greater potential of harm to investors inherent in such violations. Pursuant to this provision, outside attorneys who have reported a material violation which they believe has occurred, is ongoing or is about to occur that is likely to result in substantial injury to the financial interest or property of the issuer or investors, and who have not received an appropriate response, are *required* to withdraw from representation, notify the Commission and the issuer that their withdrawal is based on professional considerations, and disaffirm any submission to the Commission which is tainted by the violation (unless, as noted above, they have reported the information to a QLCC). Attorneys employed by an issuer who have reported a material violation which they believe is ongoing or about to occur that is likely to result in substantial injury to the financial interest or property of the issuer or investors and have not received an appropriate response are *required* to disaffirm any tainted submission, but are not required to resign. Attorneys are *permitted, but not required,* to take these steps in the event they believe that the violation has already occurred and has no ongoing effect and is likely to have resulted in substantial injury to the financial interest or property of the issuer or investors. Issuers must also, in certain cases, notify an attorney who is employed or retained to replace an attorney who withdrew, that the withdrawal was based on professional considerations. Finally, an attorney formerly employed or retained by an issuer who reasonably believes that he or she has been discharged because he or she fulfilled the reporting obligation imposed by the rule *may, but is not required to,* notify the Commission of his or her belief and disaffirm in writing any submission to the Commission which is tainted by the violation.

Paragraph 205.3(e) sets forth the specific circumstances under which an attorney is authorized to disclose confidential information related to his or her appearance and practice before the Commission in the representation of an issuer. Pursuant to this provision, an attorney may use the contemporaneous records he or she is required to create by the rule to defend against charges of attorney misconduct. Paragraph 205.3(e)(2) also allows an attorney to reveal confidential information to the extent necessary to prevent the commission of an illegal act which the attorney reasonably believes will result either in perpetration of fraud upon the Commission or in substantial injury to the financial or property interests of the issuer or investors. Similarly, the attorney may disclose confidential information to rectify an issuer's illegal actions when such actions have been advanced by the issuer's use of the attorney's services.

We expect that the various reporting and recordkeeping requirements required by proposed Part 205 would, at least to a limited extent, increase costs incurred by both small issuers and law firms. We believe that many of these reports are, however, already being made and retained by those affected by the proposed rule. We are unable to estimate the frequency with which reports would have to be prepared and retained by small entities. The time required for the actual preparation of a report would vary, but should not be extensive. Small issuers and law firms may bolster, and in some instances, institute, internal procedures to ensure compliance—although the rule does not dictate how these procedures should be implemented.

F. Duplicative, Overlapping, or Conflicting Federal Rules

Proposed Part 205 would not duplicate, overlap, or conflict with other federal rules. There are no other statutory federal requirements that small entities make similar reports or provide similar information.

G. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant

alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) an exemption from coverage of the requirements, or any part thereof, for small entities; and (d) the use of performance rather than design standards. As discussed above, the Sarbanes-Oxley Act directs the Commission to implement rules requiring ''up the ladder'' reporting. The Act does not contain any exemption or other limitation for small entities. Small business issuers may have some difficulty staffing a QLCC, as we presume that they may have fewer independent directors. We note that issuers are not required to have a QLCC under the proposal, but we nevertheless seek comment on whether the QLCC should be modified for small issuers or if another committee or procedure could accomplish the same regulatory purpose. We do not believe that the rule will impose any significant increased costs on small law firms.

The proposed rule uses some performance standards and some design standards. While the rule establishes a framework for reporting evidence of material violations ''up the ladder,'' it does not set specific standards for how to comply with the rule's requirements. For the most part, rather than requiring reports to contain specific, detailed disclosures, the proposed rule prescribes general requirements for reporting and recordkeeping. It does not dictate the time period that records need to be kept, but directs only that they be retained for a reasonable time. This should give small entities flexibility in complying with the proposed rule.

We believe that utilizing different reporting or other compliance requirements for small entities would seriously undermine the effective functioning of the proposed reporting regime. The proposed rule is designed to restore investor confidence in the reliability of the financial statements of the companies they invest in—if small entities were not subject to such requirements, investors might shun their securities. Further, we see no valid justification for imposing different standards of conduct upon small law firms than would apply to others who choose to appear and practice before the Commission. We also believe that the proposed reporting and recordkeeping requirements will be at least as well understood by small entities as would be any alternate formulation we might formulate to apply to them. Therefore, it does not seem necessary or appropriate to develop separate requirements for small entities. We solicit comment on whether small entities should be subject to different requirements.

H. Solicitation of Comments

Interested persons are invited to comment upon any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments concerning: (i) The number of law practices that constitute small entities; (ii) the number of small entities that may be affected by proposed Part 205; (iii) the existence or nature of the potential impact of the proposed rule on small entities; and (iv) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule is adopted, and will be placed in the same public file as comments on the proposed rule itself.

X. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), we must advise the OMB as to whether the proposed rule constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

—An annual effect on the economy of $ 100 million or more (either in the form of an increase or a decrease);

—A major increase in costs or prices for consumers or individual industries; or

—Significant adverse effects on competition, investment, or innovation. Where a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XI. Statutory Basis and Text of Proposed Part 205

We propose to add a new Part 205 to Title 17, Chapter II, of the Code of Federal Regulations under the authority in Sections 3, 307, and 404 of the Sarbanes-Oxley Act of 2002,[89] Section 19 of the Securities Act of 1933,[90] Sections 3(b), 4C, 13, and 23 of the Securities Exchange Act of 1934,[91] Sections 38 and 39 of the Investment Company Act of 1940,[92] and Section 211 of the Investment Advisers Act of 1940.[93]

List of Subjects in 17 CFR Part 205

Standards of conduct for attorneys.

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations by adding Part 205 to read as follows:

PART 205—STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

Sec.
205.1 Purpose and scope.
205.2 Definitions.
205.3 Issuer as client.
205.4 Responsibilities of supervisory attorneys.
205.5 Responsibilities of a subordinate attorney.
205.6 Sanctions.

Authority: 15 U.S.C. 77s, 78d–3, 78w, 80a–37, 80a–38, 80b–11, 7202, 7245, and 7262.

§ 205.1 Purpose and scope.

Consistent with Section 307 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7245, the Commission is adopting rules setting forth minimum standards of professional conduct for attorneys appearing and practicing before it in any way in the representation of an issuer. Where the standards of a state where an attorney is admitted or practices conflict with this part, this part shall govern.

§ 205.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Appearing and practicing* before the Commission includes, but is not limited to, an attorney's:

(1) Transacting any business with the Commission, including communication with Commissioners, the Commission, or its staff;

(2) Representing any party to, or the subject of, or a witness in a Commission administrative proceeding;

(3) Representing any person in connection with any Commission investigation, inquiry, information request, or subpoena;

[89] 15 U.S.C. 7202, 7245, 7262.

[90] 15 U.S.C. 77S.

[91] 15 U.S.C. 78c(b), 78d–3, 78m, 78w.

[92] 15 U.S.C. 80a–37, 80a–38.

[93] 15 U.S.C. 80b–11.

(4) Preparing, or participating in the process of preparing, any statement, opinion, or other writing which the attorney has reason to believe will be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(5) Advising any party that:

(i) A statement, opinion, or other writing need not or should not be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(ii) The party is not obligated to submit or file a registration statement, notification, application, report, communication or other document with the Commission or its staff.

(b) *Appropriate response* means a response to evidence of a material violation reported to appropriate officers or directors of an issuer that provides a basis for an attorney reasonably to believe:

(1) That no material violation, as defined in paragraph (i) of this section, is occurring, has occurred, or is about to occur; or

(2) That the issuer has, as necessary, adopted remedial measures, including appropriate disclosures, and/or imposed sanctions that can be expected to stop any material violation that is occurring, prevent any material violation that has yet to occur, and/or rectify any material violation that has already occurred.

(c) *Attorney* refers to any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.

(d) *Breach of fiduciary duty* refers to any breach of fiduciary duty recognized at common law, including, but not limited to, misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.

(e) *Evidence of a material violation* means information that would lead an attorney reasonably to believe that a material violation has occurred, is occurring, or is about to occur.

(f) *In the representation of an issuer* means acting in any way on behalf, at the behest, or for the benefit of an issuer, whether or not employed or retained by the issuer.

(g) *Issuer* means an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under Section 12 of that Act (15 U.S.C. 78*l*), or that is required to file reports under Section 15(d) of that Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

(h) *Material* refers to conduct or information about which a reasonable investor would want to be informed before making an investment decision.

(i) *Material violation* means a material violation of the securities laws, a material breach of fiduciary duty, or a similar material violation.

(j) *Qualified legal compliance committee* means a committee of an issuer that:

(1) Consists of at least one member of the issuer's audit committee and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, ''interested persons'' as defined in Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19));

(2) Has been duly established by the issuer's board of directors and authorized to investigate any report of evidence of a material violation by the issuer, its officers, directors, employees or agents;

(3) Has established written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under § 205.3(c);

(4) Has the authority and responsibility:

(i) To inform the issuer's chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in § 205.3(b)(5));

(ii) To decide whether an investigation is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur and, if so, to:

(A) Notify the audit committee or the full board of directors;

(B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and

(C) Retain such additional expert personnel as the committee deems necessary; and

(iii) At the conclusion of any such investigation under paragraph (j)(4)(ii) of this section, to:

(A) Direct the issuer to adopt appropriate remedial measures, including appropriate disclosures, and/or to impose appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred; and

(B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under paragraph (j)(4)(ii) of this section and the appropriate remedial measures to be adopted; and

(5) Each member of which individually, together with the issuer's chief legal officer and chief executive officer (or the equivalents thereof) individually, has the authority and responsibility, in the event the issuer fails in any material respect to take any of the remedial measures that the qualified legal compliance committee has directed the issuer to take, to notify the Commission that a material violation has occurred, is occurring or is about to occur and to disaffirm in writing any document submitted to or filed with the Commission by the issuer that the individual member of the qualified legal compliance committee or the chief legal officer or the chief executive officer reasonably believes is false or materially misleading.

(k) *Reasonable* or *reasonably* denotes the conduct of a reasonably prudent and competent attorney.

(l) *Reasonably believes* means that an attorney, acting reasonably, would believe the matter in question.

(m) *Report* means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

§ 205.3 Issuer as client.

(a) *Representing an issuer.* An attorney appearing and practicing before the Commission in the representation of an issuer represents the issuer as an organization and shall act in the best interest of the issuer and its shareholders. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.

(b) *Duty to report evidence of a material violation.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report any evidence of a material violation to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief legal officer and its chief executive officer (or to the equivalents thereof) forthwith (unless the issuer has

a qualified legal compliance committee and the attorney chooses instead to report the evidence of a material violation to that committee under paragraph (c) of this section). An attorney does not reveal client confidences or secrets or privileged or otherwise protected information by communicating such information related to the attorney's representation of an issuer to the issuer's officers or directors.

(2) The attorney reporting evidence of a material violation shall take steps reasonable under the circumstances to document the report and the response thereto and shall retain such documentation for a reasonable time.

(3) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is necessary to determine whether the material violation described in the report has occurred, is occurring, or is about to occur. If the chief legal officer reasonably believes no material violation has occurred, is occurring, or is about to occur, he or she shall so advise the reporting attorney. If the chief legal officer reasonably believes that a material violation has occurred, is occurring, or is about to occur, he or she shall take any necessary steps to ensure that the issuer adopts appropriate remedial measures, including appropriate disclosures, and/or imposes appropriate sanctions to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred. The chief legal officer shall promptly report the remedial measures adopted and/or sanctions imposed to the chief executive officer, to the audit committee of the issuer's board of directors, or to the issuer's board of directors, and to the reporting attorney. The chief legal officer shall take reasonable steps to document his or her inquiry and to retain such documentation for a reasonable time. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section. If the issuer fails in any material respect to take any remedial measure that the qualified legal compliance committee directs the issuer to take in order to stop any material violation that is occurring, prevent any material violation that is about to occur, and/or to rectify any material violation that has already occurred, the chief legal officer shall notify the Commission that a material violation has occurred, is occurring or is about to occur and shall disaffirm in writing any documents submitted to or filed with the Commission by the issuer that the chief legal officer reasonably believes are false or materially misleading.

(4) If an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has not provided an appropriate response, or has not responded within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, ''interested persons'' as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, ''interested persons'' as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19))).

(5) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report the evidence of a material violation as provided under paragraph (b)(4) of this section.

(6) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(4), or (b)(5) of this section shall be deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve the officers or directors of the issuer to whom the evidence of a material violation has been reported under paragraph (b)(1), (b)(4), or (b)(5) of this section of the duty to respond to the reporting attorney.

(7) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section and who has taken reasonable steps to document his or her report and the response thereto under paragraph (b)(2) of this section need do nothing more under this section regarding the evidence of a material violation.

(8) If the attorney reasonably believes that the issuer has not made an appropriate response to the report or reports made pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section, or the attorney has not received a response in a reasonable time, the attorney shall:

(i) Explain his or her reasons for so believing to the chief legal officer, chief executive officer, or directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(4), or (b)(5) of this section; and

(ii) Take reasonable steps to document the response, or absence thereof, and to retain such documentation for a reasonable time.

(c) *Alternative reporting procedures for attorneys retained or employed by an issuer with a qualified legal compliance committee.* (1) If, in appearing and practicing before the Commission in the representation of an issuer, an attorney becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence of a material violation to a qualified legal compliance committee, if the issuer has duly formed such a committee. Except as provided in paragraph (b)(3) of this section, an attorney who reports evidence of a material violation to a qualified legal compliance committee has satisfied his or her obligation to report evidence of a material violation within the issuer, is not required to assess the issuer's response to the reported evidence of a material violation, and is not required to take any action under paragraph (d) of this section regarding the evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(3) of this section. Thereafter, pursuant to the requirements under § 205.2(j), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c) of this section.

(d) *Notice to the Commission where there is no appropriate response within a reasonable time.* (1) Where an attorney who has reported evidence of a material violation under paragraph 3(b) of this

section rather than paragraph 3(c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report, and the attorney reasonably believes that a material violation is ongoing or is about to occur and is likely to result in substantial injury to the financial interest or property of the issuer or of investors:

(i) An attorney retained by the issuer shall:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Within one business day of withdrawing, give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Promptly disaffirm to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer shall:

(A) Within one business day, notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Promptly disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

(2) Where an attorney who has reported evidence of a material violation under paragraph (b) rather than paragraph (c) of this section does not receive an appropriate response, or has not received a response in a reasonable time, to his or her report under paragraph (b) of this section, and the attorney reasonably believes that a material violation has occurred and is likely to have resulted in substantial injury to the financial interest or property of the issuer or of investors but is not ongoing:

(i) An attorney retained by the issuer may:

(A) Withdraw forthwith from representing the issuer, indicating that the withdrawal is based on professional considerations;

(B) Give written notice to the Commission of the attorney's withdrawal, indicating that the withdrawal was based on professional considerations; and

(C) Disaffirm to the Commission, in writing, any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading;

(ii) An attorney employed by the issuer may:

(A) Notify the Commission in writing that he or she intends to disaffirm some opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading; and

(B) Disaffirm to the Commission, in writing, any such opinion, document, affirmation, representation, characterization, or the like; and

(iii) The issuer's chief legal officer (or the equivalent) shall inform any attorney retained or employed to replace the attorney who has so withdrawn that the previous attorney's withdrawal was based on professional considerations.

(3) The notification to the Commission prescribed by this paragraph (d) does not breach the attorney-client privilege.

(4) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this section and reasonably believes that he or she has been discharged for so doing may notify the Commission that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section and may disaffirm in writing to the Commission any opinion, document, affirmation, representation, characterization, or the like in a document filed with or submitted to the Commission, or incorporated into such a document, that the attorney has prepared or assisted in preparing and that the attorney reasonably believes is or may be materially false or misleading.

(e) *Issuer confidences.* (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof), may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to result in substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer from committing an illegal act that the attorney reasonably believes is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of the issuer's illegal act in the furtherance of which the attorney's services had been used.

(3) Where an issuer, through its attorney, shares with the Commission information related to a material violation, pursuant to a confidentiality agreement, such sharing of information shall not constitute a waiver of any otherwise applicable privilege or protection as to other persons.

§ 205.4 Responsibilities of supervisory attorneys.

(a) An attorney supervising, directing, or having supervisory authority over another attorney is a supervisory attorney. An issuer's chief legal officer (or the equivalent) is a supervisory attorney under this section.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in § 205.5(a), that he or she supervises, directs, or has supervisory authority over is appearing and practicing before the Commission conforms to this part and complies with the statutes and other rules administered by the Commission. To the extent a subordinate attorney appears and practices before the Commission on behalf of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in § 205.3 when a subordinate attorney has reported to

the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who reasonably believes that information reported to him or her by a subordinate attorney under § 205.5(c) is not evidence of a material violation shall take reasonable steps to document the basis for the supervisory attorney's belief.

§ 205.5 Responsibilities of a subordinate attorney.

(a) An attorney under the supervision, direction, or supervisory authority of another attorney is a subordinate attorney.

(b) A subordinate attorney is bound by this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with § 205.3 if the subordinate attorney reports to his or her supervising attorney under § 205.3(b) evidence of a material violation that the subordinate attorney becomes aware of in the course of appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by § 205.3(b), (c), and (d) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under § 205.3(b) has failed to comply with § 205.3.

§ 205.6 Sanctions.

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and any such attorney shall be subject to the same penalties and remedies, and to the same extent, as for a violation of that Act.

(b) With respect to attorneys appearing and practicing before the Commission on behalf of an issuer, ''improper professional conduct'' under section 4C(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d—3(a)) includes:

(1) Intentional or knowing conduct, including reckless conduct, that results in a violation of any provision of this part; and

(2) Negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of any provision of this part; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of a provision of this part.

(c) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices.

Dated: November 21, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30035 Filed 11–29–02; 8:45 am]

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Federal Register

Monday,
December 2, 2002

Part IV

Department of Education

34 CFR Part 200

Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA91

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the programs administered under Title I, parts A, C, and D of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (hereinafter referred to as the Title I programs.) These regulations are needed to implement recent changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: These regulations are effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: For subparts A, D, and E of part 200, Jacquelyn C. Jackson, Ed. D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For subparts B and C of part 200, Francisco Garcia, Director, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E217, FB–6, Washington, DC 20202–6135. Telephone: (202) 260–0089.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: These regulations implement changes to Title I of the ESEA, as amended by the NCLB Act (Public Law 107–110), enacted January 8, 2002. On August 6, 2002, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (67 FR 50986).

In the preamble to the NPRM, the Secretary discussed on pages 50986 through 51001 the major revisions proposed in that document to implement changes in the provisions of Title I made by the NCLB Act. These included the following:

- Clarifying in § 200.11 that a condition of receiving Title I funds is that, if selected, the local educational agency (LEA) must participate in the National Assessment for Educational Progress (NAEP).
- Specifying in § 200.12 that the implementation of the statutory provisions requiring a single, statewide accountability system take effect beginning with the 2002–2003 school year.
- Requiring in § 200.12 that States include, in their accountability systems, guidelines for identifying the students with disabilities who should take alternate assessments and that States report on the number of students who take an alternate assessment.
- Clarifying in §§ 200.13 through 200.20 statutory provisions in section 1111(b)(2) of the NCLB Act requiring each State to demonstrate what constitutes adequate yearly progress (AYP), particularly the interrelationship among the timeline, starting points, intermediate goals, and annual measurable objectives that are part of AYP.
- Clarifying in § 200.13(c)(1) and (2) that States can define achievement standards for students with the most significant cognitive disabilities who take an alternate assessment, but that the percentage of students with disabilities included in accountability measures using alternate standards cannot be more than .5 percent of all students assessed in a State or LEA.
- Specifying in § 200.16 that a State must set separate starting points for reading/language arts and mathematics, and permitting the establishment of separate starting points by grade span.
- Clarifying in § 200.20 the statutory requirement that 95 percent of the students enrolled in each subgroup must take the State's academic assessment for the school to make AYP.
- Requiring in § 200.21 that the Secretary review both a State's AYP and its annual measurable achievement objectives relating to the English proficiency of limited English proficient students.
- Reorganizing in §§ 200.25 through 200.28 schoolwide program regulations to emphasize the fundamental purpose of a schoolwide program and to create smaller and simpler sections.
- Clarifying in §§ 200.30 and 200.31 the statutory requirement that an LEA conduct an annual review of the performance of all schools receiving funds under subpart A of the ESEA and provide schools with the data on which it has based a proposed identification for improvement, corrective action, or restructuring.
- Clarifying in §§ 200.32 through 200.35 the statutory provisions related to the LEA's identification of schools for improvement, corrective action, and restructuring as well as provisions governing the delay or termination of requirements related to identification.
- Clarifying in §§ 200.36 through 200.38 the manner in which State educational agencies (SEAs), LEAs, and schools must meet notification requirements under section 1116 of the ESEA.
- Restating in §§ 200.39 through 200.41 the statutory requirements related to both LEA and school-level responsibilities under the school improvement process.
- Clarifying in §§ 200.42 and 200.43 the statutory requirements related to corrective action and restructuring.
- Restating and reorganizing in § 200.44 the statutory provisions related to the public school choice option and clarifying the statutory deadline to provide this option.
- Specifying in §§ 200.45 through 200.47 requirements for the provision of supplemental services.
- Clarifying in § 200.48 statutory provisions regarding the reservation of funds to pay for choice-related transportation and supplemental educational services.
- Clarifying in §§ 200.49 through 200.51 statutory provisions related to SEA responsibilities in the school improvement process, including SEA review of LEA progress and notice requirements.
- Including in §§ 200.52 and 200.53 the statutory requirements for LEA improvement and corrective action.
- Incorporating in § 200.54 the statutory provision with respect to State or local laws or collective bargaining agreements in effect on January 8, 2002—the day the NCLB Act was signed into law.
- Incorporating in §§ 200.55 through 200.57 the statutory provisions regarding qualifications of teachers, and clarifying that the requirements apply to teachers of the core academic subjects and do not apply to teachers who do not teach core subjects, employees of third-party contractors, or supplemental services providers.
- Incorporating in §§ 200.58 and 200.59 statutory provisions governing paraprofessionals, clarifying that the term applies to individuals performing instructional support duties and to paraprofessionals in both targeted assistance and schoolwide program

schools supported by funds under subpart A of this part.

• Clarifying in § 200.60 that professional development funds may be used for paraprofessionals as well as teachers.

• Incorporating in §§ 200.61 through 200.66 statutory changes from the previous law governing the participation of eligible children in private schools and clarifying provisions in this area about which questions have arisen in the past.

• Specifying in §§ 200.70 through 200.75 procedures that SEAs must follow in adjusting allocations determined by the Secretary to account for unique situations within their states.

• Clarifying in §§ 200.77 and 200.78 within-district allocation procedures as specified in section 1113 of the ESEA.

• Restating in § 200.79 the criteria a State or local program must meet in order to be excluded from ''supplement not supplant'' and ''comparability'' determinations, and incorporating a change in the poverty threshold for schoolwide programs.

• Clarifying in §§ 200.81 through 200.88 program specific regulations for subpart C—Migrant Education Program (MEP).

• Specifying that the regulations for subpart D—Prevention Programs for Children and Youth Who Are Neglected, Delinquent, or At-risk of Dropping Out have not changed.

• Clarifying in §§ 200.100 through 200.103 new procedures an SEA must follow when reserving funds for school improvement, State administration, and the State academic achievement awards program, addressing the use of funds reserved for State administration, and providing certain definitions that apply to all of the programs governed by the regulations.

The final regulations reflect these provisions, modified as noted in the analysis of comments and changes in the appendix.

Significant Changes From the NPRM

• *AYP Requirements:* Numerous comments were received from states requesting information on potential flexibility in determining AYP. One of the cornerstones of the NCLB is its strong emphasis on accountability for results. Only if we hold schools and LEAs accountability for the improved achievement of *all* students will we meet the goal of leaving no child behind. As a result, the NCLB Act included very specific, rigorous requirements that States must implement to determine the AYP of each public school, LEA, and the State itself. In preparing the final regulations, the Secretary has faithfully implemented the statutory provisions governing AYP, addressing additional flexibility wherever possible. The Secretary realizes that the accountability systems currently in place in many States may not fully meet the statutory and regulatory requirements. To meet the requirements in NCLB and these final regulations, a State may continue to use its current State accountability system, consistent with Secretary's July 24, 2002 *Dear Colleague* letter, if that system integrates AYP, as defined in the statute and regulations, into its system. A State must submit evidence to the Secretary, for peer review, that thoroughly describes the State's accountability system and demonstrates how it has integrated the AYP provisions required by the statute and regulations.

• *AYP for students with the most significant cognitive disabilities:* Section 200.13 of the NPRM would have allowed the use of alternate achievement standards for students with the most significant cognitive disabilities for determining the AYP of states and LEAs, provided that use did not exceed 0.5 percent of all students. Numerous comments were received on this proposal, with many of them indicating that commenters misunderstood this proposal as limiting the number of students with disabilities who could take an alternate assessment, rather than providing flexibility by allowing the use of alternate achievement standards to determine proficiency for calculating AYP for a limited group of students with disabilities. Because the Secretary believes that the policy may need further clarification, the Secretary will be seeking public comment in an NPRM to be published shortly on a proposed policy regarding the appropriate use of alternate achievement standards in determining AYP for students with the most significant cognitive disabilities.

However, because it is critical to ensure that students with disabilities are not excluded from state accountability systems, the final regulations provide that the same grade level academic content and achievement standards that apply to all public schools and public school students in the State will be applied to alternate assessments. The Secretary anticipates that the separate NPRM will propose an exception to this policy for a small group of students with disabilities.

• *Graduation Rates and Other Indicators:* Section 200.19 of the NPRM required States to include in their definition of AYP graduation rates and one other academic indicator for elementary and middle schools. The final regulation clarifies that States are required to use the other indicators to determine whether or not a school or LEA has made AYP.

• *Restructuring:* Section 200.34 of the NPRM did not address school status after implementation of restructuring. The final regulations modify the NPRM by clarifying that a school in restructuring must continue to provide supplemental educational services and choice, and to implement its restructuring plan, until it has made AYP for two consecutive years.

• *School choice and capacity:* Numerous commenters requested clarification of the NPRM on the issue of a school district's capacity to provide choice for all students. Section 200.44(d) of the final regulation clarifies that an LEA may not use lack of capacity to deny an eligible student the opportunity to transfer to another school not identified for improvement.

• *LEA responsibility for supplemental educational services.* Sections 200.46(a)(4) and 200.47(a)(5) of the NPRM did not address the responsibility of LEAs and SEAs to ensure that limited English proficient students receive appropriate educational services and language assistance in the provision of supplemental services. The final regulation clarifies that both the LEA and SEA are required to ensure that students with limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

• *Providers of supplemental educational services:* Section 200.47(b)(3) of the NPRM stated: ''A private provider may not, on the basis of disability, exclude a qualified student with disabilities or a student covered under Section 504 if the student can, with minor adjustments, be provided supplemental educational services designed to meet the individual educational needs of the student unless otherwise provided by law.'' NPRM provisions §§ 200.46(a)(4) and 200.47(a)(5) provided that LEAs and SEAs must ensure that eligible students with disabilities and students covered by Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services. The final regulation is amended to eliminate the ''minor adjustments'' standard for private providers of supplemental services.

• *Scientifically Based Research and Supplemental Services Providers:* Section 200.47(b)(4)(ii) of the NPRM prohibited states from requiring

providers to demonstrate that their instructional strategies were based on scientifically based research as a condition of approval. The final regulation removes this restriction.

• *Alternate Certification:* The NPRM specified that one of the requirements of being a ''highly qualified teacher'' is having obtained full State certification as a teacher—which may include certification obtained through alternative routes to certification. The final regulation adds language that requires teachers who are enrolled in alternative route programs to receive high-quality professional development before and while teaching, to participate in a program of intensive supervision or a teacher mentoring program, to assume the functions of a teacher while in the alternative route program only for a specified period of time not to exceed three years, and to demonstrate satisfactory progress toward full certification as prescribed by the State. The regulations have been further amended by requiring the State to ensure, through its certification and licensure process, that these provisions are met.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, approximately 140 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We group major issues according to subject. We discuss other substantive issues under the sections of these regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Waiver of Rulemaking

In response to comments, the Secretary has added § 200.61 in these final regulations regarding parents' right to know the qualifications of their child's teachers. This section merely incorporates statutory requirements in section 1111(h)(6) of Title I. The Secretary has included it, however, to emphasize the important responsibility of LEAs to notify parents of students in Title I schools that they have a right to request information regarding the professional qualifications of their child's teachers. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory provisions and do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements, and those we have determined to be necessary for administering this program effectively and efficiently. Based on our assessment of the regulatory burden on States, LEAs, and schools, we estimate that the total cost of administering these regulations is $52 million. In deriving this cost estimate, we calculated the burden hours at the SEA level to be 55,952 hours. Using a cost rate of $25 per hour at the SEA level, we estimated the administrative burden cost to States to be $1.4 million. At the LEA and school levels, we calculated the burden hours to be 2,530,476 hours. Based on a cost rate of $20 per hour, the estimated administrative burden cost at the local level is $50.6 million. The section of this preamble on the Paperwork Reduction Act of 1995 discusses the burden that the statutory requirements of the NCLB Act impose on States, LEAs, and schools in more detail. The fiscal year (FY) 2002 appropriation for Title I, part A provided a $1.6 billion (18 percent) increase in funds. This increase in funding will enable States, LEAs, and schools to meet the administrative costs associated with the requirements of the NCLB Act at the State, LEA, and school levels.

In assessing the potential costs of implementing these regulations compared to the $10.6 billion in Title I, Part A, Part C, and Part D, subpart 1 funds received by the States and LEAs, we have determined that the benefits of the regulations justify the costs. The FY 2002 appropriation of $10.6 billion for these programs, which represents an 18 percent increase over the prior year appropriation, will provide enough resources for States, LEAs, and schools to carry out the requirements of the statute. The NCLB Act represents a sweeping overhaul of Federal efforts to support elementary and secondary education in the United States and is a landmark in education reform designed to improve student achievement and change the culture of our nation's schools. The new law is based on four basic principles—stronger accountability for results; greater flexibility for States, school districts, and schools in the use of Federal funds; more choices for parents of children from disadvantaged backgrounds; and an emphasis on teaching methods that have been demonstrated to work.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Most of the final regulations would add clarity where the statute is ambiguous or unclear or would reorganize statutory provisions to facilitate a better understanding of their requirements. These regulations would not add significantly to the costs of implementing the Title I programs authorized by the Elementary and Secondary Education Act (ESEA) or alter the benefits that the Secretary believes will be obtained through successful implementation. The vast majority of the implementation costs and benefits will stem from the underlying legislation.

The programs authorized by Title I of the ESEA, as reauthorized by the No Child Left Behind Act of 2001, have as their goal the education of all students, including students who are economically disadvantaged, limited English proficient, disabled, migratory, residing in institutions for neglected or delinquent youth and adults, or members of other groups typically considered ''at risk,'' so that they can achieve to challenging content and academic achievement standards. Thus, the benefits that will be obtained through the reauthorized Title I and its implementing regulations are those primarily of a more educated society. National data sets and studies by prominent researchers have demonstrated repeatedly that better education has major benefits, both economic and non-economic, not only for the individuals who receive it but for society as a whole. Nations that invest in quality education enjoy higher levels of growth and productivity, and a high-quality education system is an indispensable element of a strong economy and successful civil society.

Data from the 1999 Current Population Survey, conducted by the Census Bureau, indicate that adults with a high school diploma (but no further education) had a median income of $23,061, compared to $17,015 for those with no diploma and $15,098 for those with less than 9 years of education. High school graduates are more likely to continue their education and receive the additional skills and knowledge necessary to compete for jobs in a high-technology, knowledge-driven economy.

Scholars have also found strong, positive correlations between higher levels of schooling and higher lifetime earnings, higher savings rates, and reduced costs of job search.

Researchers have, in addition, found that more and better education correlates with other outcomes that, while not directly related to employment and earnings, have a major, positive benefit on society. More educated individuals lead healthier lives and have lower mortality rates. They are more likely to donate time and money to charity, and to vote in elections. Researchers have demonstrated the intergenerational impact of education, as the educational level of parents is a positive predictor of children's health, cognitive development, education, occupational status, and future earnings. In addition, education is negatively correlated with criminal activity and incarceration, and more educated mothers are less likely to have daughters who give birth out of wedlock as teens.

The reauthorized Title I programs, and the final regulations for those programs, will also lead to improvements in the qualifications of teachers, both in programs supported by Title I and in schools generally. The Department believes that the new teacher qualifications provisions will also convey major benefits on students and on society generally. Research has found that the academic success of children is more dependent on teacher quality than on any other variable, with the exception of family background; it is, in other words, the most important school-related determinant of achievement.

The major costs to States and to LEAs imposed by the statute and the regulations are the costs of administering the Title I programs: At the State level, distributing funds to LEAs, monitoring LEA activities, providing technical assistance, and carrying out other activities specified in the statute, and, at the local level, administering programs in schools and classrooms, providing professional development to teachers and other staff, and ensuring program accountability, among other things. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources. For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

Regulatory Flexibility Act

This Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with the Regulatory Flexibility Act. It involves final regulations under Title I of the ESEA, as amended by the NCLB Act. Its provisions require LEAs, without regard to size, to take certain actions to improve student academic achievement.

1. Need for, Objectives of, and Legal Basis for Final Regulations

The purpose of the final regulations is to implement recent changes to Title I of the ESEA made by the NCLB Act. We are issuing final regulation under the authority in section 1901(a) of Title I.

2. Summary of Significant Issues Raised in Response to the Initial Regulatory Flexibility Analysis (IRFA)

We have received no comments concerning the cost implications of these regulations on small entities as result of our request for comments to the IRFA published in the NPRM on August 6, 2002. However, there was one comment on the proposed regulation regarding the impact of particular provisions on small LEAs.

Comment: One commenter recommended that the final regulations provide flexibility in defining AYP for small school districts, and single-school LEAs in particular, that may find it difficult to implement the subgroup-based accountability requirements of the Act.

Discussion: The intent of the law is to ensure that all schools and districts are held accountable for student achievement. In those instances where schools and districts are too small to include any subgroups, the school and district will need to make a decision about AYP at least on the basis of all its students who were within the school or district for a full academic year. The Department of Education will issue nonregulatory guidance to advise States about particular methodologies for handling this issue. The regulations clarify at § 200.7(d) that subgroups too small to be reported or identified at one level must be included at the next higher level, assuming the subgroup reaches the appropriate size.

3. A Description of the Small Entities to Which These Regulations Will Apply

The small entities that would be affected by these final regulations are small LEAs receiving Federal funds under Title I programs. Based on the Small Business Administration's (SBA) standards, which defines ''small entities'' as those jurisdictions serving a population of less than 50,000, 13,231 LEAs out of a total of 13,335 LEAs that receive Title I, part A funds would be considered small. As noted earlier, the FY 2002 appropriation provides a $1.6 billion increase in the Title I, part A amount available for school year 2002–03 to States and to all LEAs, both large and small.

4. Reporting, Recordkeeping and Other Compliance Requirements

Under these regulations, an LEA must: (1) Publicize and disseminate the results of its annual progress review, (2) notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that led to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. An LEA also must maintain in its records, and provide to the SEA, a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred. The potential costs and benefits of associated with these regulations are discussed in the section on Executive Order 12866.

5. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. Although the NCLB Act makes no special provisions for ''small'' LEAs that serve fewer than 50,000 students, which account for 99 percent of all school districts receiving Title I part A funds, the Department has, to the extent allowable under the statute accommodated small LEAs in these regulations. For example, § 200.74 of the regulations outlines procedures a State must use in using alternative poverty data, which it believes better reflect where poor children are located, to determine final Title I allocations for LEAs with a total population of less than 20,000. This provision potentially applies to roughly 80 percent of all LEAs nationally that meet this criteria. LEAs with fewer than 1,000 students enrolled are exempt from the within-district allocation requirements outlined

in § 200.78. More than 4,060 LEAs receiving Title I Part A funds are affected by this policy. Moreover, activities required under these regulations would be financed through the appropriations for Title I programs, which have increased by $1.6 billion for FY 2002, and the responsibilities encompassed in the law and regulations would not impose a financial burden that small entities would have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Title I, part A of the Elementary and Secondary Education, as amended by the No Child Left Behind Act, contains several provisions that require SEAs, LEAs, or schools to collect or disseminate information. They are: Sections 200.26, 200.27, 200.28, 200.30, 200.31, 200.34, 200.36, 200.37, 200.38, 200.39, 200.41, 200.42, 200.43, 200.45, 200.46, 200.47, 200.49, 200.50, 200.51, 200.52, 200.57, 200.61, and 200.62. Section 200.61 was added to the final regulation to incorporate statutory language requiring LEAs to notify parents that they may request information about the professional qualifications of their child's classroom teacher. All these sections relate to OMB control number 1810–0581. Sections 200.12, 200.13, and 200.33 are covered under OMB control number 1810–0576. Section 200.53 is covered under OMB control number 1810–0516. Sections 200.70 through 200.75 and 200.100 are covered under OMB control numbers 1810–0620 and 1810–0622. Section 200.83, 200.84, and 200.88 are covered under OMB control number 1810–0659. Section 200.91 is covered under OMB control number 1810–0060.

SEAs must: (1) Provide annual notice to potential supplemental service providers of the opportunity to provide such services, (2) maintain an updated list of approved providers from which parents may select, and (3) publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by each approved provider and for withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental services. As part of their responsibility to annually review the progress of each LEA to determine whether schools are making AYP, SEAs must: (1) Provide, before the beginning of the next school year, the results of academic assessments administered as part of the State assessment system in a given school year to LEAs, (2) publicize and disseminate the results of the State review, (3) notify parents when LEAs are identified for improvement or corrective action, including providing information on the corrective action, and (4) notify the Secretary of Education of major factors that have significantly affected student academic achievement in schools identified for improvement. Additionally, under Title I, part D, States must submit a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected children and youth and adult correctional institutions.

As part of their responsibility to annually review the progress of schools to determine whether they are making AYP, each LEA must (1) publicize and disseminate the results of its annual progress review, (2) notify parents and teachers of any school identified for improvement or subject to corrective action or restructuring, (3) publicize and disseminate information regarding any action taken by the school and LEA to address the problems that lead to the identification, and (4) for schools subject to restructuring, prepare a plan to carry out alternative governance arrangements. LEAs also must maintain in their records, and provide to the SEA, written affirmation signed by officials of each private school with participating children, or appropriate private school representatives, that the required consultation has occurred.

At the school level, an eligible school choosing to operate a schoolwide program must develop a comprehensive schoolwide plan and maintain records demonstrating that it addresses the intent and purpose of each Federal program included.

The total estimated burden hours for SEA activities covered by the paperwork requirements are 55,952 across 52 SEAs. The total estimated burden hours for LEA activities covered by the paperwork requirements are 1,119,500 hours across 13,335 LEAs. The total estimated burden hours for school-level activities is 1,410,976 hours. Almost all the burden hours at the LEA and school level result from statutory requirements that require: (1) LEAs to prepare restructuring plans for schools that do not make AYP after one full year in corrective action, and (2) schools seeking to operate schoolwide programs to develop schoolwide program plans. The actual impact on an individual LEA or school will vary depending on whether the LEA or school is subject to these specific requirements. The estimate of the burden hours at the LEA level includes an estimate of additional hours that result from adding a new § 200.61 to the final regulations, which requires an LEA to notify parents that they can request information about the professional qualifications of their child's classroom teacher.

Section 200.83 outlines an SEA's responsibility to implement its State Title I, part C (Migrant Education) program through a comprehensive needs assessment and a comprehensive State plan for service delivery. Section 200.84 outlines an SEA's responsibility for evaluating the effectiveness of its Title I, part C (Migrant Education) program. The yearly estimated public reporting burden for the collection of information to implement these two regulatory requirements is 19,925 hours. The Department requested that the Office of Management and Budget (OMB)review the information collections, 1810–0581 and 1810–0659, on an emergency basis. Although these information collections have been approved on an emergency basis, we continue to invite your comments through January 31, 2003. We request those wishing to comment to send their comments to the individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local and tribal government and the private sector. These regulations contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. As noted in the cost/benefit analysis, the fiscal year 2002 appropriation for Title I, part A provided a $1.6 billion (18 percent) increase in funds for States to use in implementing the changes mandated by the NCLB Act. Therefore, these regulations are not subject to the requirements of sections 202 and 205 of UMRA.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the

development of regulatory policies that have federalism implications. ''Federalism implications'' means 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. Although we did not believe our NPRM would have federalism implications, we encouraged State and local elected officials to review the NPRM for federalism implications and to provide comments. We did not receive any comments on federalism implications. We also consulted extensively with Chief State School Officers, other State representatives, Superintendents, and leaders of various education organizations. In May of 2002, we hosted a series of regional meetings to share important information about the proposed regulations during the public comment period. We also conducted numerous teleconferences with State Chiefs and their staff to learn more about the implications of these regulations.

These regulations implement various statutory changes to Title I of the ESEA made by the NCLB Act. We do not believe that these regulations have federalism implications as defined in Executive Order 13132 or that they preempt State law. Accordingly, the Secretary has determined that these regulations do not contain policies that have federalism implications.

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(Catalog of Federal Domestic Assistance Numbers: 84.010 Improving Programs Operated by Local Educational Agencies, 84.011 Education of Migrant Children, 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out, 84.214A Even Start—Migrant Education)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: November 25, 2002.

Rod Paige,

Secretary of Education.

The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1–2. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

Subpart A—Improving Basic Programs Operated by Local Educational Agencies

3. In § 200.6, revise paragraph (a)(2) to read as follows:

§ 200.6 Inclusion of all students.

(a) * * *

(2) *Alternate assessments.* (i) The State's academic assessment system must provide for one or more alternate assessments for a child with a disability as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) whom the child's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

* * * * *

4. In § 200.7, add new paragraphs (c) and (d) to read as follows:

§ 200.7 Disaggregation of data.

* * * * *

(c) *Inclusion of subgroups in assessments.* If a subgroup under § 200.2(b)(10) is not of sufficient size to produce statistically reliable results, the State must still include students in that subgroup in its State assessments under § 200.2.

(d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically reliable at the school level, the State must include those students in disaggregations at each level for which the number of students is statistically reliable—*e.g.*, the LEA or State level.

5. In subpart A to part 200, remove the undesignated center headings ''Participation of Eligible Children in Private Schools'', ''Capital Expenses'', ''Schoolwide Programs'', Procedures for the Within-State Allocation of LEA Program Funds'', and ''Procedures for the Within-District Allocation of LEA Program Funds''.

6. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.10 to read as follows:

Participation in National Assessment of Educational Progress (NAEP)

7. Revise § 200.11 and place it under the new undesignated center heading ''Participation in National Assessment of Educational Progress (NAEP)'' in subpart A of part 200 to read as follows:

§ 200.11 Participation in NAEP.

(a) *State participation.* Beginning in the 2002–2003 school year, each State that receives funds under subpart A of this part must participate in biennial State academic assessments of fourth and eighth grade reading and mathematics under the State National Assessment of Educational Progress (NAEP), if the Department pays the costs of administering those assessments.

(b) *Local participation.* In accordance with section 1112(b)(1)(F) of the Elementary and Secondary Education Act of 1965 (ESEA), and notwithstanding section 411(d)(1) of the National Education Statistics Act of 1994, an LEA that receives funds under subpart A of this part must participate, if selected, in the State-NAEP assessments referred to in paragraph (a) of this section.

(Authority: 20 U.S.C. 6311(c)(2); 6312(b)(1)(F), 9010(d)(1))

8. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.11 to read as follows:

State Accountability System

9. Revise § 200.12 and place it under the new undesignated center heading ''State Accountability System'' in subpart A of part 200 to read as follows:

§ 200.12 Single State accountability system.

(a)(1) Each State must demonstrate in its State plan that the State has developed and is implementing, beginning with the 2002–2003 school year, a single, statewide accountability system.

(2) The State's accountability system must be effective in ensuring that all public elementary and secondary schools and LEAs in the State make adequate yearly progress (AYP) as defined in §§ 200.13 through 200.20.

(b) The State's accountability system must—

(1) Be based on the State's academic standards under § 200.1, academic assessments under § 200.2, and other academic indicators under § 200.19;

(2) Take into account the achievement of all public elementary and secondary school students;

(3) Be the same accountability system the State uses for all public elementary and secondary schools and all LEAs in the State; and

(4) Include sanctions and rewards that the State will use to hold public elementary and secondary schools and LEAs accountable for student achievement and for making AYP, except that the State is not required to subject schools and LEAs not participating under subpart A of this part to the requirements of section 1116 of the ESEA. (Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6311(b)(2)(A))

10. Add a new undesignated center heading to subpart A of part 200 and place it after revised § 200.12 to read as follows:

Adequate Yearly Progress (AYP)

11. Revise §§ 200.13 through 200.18 and place them under the new undesignated center heading ''Adequate Yearly Progress (AYP)'' in subpart A of part 200 to read as follows:

§ 200.13 Adequate yearly progress in general.

(a) Each State must demonstrate in its State plan what constitutes AYP of the State and of all public schools and LEAs in the State—

(1) Toward enabling all public school students to meet the State's student academic achievement standards; while

(2) Working toward the goal of narrowing the achievement gaps in the State, its LEAs, and its public schools.

(b) A State must define, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Applies the same high standards of academic achievement to all public school students in the State;

(2) Is statistically valid and reliable;

(3) Results in continuous and substantial academic improvement for all students;

(4) Measures the progress of all public schools, LEAs, and the State based primarily on the State's academic assessment system under § 200.2;

(5) Measures progress separately for reading/language arts and for mathematics;

(6) Is the same for all public schools and LEAs in the State; and

(7) Consistent with § 200.7, applies the same annual measurable objectives under § 200.18 separately to each of the following:

(i) All public school students.

(ii) Students in each of the following subgroups:

(A) Economically disadvantaged students.

(B) Students from major racial and ethnic groups.

(C) Students with disabilities, as defined in section 9101(5) of the ESEA.

(D) Students with limited English proficiency, as defined in section 9101(25) of the ESEA.

(c) The State must establish a way to hold accountable schools in which no grade level is assessed under the State's academic assessment system (*e.g.*, K–2 schools), although the State is not required to administer a formal assessment to meet this requirement.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.14 Components of Adequate Yearly Progress.

A State's definition of AYP must include all of the following:

(a) A timeline in accordance with § 200.15.

(b) Starting points in accordance with § 200.16.

(c) Intermediate goals in accordance with § 200.17.

(d) Annual measurable objectives in accordance with § 200.18.

(e) Other academic indicators in accordance with § 200.19.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.15 Timeline.

(a) Each State must establish a timeline for making AYP that ensures that, not later than the 2013–2014 school year, all students in each group described in § 200.13(b)(7) will meet or exceed the State's proficient level of academic achievement.

(b) Notwithstanding subsequent changes a State may make to its academic assessment system or its definition of AYP under §§ 200.13 through 200.20, the State may not extend its timeline for all students to reach proficiency beyond the 2013–2014 school year.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.16 Starting points.

(a) Using data from the 2001–2002 school year, each State must establish starting points in reading/language arts and in mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.

(b) Each starting point must be based, at a minimum, on the higher of the following percentages of students at the proficient level:

(1) The percentage in the State of proficient students in the lowest-achieving subgroup of students under § 200.13(b)(7)(ii).

(2) The percentage of proficient students in the school that represents 20 percent of the State's total enrollment among all schools ranked by the percentage of students at the proficient level. The State must determine this percentage as follows:

(i) Rank each school in the State according to the percentage of proficient students in the school.

(ii) Determine 20 percent of the total enrollment in all schools in the State.

(iii) Beginning with the lowest-ranked school, add the number of students enrolled in each school until reaching the school that represents 20 percent of the State's total enrollment among all schools.

(iv) Identify the percentage of proficient students in the school identified in paragraph (iii).

(c)(1) Except as permitted under paragraph (c)(2) of this section, each starting point must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7).

(2) A State may use the procedures under paragraph (b) of this section to establish separate starting points by grade span.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.17 Intermediate goals.

Each State must establish intermediate goals that increase in equal

increments over the period covered by the timeline under § 200.15 as follows:

(a) The first incremental increase must take effect not later than the 2004–2005 school year.

(b) Each following incremental increase must occur in not more than three years.

(Authority: 20 U.S.C. 6311(b)(2))

§ 200.18 Annual measurable objectives.

(a) Each State must establish annual measurable objectives that—

(1) Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the State's academic assessments; and

(2) Ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline under § 200.15.

(b) The State's annual measurable objectives—

(1) Must be the same throughout the State for each school, each LEA, and each group of students under § 200.13(b)(7); and

(2) May be the same for more than one year, consistent with the State's intermediate goals under § 200.17.

(Authority: 20 U.S.C. 6311(b)(2))

12. Add § 200.19 and place it under the new undesignated center heading ''Adequate Yearly Progress (AYP)'' in subpart A of part 200 to read as follows:

§ 200.19 Other academic indicators.

(a) Each State must use the following other academic indicators to determine AYP:

(1) *High schools.* (i) The graduation rate for public high schools, which means—

(A) The percentage of students, measured from the beginning of high school, who graduate from high school with a regular diploma (not including an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a GED) in the standard number of years; or

(B) Another definition, developed by the State and approved by the Secretary in the State plan, that more accurately measures the rate of students who graduate from high school with a regular diploma as defined in paragraph (a)(1)(i)(A) of this section.

(ii) In defining graduation rate, the State must avoid counting a dropout as a transfer.

(2) *Elementary and middle schools.* At least one academic indicator for public elementary schools and at least one academic indicator for public middle schools, such as those under paragraph (b) of this section.

(b) The State may include additional academic indicators determined by the State, including, but not limited to, the following:

(1) Additional State or locally administered assessments not included in the State assessment system under § 200.2.

(2) Grade-to-grade retention rates.

(3) Attendance rates.

(4) Percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

(c) A State must ensure that its other academic indicators are—

(1) Valid and reliable;

(2) Consistent with relevant, nationally recognized professional and technical standards, if any; and

(3) Consistent throughout the State within each grade span.

(d)(1) A State may, but is not required to, increase the goals of its other academic indicators over the course of the timeline under § 200.15.

(2) The State—

(i) Must disaggregate its other academic indicators by each group in § 200.13(b)(7) for purposes of § 200.20(b)(2) and section 1111(h) of the ESEA; but

(ii) Need not disaggregate those indicators for determining AYP except as required under section 1111(b)(2)(C)(vii) of the ESEA.

(e) Except as provided in § 200.20(b)(2), a State—

(1) May not use the indicators in paragraphs (a) and (b) of this section to reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring if those indicators were not used; but

(2) May use the indicators to identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(2), (h))

13. Revise §§ 200.20 and 200.21 and place them under the new undesignated center heading ''Adequate Yearly Progress (AYP)'' in subpart A of part 200 to read as follows:

§ 200.20 Making adequate yearly progress.

A school or LEA makes AYP if it complies with paragraph (c) and with either paragraph (a) or (b) of this section separately in reading/language arts and in mathematics.

(a)(1) A school or LEA makes AYP if—

(i) Each group of students under § 200.13(b)(7) meets or exceeds the State's annual measurable objectives under § 200.18; and

(ii) The school or LEA, respectively, meets or exceeds the State's other academic indicators under § 200.19.

(2) For a group under § 200.13(b)(7) to be included in the determination of AYP for a school or LEA, the number of students in the group must be sufficient to yield statistically reliable information under § 200.7(a).

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if—

(1) The percentage of students in that group below the State's proficient achievement level decreased by at least 10 percent from the preceding year; and

(2) That group made progress on one or more of the State's academic indicators under § 200.19 or the LEA's academic indicators under § 200.30(c).

(c)(1) A school or LEA makes AYP if—

(i) Not less than 95 percent of the students enrolled in each group under § 200.13(b)(7) takes the State assessments under § 200.2; and

(ii) The group is of sufficient size to produce statistically reliable results under § 200.7(a).

(2) The requirement in paragraph (c)(1) of this section does not authorize a State, LEA, or school to systematically exclude 5 percent of the students in any group under § 200.13(b)(7).

(3) If a student takes the State assessments for a particular subject or grade level more than once, the State must use the student's results from the first administration to determine AYP.

(d) For the purpose of determining whether a school or LEA has made AYP, a State may establish a uniform procedure for averaging data that includes one or more of the following:

(1) *Averaging data across school years.* (i) A State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) If a State averages data across school years, the State must—

(A) Implement, on schedule, the assessments in reading/language arts and mathematics in grades 3 through 8 and once in grades 10 through 12 required under § 200.5(a)(2);

(B) Report data resulting from the assessments under § 200.5(a)(2);

(C) Determine AYP under §§ 200.13 through 200.20, although the State may base that determination on data only from the reading/language arts and mathematics assessments in the three grade spans required under § 200.5(a)(1); and

(D) Implement the requirements in section 1116 of the ESEA.

(iii) A State that averages data across years must determine AYP on the basis of the assessments under § 200.5(a)(2) as soon as it has data from two or three years to average. Until that time, the State may use data from the reading/language arts and mathematics assessments required under § 200.5(a)(1) to determine adequate yearly progress.

(2) *Combining data across grades.* Within each subject area and subgroup, the State may combine data across grades in a school or LEA.

(e)(1) In determining the AYP of an LEA, a State must include all students who were enrolled in schools in the LEA for a full academic year, as defined by the State.

(2) In determining the AYP of a school, the State may not include students who were not enrolled in that school for a full academic year, as defined by the State.

(Authority: 20 U.S.C. 6311(b)(2), (b)(3)(C)(xi))

§ 200.21 Adequate yearly progress of a State.

For each State that receives funds under subpart A of this part and under subpart 1 of part A of Title III of the ESEA, the Secretary must, beginning with the 2004–2005 school year, annually review whether the State has—

(a)(1) Made AYP as defined by the State in accordance with §§ 200.13 through 200.20 for each group of students in § 200.13(b)(7); and

(2) Met its annual measurable achievement objectives under section 3122(a) of the ESEA relating to the development and attainment of English proficiency by limited English proficient students.

(b) A State must include all students who were enrolled in schools in the State for a full academic year in reporting on the yearly progress of the State.

(Authority: 20 U.S.C. 7325)

14. Remove and reserve §§ 200.22 through 200.24 and place them under the new undesignated center heading ''Adequate Yearly Progress (AYP)'' in subpart A of part 200.

15. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.24 to read as follows:

Schoolwide Programs

16. Revise § 200.25 and place it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to read as follows:

§ 200.25 Schoolwide programs in general.

(a) *Purpose.* (1) The purpose of a schoolwide program is to improve academic achievement throughout a school so that all students, particularly the lowest-achieving students, demonstrate proficiency related to the State's academic standards under § 200.1.

(2) The improved achievement is to result from improving the entire educational program of the school.

(b) *Eligibility.* (1) A school may operate a schoolwide program if—

(i) The school's LEA determines that the school serves an eligible attendance area or is a participating school under section 1113 of the ESEA; and

(ii) For the initial year of the schoolwide program—

(A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families; or

(B) Not less than 40 percent of the children enrolled in the school are from low-income families.

(2) In determining the percentage of children from low-income families under paragraph (b)(1)(ii) of this section, the LEA may use a measure of poverty that is different from the measure or measures of poverty used by the LEA to identify and rank school attendance areas for eligibility and participation under subpart A of this part.

(c) *Participating students and services.* A school operating a schoolwide program is not required to—

(1) Identify particular children as eligible to participate; or

(2) As required under section 1120A(b) of the ESEA, provide services that supplement, and do not supplant, the services participating children would otherwise receive if they were not participating in a program under subpart A of this part.

(d) Supplemental funds. A school operating a schoolwide program must use funds available under subpart A of this part and under any other Federal program included under paragraph (e) of this section and § 200.29 only to supplement the total amount of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency.

(e) *Consolidation of funds.* An eligible school may, consistent with § 200.29, consolidate and use funds or services under subpart A of this part, together with other Federal, State, and local funds that the school receives, to operate a schoolwide program in accordance with §§ 200.25 through 200.29.

(f) *Prekindergarten program.* A school operating a schoolwide program may use funds made available under subpart A of this part to establish or enhance prekindergarten programs for children below the age of 6, such as Even Start programs or Early Reading First programs.

(Authority: 20 U.S.C. 6314)

17. Add a new § 200.26 and place it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to read as follows:

§ 200.26 Core elements of a schoolwide program.

(a) *Comprehensive needs assessment.* (1) A school operating a schoolwide program must conduct a comprehensive needs assessment of the entire school that—

(i) Is based on academic achievement information about all students in the school, including all groups under § 200.13(b)(7) and migratory children as defined in section 1309(2) of the ESEA, relative to the State's academic standards under § 200.1 to—

(A) Help the school understand the subjects and skills for which teaching and learning need to be improved; and

(B) Identify the specific academic needs of students and groups of students who are not yet achieving the State's academic standards; and

(ii) Assesses the needs of the school relative to each of the components of the schoolwide program under § 200.28.

(2) The comprehensive needs assessment must be developed with the participation of individuals who will carry out the schoolwide program plan.

(3) The school must document how it conducted the needs assessment, the results it obtained, and the conclusions it drew from those results.

(b) *Comprehensive plan.* Using data from the comprehensive needs assessment under paragraph (a) of this section, a school that wishes to operate a schoolwide program must develop a comprehensive plan, in accordance with § 200.27, that describes how the school will improve academic achievement throughout the school, but particularly for those students furthest away from demonstrating proficiency, so that all students demonstrate at least proficiency on the State's academic standards.

(c) *Evaluation.* A school operating a schoolwide program must—

(1) Annually evaluate the implementation of, and results achieved by, the schoolwide program, using data from the State's annual assessments and other indicators of academic achievement;

(2) Determine whether the schoolwide program has been effective in increasing the achievement of students in meeting the State's academic standards, particularly for those students who had been furthest from achieving the standards; and

(3) Revise the plan, as necessary, based on the results of the evaluation, to ensure continuous improvement of students in the schoolwide program.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6314)

18. Revise §§ 200.27 and 200.28 and place them under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to read as follows:

§ 200.27 Development of a schoolwide program plan.

(a)(1) A school operating a schoolwide program must develop a comprehensive plan to improve teaching and learning throughout the school.

(2) The school must develop the comprehensive plan in consultation with the LEA and its school support team or other technical assistance provider under section 1117 of the ESEA.

(3) The comprehensive plan must—

(i) Describe how the school will carry out each of the components under § 200.28;

(ii) Describe how the school will use resources under subpart A of this part and from other sources to carry out the components under § 200.28; and

(iii) Include a list of State and local programs and other Federal programs under § 200.29 that the school will consolidate in the schoolwide program.

(b)(1) The school must develop the comprehensive plan, including the comprehensive needs assessment, over a one-year period unless—

(i) The LEA, after considering the recommendations of its technical assistance providers under section 1117 of the ESEA, determines that less time is needed to develop and implement the schoolwide program; or

(ii) The school was operating a schoolwide program on or before January 7, 2002, in which case the school may continue to operate its program, but must amend its existing plan to reflect the provisions of §§ 200.25 through 200.29 during the 2002–2003 school year.

(2) The school must develop the comprehensive plan with the involvement of parents, consistent with the requirements of section 1118 of the ESEA, and other members of the community to be served and individuals who will carry out the plan, including—

(i) Teachers, principals, and administrators, including administrators of programs described in other parts of Title I of the ESEA;

(ii) If appropriate, pupil services personnel, technical assistance providers, and other school staff; and

(iii) If the plan relates to a secondary school, students from the school.

(3) If appropriate, the school must develop the comprehensive plan in coordination with other programs, including those carried out under Reading First, Early Reading First, Even Start, the Carl D. Perkins Vocational and Technical Education Act of 1998, and the Head Start Act.

(4) The comprehensive plan remains in effect for the duration of the school's participation under §§ 200.25 through 200.29.

(c)(1) The schoolwide program plan must be available to the LEA, parents, and the public.

(2) Information in the plan must be—

(i) In an understandable and uniform format, including alternative formats upon request; and

(ii) To the extent practicable, provided in a language that the parents can understand.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6314)

§ 200.28 Schoolwide program components.

A schoolwide program must include the following components:

(a) *Schoolwide reform strategies.* The schoolwide program must incorporate reform strategies in the overall instructional program. Those strategies must—

(1) Provide opportunities for all students to meet the State's proficient and advanced levels of student academic achievement;

(2)(i) Address the needs of all students in the school, particularly the needs of low-achieving students and those at risk of not meeting the State's student academic achievement standards who are members of the target population of any program included in the schoolwide program; and

(ii) Address how the school will determine if those needs have been met;

(3) Use effective methods and instructional practices that are based on scientifically based research, as defined in section 9101 of the ESEA, and that—

(i) Strengthen the core academic program;

(ii) Provide an enriched and accelerated curriculum;

(iii) Increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities;

(iv) Include strategies for meeting the educational needs of historically underserved populations; and

(v) Are consistent with, and are designed to implement, State and local improvement plans, if any.

(b) *Instruction by highly qualified teachers.* A schoolwide program must ensure instruction by highly qualified teachers and provide ongoing professional development. The schoolwide program must—

(1) Include strategies to attract highly qualified teachers, as defined in § 200.56;

(2)(i) Provide high-quality and ongoing professional development in accordance with sections 1119 and 9101(34) of the ESEA for teachers, principals, paraprofessionals and, if appropriate, pupil services personnel, parents, and other staff, to enable all students in the school to meet the State's student academic standards; and

(ii) Align professional development with the State's academic standards;

(3) Devote sufficient resources to carry out effectively the professional development activities described in paragraph (b)(2) of this section; and

(4) Include teachers in professional development activities regarding the use of academic assessments described in § 200.2 to enable them to provide information on, and to improve, the achievement of individual students and the overall instructional program.

(c) *Parental involvement.* (1) A schoolwide program must involve parents in the planning, review, and improvement of the schoolwide program plan.

(2) A schoolwide program must have a parental involvement policy, consistent with section 1118(b) of the ESEA, that—

(i) Includes strategies, such as family literacy services, to increase parental involvement in accordance with sections 1118(c) through (f) and 9101(32) of the ESEA; and

(ii) Describes how the school will provide individual student academic assessment results, including an interpretation of those results, to the parents of students who participate in the academic assessments required by § 200.2.

(d) *Additional support.* A schoolwide program school must include activities to ensure that students who experience difficulty attaining the proficient or advanced levels of academic achievement standards required by § 200.1 will be provided with effective, timely additional support, including measures to—

(1) Ensure that those students' difficulties are identified on a timely basis; and

(2) Provide sufficient information on which to base effective assistance to those students.

(e) *Transition.* A schoolwide program in an elementary school must include plans for assisting preschool students in the successful transition from early childhood programs, such as Head Start, Even Start, Early Reading First, or a preschool program under IDEA or a State-run preschool program, to the schoolwide program.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6314)

19. Add § 200.29 and place it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to read as follows:

§ 200.29 Consolidation of funds in a schoolwide program.

(a) In addition to funds under subpart A of this part, a school may consolidate and use in its schoolwide program Federal funds from any program administered by the Secretary that is included in the most recent notice published for this purpose in the **Federal Register**.

(2) For purposes of §§ 200.25 through 200.29, the authority to consolidate funds from other Federal programs also applies to services provided to the school with those funds.

(b)(1) Except as provided in paragraphs (b)(2) and (c) of this section, a school that consolidates and uses in a schoolwide program funds from any other Federal program administered by the Secretary—

(i) Is not required to meet the statutory or regulatory requirements of that program applicable at the school level; but

(ii) Must meet the intent and purposes of that program to ensure that the needs of the intended beneficiaries of that program are addressed.

(2) A school that chooses to consolidate funds from other Federal programs must meet the requirements of those programs relating to—

(i) Health;

(ii) Safety;

(iii) Civil rights;

(iv) Student and parental participation and involvement;

(v) Services to private school children;

(vi) Maintenance of effort;

(vii) Comparability of services;

(viii) Use of Federal funds to supplement, not supplant non-Federal funds in accordance with § 200.25(d); and

(ix) Distribution of funds to SEAs or LEAs.

(c) A school must meet the following requirements if the school consolidates and uses funds from these programs in its schoolwide program:

(1) *Migrant education.* Before the school chooses to consolidate in its schoolwide program funds received under part C of Title I of the ESEA, the school must—

(i) Use these funds, in consultation with parents of migratory children or organizations representing those parents, or both, first to meet the unique educational needs of migratory students that result from the effects of their migratory lifestyle, and those other needs that are necessary to permit these students to participate effectively in school, as identified through the comprehensive Statewide needs assessment under § 200.83; and

(ii) Document that these needs have been met.

(2) *Indian education.* The school may consolidate funds received under subpart 1 of part A of Title VII of the ESEA if the parent committee established by the LEA under section 7114(c)(4) of the ESEA approves the inclusion of these funds.

(3) *Special education.* (i) The school may consolidate funds received under part B of the IDEA.

(ii) However, the amount of funds consolidated may not exceed the amount received by the LEA under part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program.

(iii) The school may also consolidate funds received under section 8003(d) of the ESEA (Impact Aid) for children with disabilities in a schoolwide program.

(iv) A school that consolidates funds under part B of IDEA or section 8003(d) of the ESEA may use those funds for any activities under its schoolwide program plan but must comply with all other requirements of part B of IDEA, to the same extent it would if it did not consolidate funds under part B of IDEA or section 8003(d) of the ESEA in the schoolwide program.

(d) A school that consolidates and uses in a schoolwide program funds under subpart A of this part or from any other Federal program administered by the Secretary—

(1) Is not required to maintain separate fiscal accounting records, by program, that identify the specific activities supported by those particular funds; but

(2) Must maintain records that demonstrate that the schoolwide program, as a whole, addresses the intent and purposes of each of the Federal programs whose funds were consolidated to support the schoolwide program.

(e) Each State must—

(1) Encourage schools to consolidate funds from other Federal, State, and local sources in their schoolwide programs; and

(2) Modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate funds from other Federal, State, and local sources in their schoolwide programs.

(Authority: 20 U.S.C. 6314, 1413(a)(s)(D), 6396(b), 7703(d), 7815(c))

20. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.29 to read as follows:

LEA and School Improvement

21. Transfer §§ 200.30 through 200.69 to subpart A of part 200.

22. Revise § 200.30 and place it under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.30 Local review.

(a) Each LEA receiving funds under subpart A of this part must use the results of the State assessment system described in § 200.2 to review annually the progress of each school served under subpart A of this part to determine whether the school is making AYP in accordance with § 200.20.

(b)(1) In reviewing the progress of an elementary or secondary school operating a targeted assistance program, an LEA may choose to review the progress of only the students in the school who are served, or are eligible for services, under subpart A of this part.

(2) The LEA may exercise the option under paragraph (b)(1) of this section so long as the students selected for services under the targeted assistance program are those with the greatest need for special assistance, consistent with the requirements of section 1115 of the ESEA.

(c)(1) To determine whether schools served under subpart A of this part are making AYP, an LEA also may use any additional academic assessments or any other academic indicators described in the LEA's plan.

(2)(i) The LEA may use these assessments and indicators—

(A) To identify additional schools for school improvement or in need of corrective action or restructuring; and

(B) To permit a school to make AYP if, in accordance with § 200.20(b), the school also reduces the percentage of a student group not meeting the State's proficient level of academic achievement by at least 10 percent.

(ii) The LEA may not, with the exception described in paragraph (c)(2)(i)(B) of this section, use these assessments and indicators to reduce the number of, or change the identity of, the schools that would otherwise be identified for school improvement, corrective action, or restructuring if the LEA did not use these additional indicators.

(d) The LEA must publicize and disseminate the results of its annual progress review to parents, teachers, principals, schools, and the community.

(e) The LEA must review the effectiveness of actions and activities that schools are carrying out under subpart A of this part with respect to parental involvement, professional development, and other activities assisted under subpart A of this part.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(a) and (b))

23. Add new §§ 200.31 through 200.39 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.31 Opportunity to review school-level data.

(a) Before identifying a school for school improvement, corrective action, or restructuring, an LEA must provide the school with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based.

(b)(1) If the principal of a school that an LEA proposes to identify for school improvement, corrective action, or restructuring believes, or a majority of the parents of the students enrolled in the school believe, that the proposed identification is in error for statistical or other substantive reasons, the principal may provide supporting evidence to the LEA.

(2) The LEA must consider the evidence referred to in paragraph (b)(1) of this section before making a final determination.

(c) The LEA must make public a final determination of the status of the school with respect to identification not later than 30 days after it provides the school with the opportunity to review the data on which the proposed identification is based.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(2))

§ 200.32 Identification for school improvement.

(a)(1) An LEA must identify for school improvement any elementary or secondary school served under subpart A of this part that fails, for two consecutive years, to make AYP as defined under §§ 200.13 through 200.20.

(2) The LEA must make the identification described in paragraph (a)(1) of this section before the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year.

(b)(1) An LEA must treat any school that was in the first year of school improvement status on January 7, 2002 as a school that is in the first year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must, in accordance with § 200.44, provide public school choice to all students in the school.

(c)(1) An LEA must treat any school that was identified for school improvement for two or more consecutive years on January 7, 2002 as a school that is in its second year of school improvement under § 200.39 for the 2002–2003 school year.

(2) Not later than the first day of the 2002–2003 school year, the LEA must—

(i) In accordance with § 200.44, provide public school choice to all students in the school; and

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school.

(d) An LEA may remove from improvement status a school otherwise subject to the requirements of paragraphs (b) or (c) of this section if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(e)(1) An LEA may, but is not required to, identify a school for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the school fails to make AYP for a second consecutive year.

(2) An LEA that does not identify such a school for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (a) of this section.

(f) If an LEA identifies a school for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the school's failure to make AYP for a second consecutive year—

(1) The school is subject to the requirements of school improvement under § 200.39 immediately upon identification, including the provision of public school choice; and

(2) The LEA must count that school year as a full school year for the purposes of subjecting the school to additional improvement measures if the school continues to fail to make AYP.

(Authority: 20 U.S.C. 6316)

§ 200.33 Identification for corrective action.

(a) If a school served by an LEA under subpart A of this part fails to make AYP by the end of the second full school year after the LEA has identified the school for improvement under § 200.32(a) or (b), or by the end of the first full school year after the LEA has identified the school for improvement under § 200.32(c), the LEA must identify the school for corrective action under § 200.42.

(b) If a school was subject to corrective action on January 7, 2002, the LEA must—

(1) Treat the school as a school identified for corrective action under § 200.42 for the 2002–2003 school year; and

(2) Not later than the first day of the 2002–2003 school year—

(i) In accordance with § 200.44, provide public school choice to all students in the school;

(ii) In accordance with § 200.45, make available supplemental educational services to eligible students who remain in the school; and

(iii) Take corrective action under § 200.42.

(c) An LEA may remove from corrective action a school otherwise subject to the requirements of paragraphs (a) or (b) of this section if, on the basis of assessments administered by the LEA during the 2001–2002 school year, the school makes AYP for a second consecutive year.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6316)

§ 200.34 Identification for restructuring.

(a) If a school continues to fail to make AYP after one full school year of corrective action under § 200.42, the LEA must prepare a restructuring plan for the school and make arrangements to implement the plan.

(b) If the school continues to fail to make AYP, the LEA must implement the

restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.35 Delay and removal.

(a) *Delay.* (1) An LEA may delay, for a period not to exceed one year, implementation of requirements under the second year of school improvement, under corrective action, or under restructuring if—

(i) The school makes AYP for one year; or

(ii) The school's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA or school.

(2) The LEA may not take into account a period of delay under paragraph (a) of this section in determining the number of consecutive years of the school's failure to make AYP.

(3) Except as provided in paragraph (b) of this section, the LEA must subject the school to further actions as if the delay never occurred.

(b) *Removal.* If any school identified for school improvement, corrective action, or restructuring makes AYP for two consecutive school years, the LEA may not, for the succeeding school year—

(1) Subject the school to the requirements of school improvement, corrective action, or restructuring; or

(2) Identify the school for improvement.

(Authority: 20 U.S.C. 6316(b))

§ 200.36 Communication with parents.

(a) Throughout the school improvement process, the State, LEA, or school must communicate with the parents of each child attending the school.

(b) The State, LEA, or school must ensure that, regardless of the method or media used, it provides the information required by §§ 200.37 and 200.38 to parents—

(1) In an understandable and uniform format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(c) The State, LEA, or school must provide information to parents—

(1) Directly, through such means as regular mail or e-mail, except that if a State does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(2) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(d) All communications must respect the privacy of students and their families.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316)

§ 200.37 Notice of identification for improvement, corrective action, or restructuring.

(a) If an LEA identifies a school for improvement or subjects the school to corrective action or restructuring, the LEA must, consistent with the requirements of § 200.36, promptly notify the parent or parents of each child enrolled in the school of this identification.

(b) The notice referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary and secondary schools served by the LEA and the SEA involved.

(2) The reasons for the identification.

(3) An explanation of how parents can become involved in addressing the academic issues that led to identification.

(4)(i) An explanation of the parents' option to transfer their child to another public school, including the provision of transportation to the new school, in accordance with § 200.44.

(ii) The explanation of the parents' option to transfer must include, at a minimum, information on the academic achievement of the school or schools to which the child may transfer.

(iii) The explanation may include other information on the school or schools to which the child may transfer, such as—

(A) A description of any special academic programs or facilities;

(B) The availability of before- and after-school programs;

(C) The professional qualifications of teachers in the core academic subjects; and

(D) A description of parental involvement opportunities.

(5)(i) If the school is in its second year of improvement or subject to corrective action or restructuring, a notice explaining how parents can obtain supplemental educational services for their child in accordance with § 200.45.

(ii) The annual notice of the availability of supplemental educational services must include, at a minimum, the following:

(A) The identity of approved providers of those services available within the LEA, including providers of technology-based or distance-learning supplemental educational services, and providers that make services reasonably available in neighboring LEAs.

(B) A brief description of the services, qualifications, and demonstrated effectiveness of the providers referred to in paragraph (b)(5)(ii)(A) of this section.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316)

§ 200.38 Information about action taken.

(a) An LEA must publish and disseminate to the parents of each student enrolled in the school, consistent with the requirements of § 200.36, and to the public information regarding any action taken by a school and the LEA to address the problems that led to the LEA's identification of the school for improvement, corrective action, or restructuring.

(b) The information referred to in paragraph (a) of this section must include the following:

(1) An explanation of what the school is doing to address the problem of low achievement.

(2) An explanation of what the LEA or SEA is doing to help the school address the problem of low achievement.

(3) If applicable, a description of specific corrective actions or restructuring plans.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b))

§ 200.39 Responsibilities resulting from identification for school improvement.

(a) If an LEA identifies a school for school improvement under § 200.32—

(1) The LEA must—

(i) Not later than the first day of the school year following identification, with the exception described in § 200.32(f), provide all students enrolled in the school with the option to transfer, in accordance with § 200.44, to another public school served by the LEA; and

(ii) Ensure that the school receives technical assistance in accordance with § 200.40; and

(2) The school must develop or revise a school improvement plan in accordance with § 200.41.

(b) If a school fails to make AYP by the end of the first full school year after the LEA has identified it for improvement under § 200.32, the LEA must—

(1) Continue to provide all students enrolled in the school with the option

to transfer, in accordance with § 200.44, to another public school served by the LEA;

(2) Continue to ensure that the school receives technical assistance in accordance with § 200.40; and

(3) Make available supplemental educational services in accordance with § 200.45.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b))

24. Revise §§ 200.40 through 200.45 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.40 Technical assistance.

(a) An LEA that identifies a school for improvement under § 200.32 must ensure that the school receives technical assistance as the school develops and implements its improvement plan under § 200.41 and throughout the plan's duration.

(b) The LEA may arrange for the technical assistance to be provided by one or more of the following:

(1) The LEA through the statewide system of school support and recognition described under section 1117 of the ESEA.

(2) The SEA.

(3) An institution of higher education that is in full compliance with all of the reporting provisions of Title II of the Higher Education Act of 1965.

(4) A private not-for-profit organization, a private for-profit organization, an educational service agency, or another entity with experience in helping schools improve academic achievement.

(c) The technical assistance must include the following:

(1) Assistance in analyzing data from the State assessment system, and other examples of student work, to identify and develop solutions to problems in—

(i) Instruction;

(ii) Implementing the requirements for parental involvement and professional development under this subpart; and

(iii) Implementing the school plan, including LEA- and school-level responsibilities under the plan.

(2) Assistance in identifying and implementing professional development and instructional strategies and methods that have proved effective, through scientifically based research, in addressing the specific instructional issues that caused the LEA to identify the school for improvement.

(3) Assistance in analyzing and revising the school's budget so that the school allocates its resources more effectively to the activities most likely to—

(i) Increase student academic achievement; and

(ii) Remove the school from school improvement status.

(d) Technical assistance provided under this section must be based on scientifically based research.

(Authority: 20 U.S.C. 6316(b)(4))

§ 200.41 School improvement plan.

(a)(1) Not later than three months after an LEA has identified a school for improvement under § 200.32, the school must develop or revise a school improvement plan for approval by the LEA.

(2) The school must consult with parents, school staff, the LEA, and outside experts in developing or revising its school improvement plan.

(b) The school improvement plan must cover a 2-year period.

(c) The school improvement plan must—

(1) Specify the responsibilities of the school, the LEA, and the SEA serving the school under the plan, including the technical assistance to be provided by the LEA under § 200.40;

(2)(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in the core academic subjects at the school and address the specific academic issues that caused the LEA to identify the school for improvement; and

(ii) May include a strategy for implementing a comprehensive school reform model described in section 1606 of the ESEA;

(3) With regard to the school's core academic subjects, adopt policies and practices most likely to ensure that all groups of students described in § 200.13(b)(7) and enrolled in the school will meet the State's proficient level of achievement, as measured by the State's assessment system, not later than the 2013–2014 school year;

(4) Establish measurable goals that—

(i) Address the specific reasons for the school's failure to make adequate progress; and

(ii) Promote, for each group of students described in § 200.13(b)(7) and enrolled in the school, continuous and substantial progress that ensures that all these groups meet the State's annual measurable objectives described in § 200.18;

(5) Provide an assurance that the school will spend not less than 10 percent of the allocation it receives under subpart A of this part for each year that the school is in school improvement status, for the purpose of providing high-quality professional development to the school's teachers, principal, and, as appropriate, other instructional staff, consistent with section 9101(34) of the ESEA, that—

(i) Directly addresses the academic achievement problem that caused the school to be identified for improvement;

(ii) Is provided in a manner that affords increased opportunity for participating in that professional development; and

(iii) Incorporates teacher mentoring activities or programs;

(6) Specify how the funds described in paragraph (c)(5) of this section will be used to remove the school from school improvement status;

(7) Describe how the school will provide written notice about the identification to parents of each student enrolled in the school;

(8) Include strategies to promote effective parental involvement at the school; and

(9) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year.

(d)(1) Within 45 days of receiving a school improvement plan, the LEA must—

(i) Establish a peer-review process to assist with review of the plan;

(ii) Promptly review the plan;

(iii) Work with the school to make any necessary revisions; and

(iv) Approve the plan if it meets the requirements of this section.

(2) The LEA may condition approval of the school improvement plan on—

(i) Inclusion of one or more of the corrective actions specified in § 200.42; or

(ii) Feedback on the plan from parents and community leaders.

(e) A school must implement its school improvement plan immediately on approval of the plan by the LEA.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(3))

§ 200.42 Corrective action.

(a) *Definition.* ''Corrective action'' means action by an LEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure of a school that led the LEA to identify the school for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the school;

(2) Is designed to increase substantially the likelihood that each group of students described in § 200.13(b)(7) and enrolled in the school will meet or exceed the State's proficient levels of achievement as

measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Requirements.* If an LEA identifies a school for corrective action, in accordance with § 200.33, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Continue to ensure that the school receives technical assistance consistent with the requirements of § 200.40.

(3) Make available supplemental educational services in accordance with § 200.45.

(4) Take at least one of the following corrective actions:

(i) Replace the school staff who are relevant to the school's failure to make AYP.

(ii) Institute and fully implement a new curriculum, including the provision of appropriate professional development for all relevant staff, that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students and of enabling the school to make AYP.

(iii) Significantly decrease management authority at the school level.

(iv) Appoint one or more outside experts to advise the school on—

(A) Revising the school improvement plan developed under § 200.41 to address the specific issues underlying the school's continued failure to make AYP and resulting in identification for corrective action; and

(B) Implementing the revised improvement plan.

(v) Extend for that school the length of the school year or school day.

(vi) Restructure the internal organization of the school.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(7))

§ 200.43 Restructuring.

(a) *Definition.* ''Restructuring'' means a major reorganization of a school's governance arrangement by an LEA that—

(1) Makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve student academic achievement in the school;

(2) Has substantial promise of enabling the school to make AYP as defined under §§ 200.13 through 200.20; and

(3) Is consistent with State law.

(b) *Requirements.* If the LEA identifies a school for restructuring in accordance with § 200.34, the LEA must do the following:

(1) Continue to provide all students enrolled in the school with the option to transfer to another public school in accordance with § 200.44.

(2) Make available supplemental educational services in accordance with § 200.45.

(3) Prepare a plan to carry out one of the following alternative governance arrangements:

(i) Reopen the school as a public charter school.

(ii) Replace all or most of the school staff, which may include the principal, who are relevant to the school's failure to make AYP.

(iii) Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the school as a public school.

(iv) Turn the operation of the school over to the SEA, if permitted under State law and agreed to by the State.

(v) Any other major restructuring of a school's governance arrangement consistent with this section.

(4) Provide to parents and teachers—

(i) Prompt notice that the LEA has identified the school for restructuring; and

(ii) An opportunity for parents and teachers to—

(A) Comment before the LEA takes any action under a restructuring plan; and

(B) Participate in the development of any restructuring plan.

(c) *Implementation.* (1) If a school continues to fail to make AYP, the LEA must—

(i) Implement the restructuring plan no later than the beginning of the school year following the year in which the LEA developed the restructuring plan under paragraph (b)(3) of this section; and

(ii) Continue to offer public school choice and supplemental educational services in accordance with §§ 200.44 and 200.45.

(2) An LEA is no longer required to carry out the requirements of paragraph (c)(1) of this section if the restructured school makes AYP for two consecutive school years.

(d) *Rural schools.* On request, the Secretary will provide technical assistance for developing and carrying out a restructuring plan to any rural LEA—

(1) That has fewer than 600 students in average daily attendance at all of its schools; and

(2) In which all of the schools have a School Locale Code of 7 or 8, as determined by the National Center for Education Statistics.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(b)(8))

§ 200.44 Public school choice.

(a) *Requirements.* (1) In the case of a school identified for school improvement under § 200.32, for corrective action under § 200.33, or for restructuring under § 200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA.

(2) The LEA must offer this option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

(3) The schools to which students may transfer under paragraph (a)(1) of this section—

(i) May not include schools that—

(A) The LEA has identified for improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34; or

(B) Are persistently dangerous as determined by the State; and

(ii) May include one or more public charter schools.

(4) If more than one school meets the requirements of paragraph (a)(3) of this section, the LEA must—

(i) Provide to parents of students eligible to transfer under paragraph (a)(1) of this section a choice of more than one such school; and

(ii) Take into account the parents' preferences among the choices offered under paragraph (a)(4)(i) of this section.

(5) The LEA must offer the option to transfer described in this section unless it is prohibited by State law in accordance with paragraph (b) of this section.

(6) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action before January 8, 2002, the State must ensure that the LEA provides a public school choice option in accordance with paragraph (a)(1) of this section not later than the first day of the 2002–2003 school year.

(b) *Limitation on State law prohibition.* An LEA may invoke the State law prohibition on choice described in paragraph (a)(5) of this section only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school.

(c) *Desegregation plans.* (1) If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-

ordered, or required by a Federal or State administrative agency, the LEA is not exempt from the requirement in paragraph (a)(1) of this section.

(2) In determining how to provide students with the option to transfer to another school, the LEA may take into account the requirements of the desegregation plan.

(3) If the desegregation plan forbids the LEA from offering the transfer option required under paragraph (a)(1) of this section, the LEA must secure appropriate changes to the plan to permit compliance with paragraph (a)(1) of this section.

(d) *Capacity.* An LEA may not use lack of capacity to deny students the option to transfer under paragraph (a)(1) of this section.

(e) *Priority.* (1) In providing students the option to transfer to another public school in accordance with paragraph (a)(1) of this section, the LEA must give priority to the lowest-achieving students from low-income families.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(f) *Status.* Any public school to which a student transfers under paragraph (a)(1) of this section must ensure that the student is enrolled in classes and other activities in the school in the same manner as all other students in the school.

(g) *Duration of transfer.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school.

(2) The LEA's obligation to provide transportation for the student may be limited under the circumstances described in paragraph (i) of this section and in § 200.48.

(h) *No eligible schools within an LEA.* If all public schools to which a student may transfer within an LEA are identified for school improvement, corrective action, or restructuring, the LEA—

(1) Must, to the extent practicable, establish a cooperative agreement for a transfer with one or more other LEAs in the area; and

(2) May offer supplemental educational services to eligible students under § 200.45 in schools in their first year of school improvement under § 200.39.

(i) *Transportation.* (1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must, consistent with § 200.48, provide or pay for the student's transportation to the school.

(2) The limitation on funding in § 200.48 applies only to the provision of choice-related transportation, and does not affect in any way the basic obligation to provide an option to transfer as required by paragraph (a) of this section.

(3) The LEA's obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the LEA for school improvement, corrective action, or restructuring.

(j) *Students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504).* For students with disabilities under the IDEA and students covered under Section 504, the public school choice option must provide a free appropriate public education as that term is defined in section 602(8) of the IDEA or 34 CFR 104.33, respectively.

(Authority: 20 U.S.C. 6316)

§ 200.45 Supplemental educational services.

(a) *Definition.* ''Supplemental educational services'' means tutoring and other supplemental academic enrichment services that are—

(1) In addition to instruction provided during the school day;

(2) Specifically designed to—

(i) Increase the academic achievement of eligible students as measured by the State's assessment system; and

(ii) Enable these children to attain proficiency in meeting State academic achievement standards; and

(3) Of high quality and research-based.

(b) *Eligibility.* (1) Only students from low-income families are eligible for supplemental educational services.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part.

(c) *Requirement.* (1) If an LEA identifies a school for a second year of improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34, the LEA must arrange, consistent with paragraph (d) of this section, for each eligible student in the school to receive supplemental educational services from a State-approved provider selected by the student's parents.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the State must ensure that the LEA makes available, consistent with paragraph (d) of this section, supplemental educational services to all eligible students not later than the first day of the 2002–2003 school year.

(3) The LEA must, consistent with § 200.48, continue to make available supplemental educational services to eligible students until the end of the school year in which the LEA is making those services available.

(4)(i) At the request of an LEA, the SEA may waive, in whole or in part, the requirement that the LEA make available supplemental educational services if the SEA determines that—

(A) None of the providers of those services on the list approved by the SEA under § 200.47 makes those services available in the area served by the LEA or within a reasonable distance of that area; and

(B) The LEA provides evidence that it is not otherwise able to make those services available.

(ii) The SEA must notify the LEA, within 30 days of receiving the LEA's request for a waiver under paragraph (c)(4)(i) of this section, whether it approves or disapproves the request and, if it disapproves, the reasons for the disapproval, in writing.

(iii) An LEA that receives a waiver must renew its request for that waiver on an annual basis.

(d) *Priority.* If the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the LEA must give priority to the lowest-achieving students.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316)

25. Add new §§ 200.46 through 200.49 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.46 LEA responsibilities for supplemental educational services.

(a) If an LEA is required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the LEA must do the following:

(1) Provide the annual notice to parents described in § 200.37(b)(5).

(2) If requested, assist parents in choosing a provider from the list of approved providers maintained by the SEA.

(3) Apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible

students whose parents request services consistent with § 200.45.

(4) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(5) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(6) Not disclose to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(b)(1) In addition to meeting the requirements in paragraph (a) of this section, the LEA must enter into an agreement with each provider selected by a parent or parents.

(2) The agreement must—

(i) Require the LEA to develop, in consultation with the parents and the provider, a statement that includes—

(A) Specific achievement goals for the student;

(B) A description of how the student's progress will be measured; and

(C) A timetable for improving achievement;

(ii) Describe procedures for regularly informing the student's parents and teachers of the student's progress;

(iii) Provide for the termination of the agreement if the provider is unable to meet the goals and timetables specified in the agreement;

(iv) Specify how the LEA will pay the provider; and

(v) Prohibit the provider from disclosing to the public, without the written permission of the student's parents, the identity of any student who is eligible for, or receiving, supplemental educational services.

(3) In the case of a student with disabilities under IDEA or a student covered under Section 504, the provisions of the agreement referred to in paragraph (b)(2)(i) of this section must be consistent with the student's individualized education program under section 614(d) of the IDEA or the student's individualized services under Section 504.

(4) The LEA may not pay the provider for religious worship or instruction.

(c) If State law prohibits an SEA from carrying out one or more of its responsibilities under § 200.47 with respect to those who provide, or seek approval to provide, supplemental educational services, each LEA must carry out those responsibilities with respect to its students who are eligible for those services.

(Authority: 20 U.S.C. 6316(e))

(Approved by the Office of Management and Budget under control number 1810–0581)

§ 200.47 SEA responsibilities for supplemental educational services.

(a) If one or more LEAs in a State are required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the SEA for that State must do the following:

(1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible.

(ii) This promotion must include annual notice to potential providers of—

(A) The opportunity to provide supplemental educational services; and

(B) Procedures for obtaining the SEA's approval to be a provider of those services.

(2) Consistent with paragraph (b) of this section, develop and apply to potential providers objective criteria.

(3) Maintain by LEA an updated list of approved providers, including any technology-based or distance-learning providers, from which parents may select.

(4) Develop, implement, and publicly report on standards and techniques for—

(i) Monitoring the quality and effectiveness of the services offered by each approved provider; and

(ii) Withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental educational services from that provider.

(5) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(6) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(b) *Standards for approving providers.* (1) As used in this section and in § 200.46, ''provider'' means a non-profit entity, a for-profit entity, an LEA, an educational service agency, a public school, including a public charter school, or a private school that—

(i) Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student achievement standards described under § 200.1;

(ii) Is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and with the State academic content standards and State student achievement standards described under § 200.1;

(iii) Is financially sound; and

(iv) In the case of—

(A) A public school, has not been identified under §§ 200.32, 200.33, or 200.34; or

(B) An LEA, has not been identified under § 200.50(d) or (e).

(2) In order for the SEA to include a provider on the State list, the provider must agree to—

(i)(A) Provide parents of each student receiving supplemental educational services and the appropriate LEA with information on the progress of the student in increasing achievement; and

(B) This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand;

(ii) Ensure that the instruction the provider gives and the content the provider uses—

(A) Are consistent with the instruction provided and the content used by the LEA and the SEA;

(B) Are aligned with State student academic achievement standards; and

(C) Are secular, neutral, and nonideological; and

(iii) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(3) As a condition of approval, a State may not require a provider to hire only staff who meet the requirements under §§ 200.55 and 200.56.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(e))

§ 200.48 Funding for choice-related transportation and supplemental educational services.

(a) *Amounts required.* (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the ESEA, an LEA may use—

(i) Funds allocated under subpart A of this part;

(ii) Funds, where allowable, from other Federal education programs; and

(iii) State, local, or private resources.

(2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part to—

(i) Provide, or pay for, transportation of students exercising a choice option under § 200.44;

(ii) Satisfy all requests for supplemental educational services under § 200.45; or

(iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that—

(A) The LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A of this part on transportation under paragraph (a)(2)(i) of this section and an amount equal to 5 percent of its allocation under subpart A of this part for supplemental educational services under paragraph (a)(2)(ii) of this section, unless lesser amounts are needed to meet the requirements of §§ 200.44 and 200.45; and

(B) The LEA may not include costs for administration or transportation incurred in providing supplemental educational services, or administrative costs associated with the provision of public school choice options under § 200.44, in the amounts required under paragraph (a)(2) of this section.

(3) If the amount specified in paragraph (a)(2) of this section is insufficient to pay all choice-related transportation costs, or to meet the demand for supplemental educational services, the LEA may make available any additional needed funds from Federal, State, or local sources.

(4) To assist an LEA that does not have sufficient funds to make available supplemental educational services to all students requesting these services, an SEA may use funds that it reserves under part A of Title I and part A of Title V of the ESEA.

(b) *Cap on school-level reduction.* (1) An LEA may not, in applying paragraph (a) of this section, reduce by more than 15 percent the total amount it makes available under subpart A of this part to a school it has identified for corrective action or restructuring.

(c) *Per-child funding for supplemental educational services.* For each student receiving supplemental educational services under § 200.45, the LEA must make available the lesser of—

(1) The amount of its allocation under subpart A of this part, divided by the number of students from families below the poverty level, as counted under section 1124(c)(1)(A) of the ESEA; or

(2) The actual costs of the supplemental educational services received by the student.

(Authority: 20 U.S.C. 6316)

§ 200.49 SEA responsibilities for school improvement, corrective action, and restructuring.

(a) *Transition requirements for public school choice and supplemental educational services.* (1) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school provides public school choice in accordance with § 200.44 not later than the first day of the 2002–2003 school year.

(2) Except as described in §§ 200.32(d) and 200.33(c), if a school was in school improvement status for two or more consecutive school years or subject to corrective action on January 7, 2002, the SEA must ensure that the LEA for that school makes available supplemental educational services in accordance with § 200.45 not later than the first day of the 2002–2003 school year.

(b) *State reservation of funds for school improvement.* (1) In accordance with § 200.100(a), an SEA must reserve 2 percent of the amount it receives under this part for fiscal years 2002 and 2003, and 4 percent of the amount it receives under this part for fiscal years 2004 through 2007, to—

(i) Support local school improvement activities;

(ii) Provide technical assistance to schools identified for improvement, corrective action, or restructuring; and

(iii) Provide technical assistance to LEAs that the SEA has identified for improvement or corrective action in accordance with § 200.50.

(2) Of the amount it reserves under paragraph (b)(1) of this section, the SEA must—

(i) Allocate not less than 95 percent directly to LEAs serving schools identified for improvement, corrective action, and restructuring to support improvement activities; or

(ii) With the approval of the LEA, directly provide for these improvement activities or arrange to provide them through such entities as school support teams or educational service agencies.

(3) In providing assistance to LEAs under paragraph (b)(2) of this section, the SEA must give priority to LEAs that—

(i) Serve the lowest-achieving schools;

(ii) Demonstrate the greatest need for this assistance; and

(iii) Demonstrate the strongest commitment to ensuring that this assistance will be used to enable the lowest-achieving schools to meet the progress goals in the school improvement plans under § 200.41.

(c) *Technical assistance.* The SEA must make technical assistance available, through the statewide system of support and improvement required by section 1117 of the ESEA, to schools that LEAs have identified for improvement, corrective action, or restructuring.

(d) *LEA failure.* If the SEA determines that an LEA has failed to carry out its responsibilities with respect to school improvement, corrective action, or restructuring, the SEA must take the actions it determines to be appropriate and in compliance with State law.

(e) *Assessment results.* (1) The SEA must ensure that the results of academic assessments administered as part of the State assessment system in a given school year are available to LEAs before the beginning of the next school year and in such time as to allow for the identification described in § 200.32(a)(2).

(2) The SEA must provide the results described in paragraph (e)(1) of this section to a school before an LEA may identify the school for school improvement under § 200.32, corrective action under § 200.33, or restructuring under § 200.34.

(f) *Accountability for charter schools.* The accountability provisions under section 1116 of the ESEA must be overseen for charter schools in accordance with State charter school law.

(g) *Factors affecting student achievement.* The SEA must notify the Secretary of Education of major factors that have been brought to the SEA's attention under section 1111(b)(9) of the ESEA that have significantly affected student academic achievement in schools and LEAs identified for improvement within the State.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6311 and 6316)

26. Revise §§ 200.50 and 200.51 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.50 SEA review of LEA progress.

(a) *State review.* (1) An SEA must annually review the progress of each LEA in its State that receives funds under subpart A of this part to determine whether—

(i) The LEA's schools served under this part are making AYP, as defined under §§ 200.13 through 200.20, toward meeting the State's student academic achievement standards; and

(ii) The LEA is carrying out its responsibilities under this part with respect to school improvement, technical assistance, parental involvement, and professional development.

(2) In reviewing the progress of an LEA, the SEA may, in the case of targeted assistance schools served by the LEA, consider the progress only of the students served or eligible for services under this subpart, provided the students selected for services in such schools are those with the greatest need

for special assistance, consistent with the requirements of section 1115 of the ESEA.

(b) Rewards. If an LEA has exceeded AYP as defined under §§ 200.13 through 200.20 for two consecutive years, the SEA may—

(1) Reserve funds in accordance with § 200.100(c); and

(2) Make rewards of the kinds described under section 1117 of the ESEA.

(c) *Opportunity for review of LEA-level data.* (1) Before identifying an LEA for improvement or corrective action, the SEA must provide the LEA with an opportunity to review the data, including academic assessment data, on which the SEA has based the proposed identification.

(2)(i) If the LEA believes that the proposed identification is in error for statistical or other substantive reasons, the LEA may provide supporting evidence to the SEA.

(ii) The SEA must consider the evidence before making a final determination not later than 30 days after it has provided the LEA with the opportunity to review the data under paragraph (c)(1) of this section.

(d) *Identification for improvement.* (1) The SEA must identify for improvement an LEA that, for two consecutive years, including the period immediately before January 8, 2002, fails to make AYP as defined in the SEA's plan under section 1111(b)(2) of the ESEA.

(2) The SEA must identify for improvement an LEA that was in improvement status on January 7, 2002.

(3)(i) The SEA may identify an LEA for improvement if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA fails to make AYP for a second consecutive year.

(ii) An SEA that does not identify such an LEA for improvement, however, must count the 2001–2002 school year as the first year of not making AYP for the purpose of subsequent identification decisions under paragraph (d)(1) of this section.

(4) The SEA may remove an LEA from improvement status if, on the basis of assessments the LEA administers during the 2001–2002 school year, the LEA makes AYP for a second consecutive year.

(e) *Identification for corrective action.* After providing technical assistance under § 200.52(b), the SEA—

(1) May take corrective action at any time with respect to an LEA that the SEA has identified for improvement under paragraph (d) of this section;

(2) Must take corrective action—

(i) With respect to an LEA that fails to make AYP, as defined under §§ 200.13 through 200.20, by the end of the second full school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under paragraph (d) of this section; and

(ii) With respect to an LEA that was in corrective action status on January 7, 2002; and

(3) May remove an LEA from corrective action if, on the basis of assessments administered by the LEA during the 2001–2002 school year, it makes AYP for a second consecutive year.

(f) *Delay of corrective action.* (1) The SEA may delay implementation of corrective action under § 200.53 for a period not to exceed one year if—

(i) The LEA makes AYP for one year; or

(ii) The LEA's failure to make AYP is due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the LEA's financial resources.

(2)(i) The SEA may not take into account the period of delay referred to in paragraph (f)(1) of this section in determining the number of consecutive years the LEA has failed to make AYP; and

(ii) The SEA must subject the LEA to further actions following the period of delay as if the delay never occurred.

(g) *Continuation of public school choice and supplemental educational services.* An SEA must ensure that an LEA identified under paragraph (d) or (e) of this section continues to offer public school choice in accordance with § 200.44 and supplemental educational services in accordance with § 200.45.

(h) *Removal from improvement or corrective action status.* If an LEA makes AYP for two consecutive years following identification for improvement under paragraph (d) or corrective action under paragraph (e) of this section, the SEA need no longer—

(1) Identify the LEA for improvement; or

(2) Subject the LEA to corrective action for the succeeding school year.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(c))

§ 200.51 Notice of SEA action.

(a) *In general.* (1) An SEA must—

(i) Communicate with parents throughout the review of an LEA under § 200.50; and

(ii) Ensure that, regardless of the method or media used, it provides information to parents—

(A) In an understandable and uniform format, including alternative formats upon request; and

(B) To the extent practicable, in a language that parents can understand.

(2) The SEA must provide information to the parents of each student enrolled in a school served by the LEA—

(i) Directly, through such means as regular mail or e-mail, except that if an SEA does not have access to individual student addresses, it may provide information to the LEA or school for distribution to parents; and

(ii) Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.

(3) All communications must respect the privacy of students and their families.

(b) *Results of review.* The SEA must promptly publicize and disseminate to the LEAs, teachers and other staff, the parents of each student enrolled in a school served by the LEA, students, and the community the results of its review under § 200.50, including statistically sound disaggregated results in accordance with §§ 200.2 and 200.7.

(c) *Identification for improvement or corrective action.* If the SEA identifies an LEA for improvement or subjects the LEA to corrective action, the SEA must promptly provide to the parents of each student enrolled in a school served by the LEA—

(1) The reasons for the identification; and

(2) An explanation of how parents can participate in improving the LEA.

(d) *Information about action taken.* (1) The SEA must publish, and disseminate to the parents of each student enrolled in a school served by the LEA and to the public, information on any corrective action the SEA takes under § 200.53.

(2) The SEA must provide this information—

(i) In a uniform and understandable format, including alternative formats upon request; and

(ii) To the extent practicable, in a language that parents can understand.

(3) The SEA must disseminate the information through such means as the Internet, the media, and public agencies.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(c))

27. Add new §§ 200.52 and 200.53 and place them under the new undesignated center heading ''LEA and School Improvement'' in subpart A of part 200 to read as follows:

§ 200.52 LEA improvement.

(a) *Improvement plan.* (1) Not later than 3 months after an SEA has identified an LEA for improvement under § 200.50(d), the LEA must develop or revise an LEA improvement plan.

(2) The LEA must consult with parents, school staff, and others in developing or revising its improvement plan.

(3) The LEA improvement plan must—

(i) Incorporate strategies, grounded in scientifically based research, that will strengthen instruction in core academic subjects in schools served by the LEA;

(ii) Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the State's student academic achievement standards;

(iii) Address the professional development needs of the instructional staff serving the LEA by committing to spend for professional development not less than 10 percent of the funds received by the LEA under subpart A of this part for each fiscal year in which the SEA identifies the LEA for improvement. These funds—

(A) May include funds reserved by schools for professional development under § 200.41(c)(5); but

(B) May not include funds reserved for professional development under section 1119 of the ESEA;

(iv) Include specific measurable achievement goals and targets—

(A) For each of the groups of students under § 200.13(b)(7); and

(B) That are consistent with AYP as defined under §§ 200.13 through 200.20;

(v) Address—

(A) The fundamental teaching and learning needs in the schools of the LEA; and

(B) The specific academic problems of low-achieving students, including a determination of why the LEA's previous plan failed to bring about increased student academic achievement;

(vi) As appropriate, incorporate activities before school, after school, during the summer, and during any extension of the school year;

(vii) Specify the responsibilities of the SEA and LEA under the plan, including the technical assistance the SEA must provide under paragraph (b) of this section and the LEA's responsibilities under section 1120A of the ESEA; and

(viii) Include strategies to promote effective parental involvement in the schools served by the LEA.

(4) The LEA must implement the improvement plan—including any revised plan—expeditiously, but not later than the beginning of the school year following the year in which the LEA administered the assessments that resulted in the LEA's failure to make AYP for a second consecutive year and led to the SEA's identification of the LEA for improvement under § 200.50(d).

(b) *SEA technical assistance.* (1) An SEA that identifies an LEA for improvement under § 200.50(d) must, if requested, provide or arrange for the provision of technical or other assistance to the LEA, as authorized under section 1117 of the ESEA.

(2) The purpose of the technical assistance is to better enable the LEA to—

(i) Develop and implement its improvement plan; and

(ii) Work with schools needing improvement.

(3) The technical assistance provided by the SEA or an entity authorized by the SEA must—

(i) Be supported by effective methods and instructional strategies grounded in scientifically based research; and

(ii) Address problems, if any, in implementing the parental involvement and professional development activities described in sections 1118 and 1119, respectively, of the ESEA.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6316(c))

§ 200.53 LEA corrective action.

(a) *Definition.* For the purposes of this section, the term ''corrective action'' means action by an SEA that—

(1) Substantially and directly responds to—

(i) The consistent academic failure that caused the SEA to identify an LEA for corrective action; and

(ii) Any underlying staffing, curriculum, or other problems in the LEA;

(2) Is designed to meet the goal that each group of students described in § 200.13(b)(7) and enrolled in the LEA's schools will meet or exceed the State's proficient levels of achievement as measured by the State assessment system; and

(3) Is consistent with State law.

(b) *Notice and hearing.* Before implementing any corrective action under paragraph (c) of this section, the SEA must provide notice and a hearing to the affected LEA—if State law provides for this notice and hearing—not later than 45 days following the decision to take corrective action.

(c) *Requirements.* If the SEA identifies an LEA for corrective action, the SEA must do the following:

(1) Continue to make available technical assistance to the LEA.

(2) Take at least one of the following corrective actions:

(i) Defer programmatic funds or reduce administrative funds.

(ii) Institute and fully implement a new curriculum based on State and local content and academic achievement standards, including the provision of appropriate professional development for all relevant staff that—

(A) Is grounded in scientifically based research; and

(B) Offers substantial promise of improving educational achievement for low-achieving students.

(iii) Replace the LEA personnel who are relevant to the failure to make AYP.

(iv) Remove particular schools from the jurisdiction of the LEA and establish alternative arrangements for public governance and supervision of these schools.

(v) Appoint a receiver or trustee to administer the affairs of the LEA in place of the superintendent and school board.

(vi) Abolish or restructure the LEA.

(vii) In conjunction with at least one other action in paragraph (c)(2) of this section—

(A) Authorize students to transfer from a school operated by the LEA to a higher-performing public school operated by another LEA in accordance with § 200.44, and

(B) Provide to these students transportation, or the costs of transportation, to the other school consistent with § 200.44(h).

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 6316(c)(10))

28. Place reserved § 200.54 under the undesignated center heading ''LEA and school improvement'' in subpart A of part 200.

29. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.54 to read as follows:

Qualifications Of Teachers And Paraprofessionals

30. Add new §§ 200.55 through 200.59 and place them under the new undesignated center heading ''Qualifications of Teachers and Paraprofessionals'' in subpart A of part 200 to read as follows:

§ 200.55 Qualifications of teachers.

(a) *Newly hired teachers in Title I programs.* (1) An LEA must ensure that all teachers hired after the first day of the 2002–2003 school year who teach core academic subjects in a program supported with funds under subpart A of this part are highly qualified as defined in § 200.56.

(2) For the purpose of paragraph (a)(1) of this section, a teacher teaching in a program supported with funds under subpart A of this part is—

(i) A teacher in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A teacher in a schoolwide program school; or

(iii) A teacher employed by an LEA with funds under subpart A of this part to provide services to eligible private school students under § 200.62.

(b) *All teachers of core academic subjects.* (1) Not later than the end of the 2005–2006 school year, each State that receives funds under subpart A of this part, and each LEA in that State, must ensure that all public elementary and secondary school teachers in the State who teach core academic subjects, including teachers employed by an LEA to provide services to eligible private school students under § 200.62, are highly qualified as defined in § 200.56.

(2) A teacher who does not teach a core academic subject—such as some vocational education teachers—is not required to meet the requirements in § 200.56.

(c) *Definition.* The term ''core academic subjects'' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(d) *Private school teachers.* The requirements in this section do not apply to teachers hired by private elementary and secondary schools.

(Authority: 20 U.S.C. 6319; 7801(11))

§ 200.56 Definition of ''highly qualified teacher.''

To be a ''highly qualified teacher,'' a teacher covered under § 200.55 must meet the requirements in paragraph (a) and either paragraph (b) or (c) of this section.

(a) *In general.* (1) Except as provided in paragraph (a)(3) of this section, a teacher covered under § 200.55 must—

(i) Have obtained full State certification as a teacher, which may include certification obtained through alternative routes to certification; or

(ii)(A) Have passed the State teacher licensing examination; and

(B) Hold a license to teach in the State.

(2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher—

(i) Has fulfilled the State's certification and licensure requirements applicable to the years of experience the teacher possesses; or

(ii) Is participating in an alternative route to certification program under which—

(A) The teacher—

(*1*) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(*2*) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(*3*) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(*4*) Demonstrates satisfactory progress toward full certification as prescribed by the State; and

(B) The State ensures, through its certification and licensure process, that the provisions in paragraph (a)(2)(ii) of this section are met.

(3) A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in the State's charter school law.

(4) If a teacher has had certification or licensure requirements waived on an emergency, temporary, or provisional basis, the teacher is not highly qualified.

(b) *Teachers new to the profession.* A teacher covered under § 200.55 who is new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2) At the public elementary school level, demonstrate, by passing a rigorous State test (which may consist of passing a State certification or licensing test), subject knowledge and teaching skills in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum; or

(3) At the public middle and high school levels, demonstrate a high level of competency by—

(i) Passing a rigorous State test in each academic subject in which the teacher teaches (which may consist of passing a State certification or licensing test in each of these subjects); or

(ii) Successfully completing in each academic subject in which the teacher teaches—

(A) An undergraduate major;

(B) A graduate degree;

(C) Coursework equivalent to an undergraduate major; or

(D) Advanced certification or credentialing.

(c) *Teachers not new to the profession.* A teacher covered under § 200.55 who is not new to the profession also must—

(1) Hold at least a bachelor's degree; and

(2)(i) Meet the applicable requirements in paragraph (b)(2) or (3) of this section; or

(ii) Based on a high, objective, uniform State standard of evaluation in accordance with section 9101(23)(C)(ii) of the ESEA, demonstrate competency in each academic subject in which the teacher teaches.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 7801(23))

§ 200.57 Plans to increase teacher quality.

(a) *State plan.* (1) A State that receives funds under subpart A of this part must develop, as part of its State plan under section 1111 of the ESEA, a plan to ensure that all public elementary and secondary school teachers in the State who teach core academic subjects are highly qualified not later than the end of the 2005–2006 school year.

(2) The State's plan must—

(i) Establish annual measurable objectives for each LEA and school that include, at a minimum, an annual increase in the percentage of—

(A) Highly qualified teachers at each LEA and school; and

(B) Teachers who are receiving high-quality professional development to enable them to become highly qualified and effective classroom teachers;

(ii) Describe the strategies the State will use to—

(A) Help LEAs and schools meet the requirements in paragraph (a)(1) of this section; and

(B) Monitor the progress of LEAs and schools in meeting these requirements; and

(iii) Until the SEA fully complies with paragraph (a)(1) of this section, describe the specific steps the SEA will take to—

(A) Ensure that Title I schools provide instruction by highly qualified teachers, including steps that the SEA will take to ensure that minority children and children from low-income families are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers; and

(B) Evaluate and publicly report the progress of the SEA with respect to these steps.

(3) The State's plan may include other measures that the State determines are appropriate to increase teacher qualifications.

(b) *Local plan.* An LEA that receives funds under subpart A of this part must develop, as part of its local plan under section 1112 of the ESEA, a plan to ensure that—

(1) All public elementary and secondary school teachers in the LEA who teach core academic subjects, including teachers employed by the

LEA to provide services to eligible private school students under § 200.62, are highly qualified not later than the end of the 2005–2006 school year; and

(2) Through incentives for voluntary transfers, professional development, recruitment programs, or other effective strategies, minority students and students from low-income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6311(b)(8)(C), 6312(c)(1)(I), (L); 6319(a)(2)–(3); 7801(34))

§ 200.58 Qualifications of paraprofessionals.

(a) *Applicability.* (1) An LEA must ensure that each paraprofessional who is hired by the LEA and who works in a program supported with funds under subpart A of this part meets the requirements in paragraph (b) of this section and, except as provided in paragraph (e) of this section, the requirements in either paragraph (c) or (d) of this section.

(2) For the purpose of this section, the term ''paraprofessional''—

(i) Means an individual who provides instructional support consistent with § 200.59; and

(ii) Does not include individuals who have only non-instructional duties (such as providing technical support for computers, providing personal care services, or performing clerical duties).

(3) For the purpose of paragraph (a) of this section, a paraprofessional working in ''a program supported with funds under subpart A of this part'' is—

(i) A paraprofessional in a targeted assisted school who is paid with funds under subpart A of this part;

(ii) A paraprofessional in a schoolwide program school; or

(iii) A paraprofessional employed by an LEA with funds under subpart A of this part to provide instructional support to a public school teacher covered under § 200.55 who provides equitable services to eligible private school students under § 200.62.

(b) *All paraprofessionals.* A paraprofessional covered under paragraph (a) of this section, regardless of the paraprofessional's hiring date, must have earned a secondary school diploma or its recognized equivalent.

(c) *New paraprofessionals.* A paraprofessional covered under paragraph (a) of this section who is hired after January 8, 2002 must have—

(1) Completed at least two years of study at an institution of higher education;

(2) Obtained an associate's or higher degree; or

(3)(i) Met a rigorous standard of quality, and can demonstrate—through a formal State or local academic assessment—knowledge of, and the ability to assist in instructing, as appropriate—

(A) Reading/language arts, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness.

(ii) A secondary school diploma or its recognized equivalent is necessary, but not sufficient, to meet the requirement in paragraph (c)(3)(i) of this section.

(d) *Existing paraprofessionals.* Each paraprofessional who was hired on or before January 8, 2002 must meet the requirements in paragraph (c) of this section no later than January 8, 2006.

(e) *Exceptions.* A paraprofessional does not need to meet the requirements in paragraph (c) or (d) of this section if the paraprofessional—

(1)(i) Is proficient in English and a language other than English; and

(ii) Acts as a translator to enhance the participation of limited English proficient children under subpart A of this part; or

(2) Has instructional-support duties that consist solely of conducting parental involvement activities.

(Authority: 20 U.S.C. 6319(c)–(f))

§ 200.59 Duties of paraprofessionals.

(a) A paraprofessional covered under § 200.58 may not be assigned a duty inconsistent with paragraph (b) of this section.

(b) A paraprofessional covered under § 200.58 may perform the following instructional support duties:

(1) One-on-one tutoring for eligible students if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher.

(2) Assisting in classroom management.

(3) Assisting in computer instruction.

(4) Conducting parent involvement activities.

(5) Providing instructional support in a library or media center.

(6) Acting as a translator.

(7) Providing instructional support services.

(c)(1) A paraprofessional may not provide instructional support to a student unless the paraprofessional is working under the direct supervision of a teacher who meets the requirements in § 200.56.

(2) A paraprofessional works under the direct supervision of a teacher if—

(i) The teacher plans the instructional activities that the paraprofessional carries out;

(ii) The teacher evaluates the achievement of the students with whom the paraprofessional is working; and

(iii) The paraprofessional works in close and frequent physical proximity to the teacher.

(d) A paraprofessional may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under subpart A of this part—including non-instructional duties and duties that do not benefit participating students—if the amount of time the paraprofessional spends on those duties is the same proportion of total work time as the time spent by similar personnel at the same school.

(Authority: 20 U.S.C. 6319(g))

31. Revise §§ 200.60 and 200.61 and place them under the new undesignated center heading ''Qualifications of Teachers and Paraprofessionals'' in subpart A of part 200 to read as follows:

§ 200.60 Expenditures for professional development.

(a)(1) Except as provided in paragraph (a)(2) of this section, an LEA must use funds it receives under subpart A of this part as follows for professional development activities to ensure that teachers and paraprofessionals meet the requirements of §§ 200.56 and 200.58:

(i) For each of fiscal years 2002 and 2003, the LEA must use not less than 5 percent or more than 10 percent of the funds it receives under subpart A of this part.

(ii) For each fiscal year after 2003, the LEA must use not less than 5 percent of the funds it receives under subpart A of this part.

(2) An LEA is not required to spend the amount required in paragraph (a)(1) of this section for a given fiscal year if a lesser amount is sufficient to ensure that the LEA's teachers and paraprofessionals meet the requirements in §§ 200.56 and 200.58, respectively.

(b) The LEA may use additional funds under subpart A of this part to support ongoing training and professional development, as defined in section 9101(34) of the ESEA, to assist teachers and paraprofessionals in carrying out activities under subpart A of this part.

(Authority: 20 U.S.C. 6319(h), (l); 7801(34))

§ 200.61 Parents' right to know.

(a) At the beginning of each school year, an LEA that receives funds under subpart A of this part must notify the parents of each student attending a Title I school that the parents may request, and the LEA will provide the parents on request, information regarding the professional qualifications of the

student's classroom teachers, including, at a minimum, the following:

(1) Whether the teacher has met State qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

(2) Whether the teacher is teaching under emergency or other provisional status through which State qualification or licensing criteria have been waived.

(3) The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

(4) Whether the child is provided services by paraprofessionals and, if so, their qualifications.

(b) A school that participates under subpart A of this part must provide to each parent—

(1) Information on the level of achievement of the parent's child in each of the State academic assessments required under § 200.2;

(2) Timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by, a teacher of a core academic subject who is not highly qualified.

(c) An LEA and school must provide the notice and information required under this section—

(1) In a uniform and understandable format, including alternative formats upon request; and

(2) To the extent practicable, in a language that parents can understand.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6311(h)(6))

32. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.61 to read as follows:

Participation of Eligible Children in Private Schools

33. Add § 200.62 and place it under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.62 Responsibilities for providing services to private school children.

(a) After timely and meaningful consultation with appropriate officials of private schools, an LEA must—

(1) In accordance with §§ 200.62 through 200.67 and section 1120 of the ESEA, provide special educational services or other benefits under subpart A of this part, on an equitable basis and in a timely manner, to eligible children who are enrolled in private elementary and secondary schools; and

(2) Ensure that teachers and families of participating private school children participate on a basis equitable to the participation of teachers and families of public school children receiving these services in accordance with § 200.65.

(b)(1) Eligible private school children are children who—

(i) Reside in participating public school attendance areas of the LEA, regardless of whether the private school they attend is located in the LEA; and

(ii) Meet the criteria in section 1115(b) of the ESEA.

(2) Among the eligible private school children, the LEA must select children to participate, consistent with § 200.64.

(c) The services and other benefits an LEA provides under this section must be secular, neutral and nonideological.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6315(b); 6320(a))

34. Revise § 200.63 and place it under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.63 Consultation.

(a) In order to have timely and meaningful consultation, an LEA must consult with appropriate officials of private schools during the design and development of the LEA's program for eligible private school children.

(b) At a minimum, the LEA must consult on the following:

(1) How the LEA will identify the needs of eligible private school children.

(2) What services the LEA will offer to eligible private school children.

(3) How and when the LEA will make decisions about the delivery of services.

(4) How, where, and by whom the LEA will provide services to eligible private school children.

(5) How the LEA will assess academically the services to eligible private school children in accordance with § 200.10, and how the LEA will use the results of that assessment to improve Title I services.

(6) The size and scope of the equitable services that the LEA will provide to eligible private school children, and, consistent with § 200.64, the proportion of funds that the LEA will allocate for these services.

(7) The method or sources of data that the LEA will use under § 200.78 to determine the number of private school children from low-income families residing in participating public school attendance areas, including whether the LEA will extrapolate data if a survey is used.

(8) The equitable services the LEA will provide to teachers and families of participating private school children.

(c)(1) Consultation by the LEA must—

(i) Include meetings of the LEA and appropriate officials of the private schools; and

(ii) Occur before the LEA makes any decision that affects the opportunity of eligible private school children to participate in Title I programs.

(2) The LEA must meet with officials of the private schools throughout the implementation and assessment of the Title I services.

(d)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the LEA can use to provide equitable services to eligible private school children; and

(ii) A thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract with a third-party provider.

(2) If the LEA disagrees with the views of the officials of the private schools on the provision of services through a contract, the LEA must provide in writing to the officials of the private schools the reasons why the LEA chooses not to use a contractor.

(e)(1) The LEA must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred.

(2) If the officials of the private schools do not provide the affirmations within a reasonable period of time, the LEA must submit to the SEA documentation that the required consultation occurred.

(f) An official of a private school has the right to complain to the SEA that the LEA did not—

(1) Engage in timely and meaningful consultation; or

(2) Consider the views of the official of the private school.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6320(b))

35. Add § 200.64 and place it under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.64 Factors for determining equitable participation of private school children.

(a) *Equal expenditures.* (1) Funds expended by an LEA under subpart A of this part for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low-income families under paragraph (a)(2) of this section.

(2) An LEA must meet this requirement as follows:

(i)(A) If the LEA reserves funds under § 200.77 to provide instructional and related activities for public elementary or secondary school students at the district level, the LEA must also provide from those funds, as applicable, equitable services to eligible private school children.

(B) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(ii) The LEA must reserve the funds generated by private school children under § 200.78 and, in consultation with appropriate officials of the private schools, may—

(A) Combine those amounts, along with funds under paragraph (a)(2)(i) of this section, if appropriate, to create a pool of funds from which the LEA provides equitable services to eligible private school children, in the aggregate, in greatest need of those services; or

(B) Provide equitable services to eligible children in each private school with the funds generated by children from low-income families under § 200.78 who attend that private school.

(b) *Services on an equitable basis.* (1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits that the LEA provides to public school children participating under subpart A of this part.

(2) Services are equitable if the LEA—

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of section; and

(iii) Provides private school children with an opportunity to participate that—

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of the private school children achieving the high levels called for by the State's student academic achievement standards or equivalent standards applicable to the private school children.

(3)(i) The LEA may provide services to eligible private school children either directly or through arrangements with another LEA or a third-party provider.

(ii) If the LEA contracts with a third-party provider—

(A) The provider must be independent of the private school and of any religious organization; and

(B) The contract must be under the control and supervision of the LEA.

(4) After timely and meaningful consultation under § 200.63, the LEA must make the final decisions with respect to the services it will provide to eligible private school children.

(Authority: 20 U.S.C. 6320)

36. Revise § 200.65 and place it under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.65 Determining equitable participation of teachers and families of participating private school children.

(a)(1) From applicable funds reserved for parent involvement and professional development under § 200.77, an LEA shall ensure that teachers and families of participating private school children participate on an equitable basis in professional development and parent involvement activities, respectively.

(2) The amount of funds available to provide equitable services from the applicable reserved funds must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

(b) After consultation with appropriate officials of the private schools, the LEA must conduct professional development and parent involvement activities for the teachers and families of participating private school children either—

(1) In conjunction with the LEA's professional development and parent involvement activities; or

(2) Independently.

(c) Private school teachers are not covered by the requirements in § 200.56.

(Authority: 20 U.S.C. 6320(a))

37. Add new §§ 200.66 and 200.67 and place them under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200 to read as follows:

§ 200.66 Requirements to ensure that funds do not benefit a private school.

(a) An LEA must use funds under subpart A of this part to provide services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children.

(b)(1) The LEA must use funds under subpart A of this part to meet the special educational needs of participating private school children.

(2) The LEA may not use funds under subpart A of this part for—

(i) The needs of the private school; or

(ii) The general needs of children in the private school.

(Authority: 20 U.S.C. 6320(a), 6321(b))

§ 200.67 Requirements concerning property, equipment, and supplies for the benefit of private school children.

(a) The LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under subpart A of this part for the benefit of eligible private school children.

(b) The LEA may place equipment and supplies in a private school for the period of time needed for the program.

(c) The LEA must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Title I purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The LEA must remove equipment and supplies from a private school if—

(1) The LEA no longer needs the equipment and supplies to provide Title I services; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes.

(e) The LEA may not use funds under subpart A of this part for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 6320(d))

38. Place reserved §§ 200.68 and 200.69 under the undesignated center heading ''Participation of Eligible Children in Private Schools'' in subpart A of part 200.

39. Add a new undesignated center heading to subpart A of part 200 and place it after reserved § 200.69 to read as follows:

Allocations To LEAS

40. Add new §§ 200.70 through 200.75 and place them under the undesignated center heading ''Allocations to LEAs'' in subpart A of part 200 to read as follows:

§ 200.70 Allocation of funds to LEAs in general.

(a) The Secretary allocates basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas

of the LEA (hereinafter referred to as the ''Census list'').

(b) In establishing eligibility and allocating funds under paragraph (a) of this section, the Secretary counts children ages 5 to 17, inclusive (hereinafter referred to as ''formula children'')—

(1) From families below the poverty level based on the most recent satisfactory data available from the Bureau of the Census;

(2) From families above the poverty level receiving assistance under the Temporary Assistance for Needy Families program under Title IV of the Social Security Act;

(3) Being supported in foster homes with public funds; and

(4) Residing in local institutions for neglected children.

(c) Except as provided in §§ 200.72, 200.75, and 200.100, an SEA may not change the Secretary's allocation to any LEA that serves an area with a total census population of at least 20,000 persons.

(d) In accordance with § 200.74, an SEA may use an alternative method, approved by the Secretary, to distribute the State's share of basic grants, concentration grants, targeted grants, and education finance incentive grants to LEAs that serve an area with a total census population of less than 20,000 persons.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.71 LEA eligibility.

(a) *Basic grants.* An LEA is eligible for a basic grant if the number of formula children is—

(1) At least 10; and

(2) Greater than two percent of the LEA's total population ages 5 to 17 years, inclusive.

(b) *Concentration grants.* An LEA is eligible for a concentration grant if—

(1) The LEA is eligible for a basic grant under paragraph (a) of this section; and

(2) The number of formula children exceeds—

(i) 6,500; or

(ii) 15 percent of the LEA's total population ages 5 to 17 years, inclusive.

(c) *Targeted grants.* An LEA is eligible for a targeted grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(d) *Education finance incentive grants.* An LEA is eligible for an education finance incentive grant if the number of formula children is—

(1) At least 10; and

(2) At least five percent of the LEA's total population ages 5 to 17 years, inclusive.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.72 Procedures for adjusting allocations determined by the Secretary to account for eligible LEAs not on the Census list.

(a) *General.* For each LEA not on the Census list (hereinafter referred to as a ''new'' LEA), an SEA must determine the number of formula children and the number of children ages 5 to 17, inclusive, in that LEA.

(b) *Determining LEA eligibility.* An SEA must determine basic grant, concentration grant, targeted grant, and education finance incentive grant eligibility for each new LEA and re-determine eligibility for the LEAs on the Census list, as appropriate, based on the number of formula children and children ages 5 to 17, inclusive, determined in paragraph (a) of this section.

(c) *Adjusting LEA allocations.* An SEA must adjust the LEA allocations calculated by the Secretary to determine allocations for eligible new LEAs based on the number of formula children determined in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.73 Applicable hold-harmless provisions.

(a) *General.* (1) Except as authorized under paragraph (c) of this section and § 200.100(d)(2), an SEA may not reduce the allocation of an eligible LEA below the hold-harmless amounts established under paragraph (a)(4) of this section.

(2) The hold-harmless protection limits the maximum reduction of an LEA's allocation compared to the LEA's allocation for the preceding year.

(3) Except as provided in § 200.100(d), an SEA must apply the hold-harmless requirement separately for basic grants, concentration grants, targeted grants, and education finance incentive grants as described in paragraph (a)(4) of this section.

(4) Under section 1122(c) of the ESEA, the hold-harmless percentage varies based on the LEA's proportion of formula children, as shown in the following table:

LEA's number of formula children ages 5 to 17, inclusive, as a percentage of its total population of children ages 5 to 17, inclusive	Hold-harmless percentage	Applicable grant formulas
(i) 30% or more	95	Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants.
(ii) 15% or more but less than 30%	90	
(iii) Less than 15%	85	

(b) *Targeted grants and education finance incentive grants.* The number of formula children used to determine the hold-harmless percentage is the number before applying the weights described in section 1125 and section 1125A of the ESEA.

(c) *Adjustment for insufficient funds.* If the amounts made available to the State are insufficient to pay the full amount that each LEA is eligible to receive under paragraph (a)(4) of this section, the SEA must ratably reduce the allocations for all LEAs in the State to the amount available.

(d) *Eligibility for hold-harmless protection.* (1) An LEA must meet the eligibility requirements for a basic grant, targeted grant, or education finance incentive grant under § 200.71 in order for the applicable hold-harmless provision to apply.

(2) An LEA not meeting the eligibility requirements for a concentration grant under § 200.71 must be paid its hold-harmless amount for four consecutive years.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6332(c))

§ 200.74 Use of an alternative method to distribute grants to LEAs with fewer than 20,000 total residents.

(a) For eligible LEAs serving an area with a total census population of less than 20,000 persons (hereinafter

referred to as ''small LEAs''), an SEA may apply to the Secretary to use an alternative method to distribute basic grant, concentration grant, targeted grant, and education finance incentive grant funds.

(b) In its application, the SEA must—

(1) Identify the alternative data it proposes to use; and

(2) Assure that it has established a procedure through which a small LEA that is dissatisfied with the determination of its grant may appeal directly to the Secretary.

(c) The SEA must base its alternative method on population data that best reflect the current distribution of children from low-income families among the State's small LEAs and use the same poverty measure consistently for small LEAs across the State for all Title I, part A programs.

(d) Based on the alternative poverty data selected, the SEA must—

(1) Re-determine eligibility of its small LEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants in accordance with § 200.71;

(2) Calculate allocations for small LEAs in accordance with the provisions of sections 1124, 1124A, 1125, and 1125A of the ESEA, as applicable; and

(3) Ensure that each LEA receives the hold-harmless amount to which it is entitled under § 200.73.

(e) The amount of funds available for redistribution under each formula is the separate amount determined by the Secretary under sections 1124, 1124A, 1125, and 1125A of the ESEA for eligible small LEAs after the SEA has made the adjustments required under § 200.72(c).

(f) If the amount available for redistribution to small LEAs under an alternative method is not sufficient to satisfy applicable hold-harmless requirements, the SEA must ratably reduce all eligible small LEAs to the amount available.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6333–6337)

§ 200.75 Special procedures for allocating concentration grant funds in small States.

(a) In a State in which the number of formula children is less than 0.25 percent of the national total on January 8, 2002 (hereinafter referred to as a ''small State''), an SEA may either—

(1) Allocate concentration grants among eligible LEAs in the State in accordance with §§ 200.72 through 200.74, as applicable; or

(2) Without regard to the allocations determined by the Secretary—

(i) Identify those LEAs in which the number or percentage of formula children exceeds the statewide average number or percentage of those children; and

(ii) Allocate concentration grant funds, consistent with § 200.73, among the LEAs identified in paragraph (a)(2)(i) of this section based on the number of formula children in each of those LEAs.

(b) If the SEA in a small State uses an alternative method under § 200.74, the SEA must use the poverty data approved under the alternative method to identify those LEAs with numbers or percentages of formula children that exceed the statewide average number or percentage of those children for the State as a whole.

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6334(b))

41. Add and reserve new § 200.76 and place it under the revised undesignated center heading ''Allocations to LEAs'' in subpart A of part 200.

42. Add a new undesignated center heading to subpart A of part 200 and place it after § 200.76 to read as follows:

Procedures for the Within-District Allocation of LEA Program Funds

43. Add new §§ 200.77 and 200.78 and place them under the undesignated center heading ''Procedures for the Within-District Allocation of LEA Program Funds'' in subpart A of part 200 to read as follows:

§ 200.77 Reservation of funds by an LEA.

Before allocating funds in accordance with § 200.78, an LEA must reserve funds as are reasonable and necessary to—

(a) Provide services comparable to those provided to children in participating school attendance areas and schools to serve—

(1) Homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where homeless children may live;

(2) Children in local institutions for neglected children; and

(3) If appropriate—

(i) Children in local institutions for delinquent children; and

(ii) Neglected and delinquent children in community-day school programs;

(b) Provide, where appropriate under section 1113(c)(4) of the ESEA, financial incentives and rewards to teachers who serve students in Title I schools identified for school improvement, corrective action, and restructuring for the purpose of attracting and retaining qualified and effective teachers;

(c) Meet the requirements for choice-related transportation and supplemental educational services in § 200.48, unless the LEA meets these requirements with non-Title I funds;

(d) Address the professional development needs of instructional staff, including—

(1) Professional development requirements under § 200.52(a)(3)(iii) if the LEA has been identified for improvement or corrective action; and

(2) Professional development expenditure requirements under § 200.60;

(e) Meet the requirements for parental involvement in section 1118(a)(3) of the ESEA;

(f) Administer programs for public and private school children under this part, including special capital expenses, if any, incurred in providing services to eligible private school children, such as—

(1) The purchase and lease of real and personal property (including mobile educational units and neutral sites);

(2) Insurance and maintenance costs;

(3) Transportation; and

(4) Other comparable goods and services, including non-instructional computer technicians; and

(g) Conduct other authorized activities, such as school improvement and coordinated services.

(Authority: 20 U.S.C. 6313(c)(3) and (4), 6316(b)(10), (c)(7)(iii), 6318(a)(3), 6319(l), 6320, 7279d)

§ 200.78 Allocation of funds to school attendance areas and schools.

(a)(1) An LEA must allocate funds under subpart A of this part to school attendance areas and schools, identified as eligible and selected to participate under section 1113(a) or (b) of the ESEA, in rank order on the basis of the total number of children from low-income families in each area or school.

(2)(i) In calculating the total number of children from low-income families, the LEA must include children from low-income families who attend private schools.

(ii) To obtain a count of private school children, the LEA may—

(A) Use the same poverty data the LEA uses to count public school children;

(B)(*1*) Use comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and

(*2*) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;

(C) Use comparable poverty data from a different source, such as scholarship applications;

(D) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or

(E) Use an equated measure of low income correlated with the measure of low income used to count public school children.

(iii) An LEA may count private school children from low-income families every year or every two years.

(iv) After timely and meaningful consultation in accordance with § 200.63, the LEA shall have the final authority in determining the method used to calculate the number of private school children from low-income families;

(3) If an LEA ranks its school attendance areas and schools by grade span groupings, the LEA may determine the percentage of children from low-income families in the LEA as a whole or for each grade span grouping.

(b)(1) Except as provided in paragraphs (b)(2) and (d) of this section, an LEA must allocate to each participating school attendance area or school an amount for each low-income child that is at least 125 percent of the per-pupil amount of funds the LEA received for that year under part A, subpart 2 of Title I. The LEA must calculate this per-pupil amount before it reserves funds under § 200.77, using the poverty measure selected by the LEA under section 1113(a)(5) of the ESEA.

(2) If an LEA is serving only school attendance areas or schools in which the percentage of children from low-income families is 35 percent or more, the LEA is not required to allocate a per-pupil amount of at least 125 percent.

(c) An LEA is not required to allocate the same per-pupil amount to each participating school attendance area or school provided the LEA allocates higher per-pupil amounts to areas or schools with higher concentrations of poverty than to areas or schools with lower concentrations of poverty.

(d) An LEA may reduce the amount of funds allocated under this section to a school attendance area or school if the area or school is spending supplemental State or local funds for programs that meet the requirements in § 200.79(b).

(e) If an LEA contains two or more counties in their entirety, the LEA must distribute to schools within each county a share of the LEA's total grant that is no less than the county's share of the child count used to calculate the LEA's grant.

(Authority: 20 U.S.C. 6313(c), 6320(a) and (c)(1), 6333(c)(2))

44. Add a new undesignated center heading to subpart A of part 200 and place it after new § 200.78 to read as follows:

Fiscal Requirements

45. Add new § 200.79 and place it under the new undesignated center heading ''Fiscal Requirements'' in subpart A of part 200 to read as follows:

§ 200.79 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For the purpose of determining compliance with the supplement not supplant requirement in section 1120A(b) and the comparability requirement in section 1120A(c) of the ESEA, a grantee or subgrantee under subpart A of this part may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 40 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all students are expected to meet;

(iii) Is designed to meet the educational needs of all students in the school, particularly the needs of students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards; and

(iv) Uses the State's assessment system under § 200.2 to review the effectiveness of the program; or

(2)(i) Serves only students who are failing, or most at risk of failing, to meet the State's challenging student academic achievement standards;

(ii) Provides supplementary services designed to meet the special educational needs of the students who are participating in the program to support their achievement toward meeting the State's student academic achievement standards; and

(iii) Uses the State's assessment system under § 200.2 to review the effectiveness of the program.

(c) The conditions in paragraph (b) of this section also apply to supplemental State and local funds expended under section 1113(b)(1)(D) and 1113(c)(2)(B) of the ESEA.

(Authority: 20 U.S.C. 6321(b)–(d))

46. Revise subpart B of part 200 to read as follows:

Subpart B—Even Start Family Literacy Programs

Sec.
200.80 Migrant Education Even Start Program definition.

Subpart B—Even Start Family Literacy Programs

§ 200.80 Migrant Education Even Start Program definition.

Eligible participants under the Migrant Education Even Start Program (MEES) must meet the definitions of a migratory child, a migratory agricultural worker, or a migratory fisher in § 200.81.

(Authority: 20 U.S.C. 6381a and 20 U.S.C. 6399)

47. Revise subpart C of part 200 to read as follows:

Subpart C—Migrant Education Program

Sec.
200.81 Program definitions.
200.82 Use of program funds for unique program function costs.
200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.
200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP.
200.85 Responsibilities of SEAs and operating agencies for improving services to migratory children.
200.86 Use of MEP funds in schoolwide projects.
200.87 Responsibilities for participation of children in private schools.
200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.
200.89 [Reserved]

Subpart C—Migrant Education Program

§ 200.81 Program definitions.

The following definitions apply to programs and projects operated under subpart C of this part:

(a) *Agricultural activity* means—

(1) Any activity directly related to the production or processing of crops, dairy products, poultry or livestock for initial commercial sale or personal subsistence;

(2) Any activity directly related to the cultivation or harvesting of trees; or

(3) Any activity directly related to fish farms.

(b) *Fishing activity* means any activity directly related to the catching or

processing of fish or shellfish for initial commercial sale or personal subsistence.

(c) *Migratory agricultural worker* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in agricultural activities (including dairy work) as a principal means of livelihood.

(d) *Migratory child* means a child who is, or whose parent, spouse, or guardian is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent, spouse, guardian in order to obtain, temporary or seasonal employment in agricultural or fishing work—

(1) Has moved from one school district to another;

(2) In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or

(3) Resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

(e) *Migratory fisher* means a person who, in the preceding 36 months, has moved from one school district to another, or from one administrative area to another within a State that is comprised of a single school district, in order to obtain temporary or seasonal employment in fishing activities as a principal means of livelihood. This definition also includes a person who, in the preceding 36 months, resided in a school district of more than 15,000 square miles, and moved a distance of 20 miles or more to a temporary residence to engage in a fishing activity as a principal means of livelihood.

(f) *Principal means of livelihood* means that temporary or seasonal agricultural or fishing activity plays an important part in providing a living for the worker and his or her family.

(Authority: 20 U.S.C. 6391–6399, 6571)

§ 200.82 Use of program funds for unique program function costs.

An SEA may use the funds available from its State Migrant Education Program (MEP) to carry out other administrative activities, beyond those allowable under § 200.101, that are unique to the MEP, including those that are the same or similar to administrative activities performed by LEAs in the State under subpart A of this part. These activities include but are not limited to—

(a) Statewide identification and recruitment of eligible migratory children;

(b) Interstate and intrastate coordination of the State MEP and its local projects with other relevant programs and local projects in the State and in other States;

(c) Procedures for providing for educational continuity for migratory children through the timely transfer of educational and health records, beyond that required generally by State and local agencies;

(d) Collecting and using information for accurate distribution of subgrant funds;

(e) Development of a statewide needs assessment and a comprehensive State plan for MEP service delivery;

(f) Supervision of instructional and support staff;

(g) Establishment and implementation of a State parent advisory council; and

(h) Conducting an evaluation of the effectiveness of the State MEP.

(Authority: 20 U.S.C. 6392, 6571)

§ 200.83 Responsibilities of SEAs to implement projects through a comprehensive needs assessment and a comprehensive State plan for service delivery.

(a) An SEA that receives a grant of MEP funds must develop and update a written comprehensive State plan (based on a current statewide needs assessment) that, at a minimum, has the following components:

(1) *Performance targets.* The plan must specify—

(i) Performance targets that the State has adopted for all children in reading and mathematics achievement, high school graduation, and the number of school dropouts, as well as the State's performance targets, if any, for school readiness; and

(ii) Any other performance targets that the State has identified for migratory children.

(2) *Needs assessment.* The plan must include an identification and assessment of—

(i) The unique educational needs of migratory children that result from the children's migratory lifestyle; and

(ii) Other needs of migratory students that must be met in order for migratory children to participate effectively in school.

(3) *Service delivery.* The plan must describe the strategies that the SEA will pursue on a statewide basis to achieve the performance targets in paragraph (a)(1) of this section by addressing—

(i) The unique educational needs of migratory children consistent with paragraph (a)(2)(i) of this section; and

(ii) Other needs of migratory children consistent with paragraph (a)(2)(ii) of this section.

(4) *Evaluation.* The plan must describe how the State will evaluate the effectiveness of its program.

(b) The SEA must develop its comprehensive State plan in consultation with the State parent advisory council or, for SEAs not operating programs for one school year in duration, in consultation with the parents of migratory children. This consultation must be in a format and language that the parents understand.

(c) Each SEA receiving MEP funds must ensure that its local operating agencies comply with the comprehensive State plan.

(Approved by the Office of Management and Budget under control number 1810–0659)

(Authority: 20 U.S.C. 6396)

§ 200.84 Responsibilities of SEAs for evaluating the effectiveness of the MEP.

Each SEA must determine the effectiveness of its program through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in § 200.83(a)(1), particularly for those students who have priority for service as defined in section 1304(d) of the ESEA.

(Approved by the Office of Management and Budget under control number 1810–0659)

(Authority: 20 U.S.C. 6394)

§ 200.85 Responsibilities of SEAs and operating agencies for improving services to migratory children.

While the specific school improvement requirements of section 1116 of the ESEA do not apply to the MEP, SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out under § 200.84 to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

§ 200.86 Use of MEP funds in schoolwide projects.

Funds available under part C of Title I of the ESEA may be used in a schoolwide program subject to the requirements of § 200.28(c)(3)(i).

(Authority: 20 U.S.C. 6396)

§ 200.87 Responsibilities for participation of children in private schools.

An SEA and its operating agencies must conduct programs and projects under subpart C of this part in a manner consistent with the basic requirements of section 9501 of the ESEA.

(Authority: 20 U.S.C. 6394)

§ 200.88 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the ESEA, a grantee or subgrantee under part C of Title I may exclude supplemental State and local funds expended in any school attendance area or school for carrying out special programs that meet the intent and purposes of part C of Title I.

(b) Before funds for a State and local program may be excluded for purposes of these requirements, the SEA must make an advance written determination that the program meets the intent and purposes of part C of Title I.

(c) A program meets the intent and purposes of part C of Title I if it meets the following requirements:

(1) The program is specifically designed to meet the unique educational needs of migratory children, as defined in section 1309 of the ESEA.

(2) The program is based on performance targets related to educational achievement that are similar to those used in programs funded under part C of Title I of the ESEA, and is evaluated in a manner consistent with those program targets.

(3) The grantee or subgrantee keeps, and provides access to, records that ensure the correctness and verification of these requirements.

(4) The grantee monitors program performance to ensure that these requirements are met.

(Approved by the Office of Management and Budget under control number 1810–0659)

(Authority 20 U.S.C. 6321(d))

§ 200.89 [Reserved]

48. Revise subpart D of part 200 to read as follows:

Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk of Dropping Out

Sec.
200.90 Program definitions.
200.91 SEA counts of eligible children.
200.92–200.99 [Reserved]

Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk of Dropping Out

§ 200.90 Program definitions.

(a) The following definitions apply to the programs authorized in part D, subparts 1 and 2 of Title I of the ESEA:

Children and youth means the same as ''children'' as that term is defined in § 200.103(a).

(b) The following definitions apply to the programs authorized in part D, subpart 1 of Title I of the ESEA:

Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

Institution for neglected children and youth means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

Regular program of instruction means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in part D, subpart 2 of Title I of the ESEA:

Immigrant children and youth and limited English proficiency have the same meanings as the term ''immigrant children'' is defined in section 3301 of the ESEA and the term ''limited English proficient'' is defined in section 9101 of the ESEA, except that the terms ''individual'' and ''children and youth'' used in those definitions mean ''children and youth'' as defined in this section.

Locally operated correctional facility means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

Migrant youth means the same as ''migratory child'' as that term is defined in § 200.81(d).

(Authority: 20 U.S.C. 6432, 6454, 6472, 7801)

§ 200.91 SEA counts of eligible children.

To receive an allocation under part D, subpart 1 of Title I of the ESEA, an SEA must provide the Secretary with a count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section.

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency must specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified must be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA must adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Approved by the Office of Management and Budget under control number 1810–0060)

(Authority: 20 U.S.C. 6432)

§§ 200.92–200.99 [Reserved]

49. Revise subpart E of part 200 to read as follows:

Subpart E—General Provisions

Sec.
200.100 Reservation of funds for school improvement, State administration, and the State academic achievement awards program.
200.101–200.102 [Reserved]
200.103 Definitions.
200.104–200.109 [Reserved]

Subpart E—General Provisions

§ 200.100 Reservation of funds for school improvement, State administration, and the State academic achievement awards program.

A State must reserve funds for school improvement, State administration, and State academic achievement awards as follows:

(a) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the ESEA, an SEA must first reserve—

(i) Two percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal years 2002 and 2003; and

(ii) Four percent from the sum of the amounts allocated to the State under section 1002(a) of the ESEA for fiscal year 2004 and succeeding years.

(2) In reserving funds under paragraph (a)(1) of this section, a State may not reduce the sum of the allocations an LEA receives under section 1002(a) of the ESEA below the sum of the allocations the LEA received under section 1002(a) for the preceding fiscal year.

(3) If funds under section 1002(a) are insufficient in a given fiscal year to implement both paragraphs (a)(1) and (2) of this section, a State is not required to reserve the full amount required under paragraph (a)(1) of this section.

(b) *State administration.* (1) An SEA may reserve for State administrative activities authorized in sections 1004 and 1903 of the ESEA no more than the greater of—

(i) One percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the ESEA; or

(ii) $400,000 ($50,000 for the Outlying Areas).

(2)(i) An SEA reserving $400,000 under paragraph (b)(1)(ii) of this section must reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), but is not required to reserve proportionate amounts from section 1002(a), (c), and (d) of the ESEA.

(ii) If an SEA reserves funds from the amounts allocated to the State or Outlying Area under section 1002(c) or (d) of the ESEA, the SEA may not reserve from those allocations more than the amount the SEA would have reserved if it had reserved proportionate amounts from section 1002(a), (c), and (d) of the ESEA.

(3) If the sum of the amounts allocated to all the States under section 1002(a), (c), and (d) of the ESEA is greater than $14,000,000,000, an SEA may not reserve more than one percent of the amount the State would receive if $14,000,000,000 had been allocated among the States under section 1002(a), (c), and (d) of the ESEA.

(4) An SEA may use the funds it has reserved under paragraph (b) of this section to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under Title I, parts A, C, and D of the ESEA.

(c) *State academic achievement awards program.* To operate the State academic achievement awards program authorized under section 1117(b)(1) and (c)(2)(A) of the ESEA, an SEA may reserve up to five percent of the excess amount the State receives under section 1002(a) of the ESEA when compared to the amount the State received under section 1002(a) of the ESEA in the preceding fiscal year.

(d) *Reservations and hold-harmless.* In reserving funds under paragraphs (b) and (c) of this section, an SEA may—

(1) Proportionately reduce each LEA's total allocation received under section 1002(a) of the ESEA while ensuring that no LEA receives in total less than the hold-harmless percentage under § 200.73(a)(4), except that, when the amount remaining is insufficient to pay all LEAs the hold-harmless amount provided in § 200.73, the SEA shall ratably reduce each LEA's hold-harmless allocation to the amount available; or

(2) Proportionately reduce each LEA's total allocation received under section 1002(a) of the ESEA even if an LEA's total allocation falls below its hold-harmless percentage under § 200.74(a)(3).

(Approved by the Office of Management and Budget under control numbers 1810–0620 and 1810–0622)

(Authority: 20 U.S.C. 6303, 6304, 6317(c)(2)(A))

§§ 200.101—200.102 [Reserved]

§ 200.103 Definitions.

The following definitions apply to programs operated under this part:

(a) *Children* means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children below the age and grade level at which the agency provides free public education.

(b) *Fiscal year* means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for record-keeping.

(Authority: 20 U.S.C. 6315, 6571)

§§ 200.104—200.109 [Reserved]

Appendix—Analysis of Comments and Changes

(**Note**: This appendix will not be codified in the Code of Federal Regulations)

Section 200.11 Participation In NAEP

Comment: One commenter recommended that the language requiring LEAs receiving Title I funds to participate in State-NAEP assessments be strengthened by specifying an expected participation rate for States and LEAs. The commenter further requested additional language that would describe allowable extenuating circumstances that would excuse schools from participating in the State NAEP assessments.

Discussion: Section 1112(b)(1)(F) of the ESEA requires that an LEA, in its plan submitted to the State, provide an assurance that it will participate, if selected, in NAEP. The statute is clear that all LEAs, if selected, must participate. Therefore, the Secretary does not believe that language concerning expected participation rates is needed. The Secretary further believes that there will be few, if any, extenuating circumstances that would excuse a school from participating in the State-NAEP and will address any special circumstances on a case-by-case basis.

Changes: None.

Comment: One commenter, while agreeing that participation of fourth and eighth graders in NAEP testing in mathematics and reading is appropriate, stated that the costs for administering those tests should not be taken from a district's Title I allocation.

Discussion: Section 200.11 states that participation in the State NAEP is mandatory, if the Department pays the costs of administering those assessments.

Changes: None.

Comment: One commenter recommended clarifying that the criteria used for selecting students to participate in NAEP reflect the student population that the State tests for State assessment purposes and for making determinations.

Discussion: Section 411(b)(2)of the National Education Statistics Act of 1994 requires NAEP to ''use a random sampling process which is consistent with relevant, widely accepted professional assessment standards and that produces data that are representative on a national and regional basis.''

Changes: None.

Comment: One commenter recommended adding language to

address the situation for rural schools with no fourth or eighth grade students by stating that ''if the selected school has students in fourth or eighth grade, the school is required to participate in NAEP.''

Discussion: Since it would not be possible for a school to participate in NAEP if it had no students enrolled at the grade(s) tested, no further clarification is necessary.

Changes: None

Comment: One commenter stated that if NAEP results are to be valid and accurate, a district may not be allowed to opt out of tests that rely on sampling techniques. To reinforce this policy the commenter recommended that the Department request Congress to make a technical correction to the ESEA and statutorily modify the contradiction in § 602 of that Act, which amended § 411(d)(1) of the National Education Statistics Act of 1994. Another commenter, however, recommended that § 200.11 allow for voluntary participation in NAEP, consistent with § 1112(b)(1)(f) of the ESEA.

Discussion: The regulation clarifies that, if selected, an LEA that receives funds under part A of Title I of the ESEA must participate in NAEP notwithstanding the provisions of § 411(d)(1) of the National Education Statistics Act of 1994, which generally provides for voluntary participation of LEAs.

Changes: None.

Comment: One commenter recommended clarification of the meaning of ''participate'' because an LEA could agree to participate, but all or most of the selected schools in that LEA could refuse to participate. The current NAEP guidelines require 85 percent participation of selected schools if a State is to report State-level results.

Discussion: Additional clarification is not necessary because an LEA cannot meet the NAEP participation requirement unless it requires all schools selected to participate.

Changes: None.

Section 200.12 Single State Accountability System

Comment: One commenter suggested that States should be directed to develop accountability systems that include multiple assessments that measure higher-order thinking skills. The commenter's rationale was that this would provide more valid and reliable student data.

Discussion: Section 1111(b)(3)(C)(vi) of the ESEA requires that statewide assessments include multiple measures that assess higher-order thinking skills and understanding. This requirement is clarified in § 200.2(b)(7) of the standards and assessment regulations published on July 5, 2002 at 67FR 45038.

Changes: None.

Comment: One commenter suggested that the statutory requirements for determining adequate yearly progress (AYP) be integrated into the State's existing system of accountability. Furthermore, the commenter expressed opposition to using different accountability measures in different States.

Discussion: The Secretary agrees that the statutory and regulatory provisions governing AYP must be integrated into a State's accountability system. To comply with the NCLB Act, each State will need to incorporate these requirements into its current accountability system. The statute gives States flexibility to define achievement standards, design assessments, and implement the accountability provisions. The Secretary believes that these State responsibilities will necessarily result in variation among State accountability systems.

Changes: None.

Comment: One commenter expressed concerns that State accountability systems will exclude homeless children.

Discussion: The statute and the regulations in § 200.6(d) require States to include homeless students in their assessment, reporting, and accountability systems. However, the Secretary is aware that the NCLB Act does not specifically identify homeless students as one of the subgroups whose progress will be monitored in meeting the 2013–2014 proficiency goals. Nevertheless, these students are required to be included in the accountability system. Schools and districts are required to test all students, and high participation rates in statewide assessments (*i.e.*, 95 percent) are a condition of making AYP. Furthermore, these students will be included in at least one subgroup—the ''all student'' category—and schools will be accountable for ensuring this group of students is proficient. To the extent that homeless children are mobile, and many are, the regulations clarify that students who have not been in a school for a full academic year must be included in district accountability, or in State accountability in those cases where students have been in multiple districts.

Changes: None.

Section 200.13 Adequate Yearly Progress in General

Comment: A number of commenters urged the Secretary to include flexibility in the final regulations on to accommodate ''rigorous models that States have already developed that may achieve the same fundamental principles of the statute, although through different approaches,'' as discussed in the preamble to the proposed regulations and the Secretary's July 24, 2002 *Dear Colleague* letter. In particular, commenters sought recognition of the validity of models that use ''growth trajectories,'' performance indices, or other ''value-added'' measures. Other commenters, however, strongly urged the Secretary to ensure that any flexibility regarding the definition in the final regulations does not go beyond the original intention of the ESEA.

Discussion: The NCLB Act included very specific, rigorous requirements that States must implement to determine the AYP of each public school, LEA, and the State itself. In preparing the final regulations, the Secretary has faithfully implemented the statutory provisions governing AYP addressing additional flexibility wherever possible. The Secretary realizes that the accountability systems currently in place in many States may not fully meet the statutory and regulatory requirements. To meet the requirements in the ESEA and these final regulations, a State may continue to use its current State accountability system, consistent with the Secretary's July 24, 2002 *Dear Colleague* letter, if that system integrates AYP as defined in the statute and regulations.

Changes: None.

Comment: One commenter requested clarification regarding the impact of recent changes in the definitions of ethnic groups issued by the Office of Management and Budget (OMB) on the requirement to ensure by major racial and ethnic groups. Another commenter also suggested that any changes in such definitions could hinder State efforts to collect student level achievement data.

Discussion: The Department is developing guidance on the implementation of OMB standards for data on multi-racial/ethnic groups of individuals. Those standards will take effect for educational agencies no sooner than the fall of 2004. Once the Department guidance is issued, the Department plans to provide adequate lead-time for educational agencies to make appropriate adjustments to their data systems. Until that happens, educational agencies are under no obligation to maintain, use, or report data under the OMB standards. Although implementation of the new multi-racial data requirements must await publication of guidance by the Department, the Secretary encourages States to consider taking appropriate steps to implement other provisions of

the OMB standards, such as separating Asians from Native Hawaiians and Other Pacific Islanders.

Changes: None.

Comment: Several commenters strongly recommended that any alternate assessment be based on the same State academic content standards used for the regular assessments. The commenters believed that applying the same standards to all children is the cornerstone of standards-based education. Other commenters, however, supported alternate standards as long as they are developed through a documented and validated process. Additional commenters urged that any student prevented by a disability from completing the regular assessment be permitted to take an alternate assessment based on different standards, not just students with ''the most significant cognitive disabilities.'' One commenter expressed concern that requiring grade-level testing for students with disabilities would be unfair both to individual students and to schools enrolling such students.

Discussion: Too often in the past, schools and LEAs have not expected students with disabilities to meet the same grade-level standards as other students. The NCLB Act sought to correct this problem by requiring each State to develop grade-level academic content and achievement standards that it expects all students—including students with disabilities—to meet, and by holding schools and LEAs responsible for all students meeting those standards. If students with disabilities cannot take a State's regular assessment, even with accommodations, § 200.6(a) of the final Title I regulations published on July 5, 2002 at 67 FR 45038, 45041 required the State to provide for one or more alternate assessments to measure those students' achievement against the State's standards. Those final regulations, however, did not clearly link those alternate assessments to grade-level expectations. To make this link, the Secretary has revised § 200.6(a)(2)(ii) of the final regulations issued on July 5, 2002 to make clear that alternate assessments must yield results for the grade in which a student with disabilities is enrolled. This change is critical to ensure that students with disabilities are not excluded from State accountability systems. This policy may be modified in the future after public comment on the separate notice of proposed rulemaking discussed in the preamble to these final regulations.

Changes: Section 200.6(a)(2)(ii) has been revised to make clear that alternate assessments for students with disabilities who cannot take the State's regular assessment must yield results for the grade in which the student is enrolled.

Comment: Several commenters expressed concern that proposed § 200.13(d) would create a ''loophole'' permitting arbitrary exclusion of some schools from an SEA's regular assessment and accountability system. The commenters noted in particular that widely differing definitions of ''full academic year'' could lead to abuses of the proposed regulations, and that the proposed regulations could be manipulated to avoid assessment of certain students. One commenter recommended clarifying that students attending a school for only part of the academic year, but who are in an assessed grade and who have attended schools in a single LEA for a full academic year, must be assessed and counted in the calculation of AYP for the LEA.

Discussion: The intent behind the proposed regulation was to ensure that schools in which no student attends for a full academic year are held accountable. It was in no way intended to create a ''loophole'' that would permit certain students to not be assessed. In response to these comments, this proposed regulation is removed. Instead, these schools are governed by the final regulation in §§ 200.20(e) and 200.21(b): any student who is not in a school for a full academic year but within a single district for a full academic year is included in accountability for the LEA, and any student who attends schools within several districts but within the same State for a full academic year is included in determinations of State AYP. Schools in which no student has attended for a full academic year would not be subject to determinations of AYP; those students, however, would be assessed and included, as discussed above, in decisions about LEA and State progress.

Changes: Section 200.13(d) has been amended to remove the proposed requirement that a State must establish a way to hold accountable ''schools whose purpose is to serve students for less than a full academic year.''

Comment: Two commenters sought clarification of the types of schools referred to in proposed § 200.13(d)(1)(ii)—that is, those whose purpose was to serve students for less than a full academic year. In particular, one commenter expressed concern that the proposed regulations might require an SEA to hold accountable schools not under its jurisdiction, such as juvenile justice alternative education programs.

Discussion: As discussed above, proposed § 200.13(d)(1)(ii) has been deleted. In accordance with § 200.20(e)(2), to the extent that a school serves students in a juvenile justice alternative education program for less than a full academic year, the school would not be held accountable for those students in determinations of AYP.

With respect to the issue of whether a State must hold accountable schools not under the jurisdiction of the SEA, § 200.13 of the regulations, consistent with the statute, requires each State to develop a single, statewide accountability system that will be effective in ensuring that all LEAs, public elementary and public secondary schools make AYP. The Department generally defers to the State interpretation of what is a public elementary and secondary school and an LEA, in accordance with State law. In a number of States, juvenile justice alternative education programs are conducted in public schools operated within school districts or other entities that are LEAs under State law. In some States, the SEA has oversight responsibility for juvenile justice alternative education programs, or enters into an agreement with the State agency responsible for such programs.

Changes: Section 200.13(d)(1)(ii) has been deleted.

Section 200.15 Timeline

Comment: Several commenters requested clarification of how changes in assessment systems or AYP definitions will impact baselines and AYP calculations over the course of the 12-year timeline for ensuring that all students are proficient.

Discussion: As a State changes its assessments and collects new data, the State may adjust its timeline, annual measurable objectives and intermediate goals, as long as the new system has as its goal that all students achieve proficiency by 2013–14. Further, regardless of changing assessment systems, States must review the progress of schools each year and, based on this annual review, identify schools that do not meet AYP. If a Title I school has not made AYP for two consecutive years, it must be identified for improvement, even if the assessment system changed between those years, thereby changing the basis for identification. Similarly, a school that has been identified for improvement cannot exit school improvement status merely because a different assessment system is used. Examples of ways in which States can continue providing accountability decisions while moving to new

assessments will be included in nonregulatory guidance.

Changes: None.

Section 200.16 Starting Points

Comment: One commenter requested clarification that States are permitted to average assessment data over a period of several years to establish starting points for reading/language arts and mathematics.

Discussion: The Secretary agrees that, consistent with § 200.20(d)(1)(i), more than one year of data can be used to establish the starting point as long as that data includes assessment results from the 2001–02 school year and does not delay the establishment of the starting point. This clarification will be further explained in nonregulatory guidance.

Changes: None.

Comment: Three commenters requested that the final regulations permit States to establish separate starting points for each subgroup of students.

Discussion: The NCLB Act clearly states that the starting point must be the same for each subgroup of students. The final regulations maintain this position. The Secretary believes that this approach establishes similar expectations for all schools and requires high achievement for all students. The final regulations do allow a State to establish separate starting points by grade span.

Changes: None.

Section 200.18 Annual Measurable Objectives

Comment: Two commenters requested that the final regulations permit a State to establish separate baselines and measurable objectives for each subgroup of students.

Discussion: The ESEA clearly states that the starting point and annual measurable objectives must be the same for each subgroup of students.

Changes: None.

Comment: One commenter objected to determining AYP for an LEA based on the academic achievement of all the students enrolled in the LEA, rather than the performance of the schools within the LEA. On the other hand, another commenter recommended that the final regulations clarify that AYP for an LEA be based on the aggregated achievement of its students and not its schools.

Discussion: The ESEA clearly specifies that LEAs are to be held accountable for the achievement of students in the same manner as schools. This means that each LEA is held accountable for all students attending schools within the district for a full academic year. These students must meet or exceed the annual measurable objectives and State goals for the other academic indicators. These provisions are a critical means of ensuring that students who are mobile within a district are not excluded from accountability; they are included in LEA and State accountability.

Changes: None.

Section 200.19 Other Academic Indicators

Comment: Several commenters asserted that, contrary to the ESEA, the proposed regulations appear to make the use of other academic indicators, including graduation rate, optional in the determination of AYP. The commenters recommended that the final regulations clarify that States must include graduation rate at the high school level and one other academic indicator at the elementary and middle school levels as part of their definitions of AYP, and that progress toward intermediate and final objectives for these indicators is required for a State, LEA, or school to make AYP. Another commenter made a similar recommendation, based on the principle that a school that improves test scores by increasing its dropout rate should not make AYP and should be identified for improvement. Another commenter requested that the final regulations reflect the statutory requirement that the other academic indicators adopted by a State be measured separately for each subgroup of students.

Discussion: As stated in § 200.19(a), a State must use graduation rate for high schools and another academic indicator of its choosing for elementary schools and for middle schools to determine AYP. Section 200.19(d)(2) makes clear that the State must disaggregate its other academic indicators, including graduation rate, by each subgroup in order to report that information under section 1111(h) of the ESEA and to calculate whether schools that do not meet the State's annual measurable objectives but have decreased for each subgroup the percentage of students below proficient by at least 10 percent can be considered to have made AYP. As indicated in § 200.19(d)(2)(ii), however, the State need not disaggregate its other academic indicators for determining AYP. The Secretary is confident that publicly reporting disaggregated data on the other academic indicators will ensure that schools, LEAs, and the State are held accountable for subgroup performance.

Changes: Section 200.19(a) and (d)(2) have been modified as discussed above.

Comment: One commenter requested clarification on the definition of ''a regular diploma,'' as used in § 200.19(a)(1)(i). Another commenter asked whether a ''certificate of attendance'' or similar recognition for students with disabilities may be considered a ''regular diploma.''

Discussion: The Secretary believes it is important to clarify this term to ensure that States use graduation rates that are as accurate and meaningful as possible. As a result, the final regulations make clear that a ''regular diploma'' must be fully aligned with the State's academic content standards and may not include a certificate or GED. Thus, if a student with disabilities is given only a certificate of attendance that does not reflect the student's achievement against the State's content standards, that student would not have received a ''regular diploma'' and thus would not be considered to have graduated for purposes of calculating graduation rate.

Changes: The final regulations clarify in § 200.19(a)(1)(i) that a regular diploma may not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or GED.

Comment: One commenter objected to the use of the term ''standard number of years'' as part of the regulatory definition of graduation rate, on the grounds that such a limitation could penalize schools serving students—such as students with disabilities, limited English proficient students, and returning dropouts—who typically take longer to graduate.

Discussion: The Secretary believes that the regulations provide sufficient flexibility to address such students. For students that, in very limited instances, may take longer than the standard number of years to graduate, a State may propose a manner for accurately accounting for these students in an alternate definition of graduation rate under § 200.19(a)(1)(i)(B). This definition must be included with the State accountability plan and submitted for peer review.

Changes: None.

Comment: Several commenters expressed concern that proposed § 200.19(a)(1) does not reflect conference report language accompanying the NCLB Act that requires measurement of graduation rates in a way that ''avoids counting dropouts as transfers'' and specifically includes the graduation rate in the definition of AYP. Several commenters also maintained that any alternative to the statutory definition of graduation rate must be based on a ''more accurate

longitudinal system that follows individual student progress'' and thus could accommodate varying numbers of years required to graduate for students with special educational needs. Two of the commenters encouraged the Secretary to take the lead in establishing a ''common framework'' for calculating graduation and dropout rates in all States, and one commenter recommended a specific definition based on a combination of statutory and conference report language. Two other commenters supported the flexibility regarding graduation rates provided in the proposed regulation.

Discussion: The Secretary agrees that the graduation rate should not include students who have dropped out of school as students who have transferred to another school. With the passage of the NCLB Act, the expectations for schools to make AYP have increased; it is critically important that schools do not make AYP simply because students have dropped out of school. The Secretary also agrees that graduation rate should be measured from the beginning of high school in order to capture students who drop out before reaching 12th grade.

Changes: Section 200.19(a)(1)(ii) of the final regulations clarifies that a State must define graduation rate in a manner that does not count students who have dropped out of school as students who have transferred to another school. In addition, § 200.19(a)(1)(i)(A) of the final regulations has been amended to require States to measure graduation rate ''from the beginning of high school.''

Comment: One commenter agreed with proposed § 200.19(c), that gives States discretion to require progress on other academic indicators by setting increasing goals for those indicators, but recommended that the final regulation also not permit a decline in such indicators from the initial baseline level. Another commenter requested clarification as to whether the State must set goals for these indicators or may simply require ''progress'' over a certain ''threshold'' level. A third commenter recommended requiring a timeline for any additional indicators used by a State, including starting points, intermediate goals, and annual measurable objectives for such indicators.

Discussion: The NCLB Act offers flexibility to States to define how progress will be measured relative to the other academic indicators. The regulations permit, but do not require, a State to increase the goals of its other academic indicators over the course of the timeline.

Changes: None.

Section 200.20 Making Adequate Yearly Progress

Comment: In determining AYP, one commenter requested clarification regarding the use of academic indicators in a school that includes both high school students and middle or elementary school students. Since these schools will have two indicators, the commenter asked if the groups must make progress on both for the school to make AYP.

Discussion: The NCLB Act is silent on this issue. The use of these indicators in determining AYP may vary depending on the configuration of a school (*e.g.*, kindergarten through eighth grade, eighth through twelfth grade). The Secretary asks States to propose a policy for addressing this issue when they submit plans for their State accountability systems.

Changes: None.

Comment: One commenter expressed concern that the 95 percent assessment requirement in proposed § 200.20(c)(1)(i) may be misconstrued as relieving States, LEAs, and schools from the requirement to assess all students under §§ 200.2(b)(9) and 200.6.

Discussion: The NCLB Act clearly states that *all* students must be assessed to measure their achievement toward meeting the State's challenging academic standards. Schools and districts are held accountable for ensuring high rates of participation: no less than 95 percent of all students and student subgroups must participate in the statewide assessments.

Changes: Section 200.20(c)(2) clarifies that a State, LEA, or school may not systematically exclude students from taking the statewide assessments.

Comment: Several commenters requested that the final regulations provide flexibility to States in applying the requirement that 95 percent of each subgroup be tested in order to make AYP. Three of these commenters were particularly concerned about the impact on this requirement of State rules permitting parents to exclude their children from statewide assessments. Two other commenters recommended phasing in the 95 percent requirement over several years.

Discussion: The ESEA does not allow for a phase-in of the participation requirement for AYP. The statute does acknowledge through the 95 percent participation rate requirement that there may be instances in which parents do not allow their students to take the statewide assessments. Schools, LEAs, and States need to carefully and thoughtfully explain to parents the importance of participating in such assessments and the consequences for not participating.

Changes: None.

Comment: Two commenters requested clarification that proposed § 200.20(c)(1)(ii), which requires subgroups to be of sufficient size to produce statistically reliable results, applies only to the determination of AYP and does not change the requirement that all students must participate in the annual assessment system.

Discussion: The ESEA clearly states that all students must be assessed to measure their achievement on challenging academic standards. For purposes of determining AYP, if a subgroup within any particular school or district is too small to produce statistically reliable results, the requirement for 95 percent participation would not apply to that subgroup. The Secretary clarifies in the final regulations that a State, LEA, or school may not systematically exclude students from participating in the assessments.

Changes: Section 200.20(c)(2) of the final regulations clarifies that the ''95 percent participation rule'' does not permit a school or LEA to systematically exclude 5 percent of students from participating in the assessments.

Comment: Several commenters recommended that the final regulations clarify that, even if a subgroup is too small to produce statistically reliable data at the school level, the results of that subgroup must be aggregated at the next level—in this case, for the LEA—to ensure that the progress of the subgroup is not simply overlooked or excluded from all calculations of AYP.

Discussion: The Secretary agrees with these comments.

Changes: Sections 200.20(e)(1) and 200.21(b) and 200.7(d) make clear that all students enrolled for a full academic year in an LEA or in a State must be included for accountability purposes at that level, provided the size of a subgroup is large enough to produce statistically reliable results. Subgroups too small to be reported or identified at one level must be included at the next higher level, assuming the subgroup reaches the appropriate size.

Comment: Two commenters expressed concern that varying definitions of ''statistical significance'' applied under proposed § 200.20(c)(1)(ii) could undermine the subgroup-based accountability provisions of the NCLB Act. One commenter recommended that the final regulations include standards to guide States in determining the number of students required to yield statistically reliable information.

Discussion: Determining the number of students required to yield statistically reliable information is the responsibility of each State. The Secretary will review and approve these definitions as part of his approval of State accountability systems. In nonregulatory guidance, the Department may offer some guidelines for States to consider as they make this decision.

Changes: None.

Comment: One commenter recommended that the final regulations provide flexibility in defining AYP for small school districts and single-school LEAs, in particular, that may find it difficult to implement the subgroup-based accountability requirements of the ESEA.

Discussion: The intent of the law is to ensure that all schools and districts are held accountable for student achievement. In those instances in which schools and districts are too small to include any subgroups, the school and district will need to make a decision about AYP at least on the basis of all its students who were enrolled in the school or district for a full academic year. The Department of Education will issue nonregulatory guidance to provide examples of methodologies for handling this issue.

Changes: None.

Comment: Two commenters objected to proposed § 200.20(d)(1)(ii)(B), which would permit a State to delay the determination of AYP on the basis of the new assessments for grades 3–8 required by the NCLB Act until the State has two or three years of data to average under proposed § 200.20(d)(1)(i). One commenter noted that this provision potentially delays the use of the new assessment data until the final year of the current authorization. Another commenter, however, expressed support for the flexibility provided in the proposed regulation.

Discussion: Section 1111(b)(2)(J) of the ESEA permits a State to establish a uniform procedure for averaging data across grades and across years in determining AYP. That provision specifically permits a State averaging data across years to accumulate two or three years of data under the new grades 3–8 assessments required by the NCLB Act before using that data to determine AYP. The final regulations accurately reflect this authority. They also make clear, however, that a State may not delay implementing the new grades 3–8 assessment requirements. Moreover, the State must report these data under section 1111(h)of the ESEA. Further, at a minimum, the State must continue making annual decisions about AYP on the basis of data from the reading/language arts and mathematics assessments in the three grade spans required in Section 1111(b)(3)(C)(v)(I) of the ESEA.

Changes: Section 200.20(d)(1) has been revised to clarify better the intent of these provisions.

Comment: Two commenters recommended modifying proposed § 200.20(e) to restore the statutory emphasis on mitigating the impact of student mobility on assessment results and prevent the potential creation of a loophole permitting the exclusion of dropouts from the determination of AYP. Additionally, another commenter recommended permitting either the State or the LEA to define ''full academic year.''

Discussion: The final regulations are an accurate reflection of the statute: students who are enrolled within a district for a full academic year must be included in the AYP of an LEA. Moreover, the final regulations clarify that students who were not enrolled within a school for a full academic year may not be included within that school's determination of AYP. The Secretary also believes that it is appropriate and justified to leave the decision of what is a ''full academic year'' to each State.

Changes: None.

Section 200.21 Adequate Yearly Progress of a State

Comment: Three commenters recommended that the final regulations specify that students who attend schools within a State but in more than one LEA must be included in the determination of AYP for the State. Two commenters also urged the Secretary to require States to report on the progress of these students.

Discussion: The Secretary concurs with these comments.

Changes: Section 200.21(b) of the final regulations specifies that all students who were enrolled within schools in a State for a full academic year must be included in determining the progress of the State.

Comment: One commenter requested that the final regulations include a description of required technical assistance and other interventions by the Secretary in the case of States that do not make AYP.

Discussion: In the case of a State that does not make AYP, the technical assistance offered by the Secretary would be specific to the State's needs. In order to offer the maximum amount of flexibility in designing technical assistance, this issue will not be addressed in the regulations but will be handled on a case-by-case basis within the statutory parameters.

Changes: None.

Comment: One commenter urged the Secretary to include in the final regulations a description of State obligations and requirements under section 1111 of the ESEA to ensure that each State provides sufficient support to LEAs and schools in implementation.

Discussion: The ambitious goals for student achievement contained within the NCLB Act will best be achieved when States, districts, and schools work together. To that end, the Department will provide nonregulatory guidance about the roles of each entity and how they can support improved achievement. The Secretary understands the important role of the U.S. Department of Education as well and intends to review State accountability plans in an expeditious manner.

Changes: None.

Comment: Two commenters recommended that the final regulations require States to establish English Language Development Standards designed to measure the oral, reading, and written proficiency in English of limited English proficient students, as well as annual exams linked to those standards.

Discussion: These final regulations cover only those provisions contained within Title I of the ESEA. The provisions governing the development of English proficiency are found in Title III. The Department plans to issue nonregulatory guidance on this issue.

Changes: None.

Schoolwide Programs

Section 200.25 Schoolwide Program Purpose and Eligibility

Comment: One commenter cautioned that because the final regulations are used frequently at the district and school level, they should adhere as closely as possible to the NCLB Act. The commenter strongly suggested that the regulations be restored to reflect the omitted statutory requirements for schoolwide programs such as: opportunities for advanced instruction and increased learning time, extended learning opportunities, and provisions related to the needs assessment. The commenter also recommended that the regulations be changed to ensure that schoolwide programs include strategies to meet the educational needs of historically underserved populations.

Discussion: The preamble to the NPRM makes specific reference to the major purpose of schoolwide programs, which is to address the needs and improve academic achievement of all

students in the school, especially for those furthest away from demonstrating proficiency. The language in the preamble did not especially address the comprehensive needs assessment and its provisions because the needs assessment is an integral part of the schoolwide planning process outlined in § 200.26.

Changes: None.

Comment: One commenter requested clarification of the apparently contradictory regulatory language in §§ 200.25 through 200.27, that defines low-achieving children as ''those students furthest away from demonstrating proficiency,'' while the language in § 200.25 states that a schoolwide program need not identify, target, or track these children.

Discussion: In defining lowest achieving children, the preamble refers to those students furthest away from meeting proficient and advanced levels of achievement consistent with sections 1111 and 1116 of the Title I statute. The Secretary agrees that there is a need to clarify in guidance that identification of those students furthest away from meeting proficient and advanced levels of achievement and identification of students for program participation have different implications. Schoolwide programs must be able to accomplish the former. They do not have to perform the latter as a means to achieve it. The Department will clarify this issue further in nonregulatory guidance.

Changes: None.

Comment: One commenter expressed concern about the requirement that all paraprofessional instructional staff in the schoolwide program meet the requirements for paraprofessionals that apply to targeted assistance schools. The commenter expressed concern that many schools will elect to remain in or return to targeted assistance status.

Discussion: Section 1119(c) of the ESEA requires that paraprofessionals hired after January 8, 2002 and working in a program supported with Title I, part A funds be highly qualified. Section 200.58 of the regulations further clarifies that statutory requirement by providing that all paraprofessionals working in a schoolwide program are considered to be supported by Title I, Part A funds. The Secretary believes that individual schools will make the decision to operate a schoolwide program, and continue their operation based on the need to reform the school and improve student achievement.

Changes: None.

Comments: Two commenters objected to the provision in § 200.25(b)(1)(ii) that the 40 percent poverty eligibility threshold for operating a schoolwide program is required for only the initial year of the program. The commenters suggested that this provision be deleted, so that if a school's poverty level decreases in subsequent years it can no longer operate as a schoolwide project.

Discussion: Section 1114(a)(1) of the ESEA establishes the 40 percent eligibility threshold for a school to operate a schoolwide program. The intent of the statute is to enable the schoolwide program to improve the entire educational program of the school. Long-term reform occurs over time and requires sustained and consistent intervention if student achievement is to improve. The Secretary believes that making the 40 percent threshold an initial eligibility requirement, rather than an annual eligibility requirement, reinforces this long-range approach.

Changes: None.

Comments: Two commenters questioned, in § 200.25(b)(2), the advisability of allowing schools to choose a measure of poverty to determine eligibility for schoolwide programs that is different from the measure used by LEAs for Title I allocation purposes. One recommended requiring identical measures of poverty across the LEA's Title I program, or at least requiring equivalent or comparable measures of poverty.

Discussion: The provision to allow a school to use a poverty measure that is different from the one the LEA selects for Title I allocation purposes when determining eligibility for operating a schoolwide program is a continuation of flexibility provided under the old regulations. An LEA may use more restrictive free school lunch data, rather than free and reduced-price lunch data to determine which schools are eligible for Title I and to allocate funds. Based on free lunch data, however, a school might not meet the 40 percent schoolwide eligibility criteria data, while it might qualify if free and reduced-price lunch data were used. The Secretary wants to continue providing as much flexibility as possible to enable schools to qualify for implementing a schoolwide program.

Changes: None.

Section 200.26 Development and Evaluation of Schoolwide Program Plan

Comment: One commenter remarked that the language of the proposed regulation concerning the development of the schoolwide plan is complex and confusing because of its organizational structure and recommended reorganizing § 200.26 along the lines of the NCLB Act.

Discussion: The language in § 200.26 of the NPRM was intended to clarify that a schoolwide plan must describe how the school will improve academic achievement and make explicit the process used for developing the plan. However, the Secretary believes that the organization in the NPRM may be confusing and concurs that reorganizing the regulations to make them more consistent with the NCLB Act would make clearer the planning process required to operate a schoolwide program.

Changes: The Secretary has reorganized the regulations by adding a new § 200.26 (renamed ''Core elements of a schoolwide program'') and placed it under the undesignated center heading ''Schoolwide Programs'' in subpart A of part 200 to make the regulations consistent with the statute. All cross-references have been amended appropriately.

Comment: One commenter recommended an addition to § 200.26(b)(1) to acknowledge that the needs of migratory children are constantly changing, requiring an ongoing needs assessment process.

Discussion: The comprehensive needs assessment described in § 200.26 addresses the needs of the school, in general, and specifically requires that the needs of migratory children be taken into account when conducting the needs assessment. The Secretary has added language to this section that includes migratory children as part of the needs assessment and provides a specific reference to the definition contained in section 1309(2) of the ESEA.

Changes: The Secretary has added a new § 200.26 and placed it under the undesignated center heading ''Schoolwide Programs.'' The language in this new section provides for the use of academic achievement information for all students in the school including all demographic groups of students as part of the needs assessment. The inclusion of migratory students in the needs assessment, and as defined in section 1309(2) of the NCLB Act is referenced in this section.

Comments: Several commenters referenced language in § 200.26(a)(2)(ii) requiring a focus on scientifically based research. One remarked that the meaning of this term is widely debated and that the application of science to improved instruction is often a complex process. One commenter asked for clarification about the meaning of regulatory language that requires a school's process for developing its schoolwide plan to focus on scientifically based research.

Discussion: Scientifically based research is defined in section 9101(B)(37) of the ESEA as ''research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.'' The strategies and methods used in schoolwide programs must be of high quality and have a reasonably high probability of increasing student achievement.

Changes: None.

Comments: Several commenters requested amplification of language regarding the schoolwide planning process to reinforce the notion that the process must be meaningful, to provide clarity regarding who should participate in the evaluation of the program's effectiveness, and to require that the comprehensive needs assessment include data on school funding and the school's capacity to meet needs. One commenter in this group also requested that the regulations be more explicit about the importance of the comprehensive needs assessment to the planning process.

Discussion: The Secretary agrees that the schoolwide planning process must be meaningful, and reflect data obtained from the comprehensive needs assessment. The resulting plan must include strategies for improved student achievement, evaluation, monitoring for effectiveness, and for amendment of the plan, as needed.

Changes: To make this policy clear and to address the comenters' concerns, the Secretary has reorganized § 200.26 and renamed it ''Core elements of a schoolwide program''. In the NPRM, these provisions were contained under § 200.28—Use of funds in a schoolwide program. The new § 200.26 outlines the basic elements of the schoolwide program planning process with regard to conducting a comprehensive needs assessment, developing a comprehensive plan, and evaluating the program.

Comment: One commenter noted widespread confusion about the Title I provisions related to serving homeless children and recommended further elaboration in nonregulatory guidance on needs and issues affecting homeless students. The commenter also suggested that the school needs assessment take into account the needs of homeless as well as migrant students.

Discussion: The Secretary agrees with the commenter's concerns and will address in nonregulatory guidance the issue of including the homeless population in all schoolwide reform efforts. The language included in revised § 200.26(a)(1)(i) provides that the comprehensive needs assessment must be based on academic achievement information about all students in the school, which includes homeless and migrant students.

Changes: None.

Comments: One commenter expressed concern that the needs assessment was taken out of the listing of components, thereby eliminating the requirement for a school to describe the needs assessment in its schoolwide plan.

Discussion: The needs assessment is critical to the development of the comprehensive schoolwide program plan. A review of the core elements of the schoolwide program includes the comprehensive needs assessment, the comprehensive plan, and the evaluation. The description of the comprehensive needs assessment may be included as a part of this section.

Changes: In the revised § 200.26, the Secretary has included three subparts that address the comprehensive needs assessment, the comprehensive plan, and the evaluation.

Comments: Two commenters expressed concern about the importance of including strategies to increase parental involvement, and requested that the regulations make reference to the parental involvement requirements contained in section 1118 of the ESEA.

Discussion: The Secretary concurs that including parents in all aspects of schoolwide program planning, development, and implementation is essential.

Change: The Secretary has included provisions for parental involvement, consistent with the ESEA, in §§ 200.27(b)(2); 200.27(c)(1) and (2); and 200.28 (c)(3)(i).

Section 200.27 Schoolwide Program Implementation Components

Comments: Several commenters expressed concern that this section of the proposed regulations omitted several key components that are critical to operating a schoolwide program: These components include the participation of teachers in the decisions regarding use of assessments, increasing the amount and quality of learning time, strategies to meet the needs of historically underserved populations, methods that help provide an accelerated and enriched curriculum, language that refers to proficient and advanced levels of academic achievement, inclusion of information about how the school will determine if academic needs have been met, and instruction by highly qualified teachers.

Discussion: The proposed regulations organized the schoolwide requirements to emphasize key components necessary for the operation of a successful schoolwide program. The intent of the NPRM was to outline an approach that would lead schools to restructure in ways that would be most likely result in improved student achievement. However, the Secretary agrees that the proposed regulations may be confusing because those provisions did not parallel the language in the ESEA.

Changes: The Secretary has amended and renamed § 200.27—Schoolwide program components—to make the regulations parallel the statute more closely and to address the specific concerns of the commenters.

Comments: Two commenters expressed concerns about proposed language in § 200.27(c) of the NPRM, which requires the inclusion of parents in the planning and academic intervention process, and requires that student achievement reports be provided to parents in a language that they can understand.

Discussion: The Secretary strongly supports the right of parents to be involved in the schoolwide planning process and to have information regarding the education services provided to their children in a form and language they can understand.

Changes: The Secretary has clarified the parental involvement provisions in §§ 200.27(b)(2) and 200.27(c) to require that a school develop its schoolwide comprehensive plan with the involvement of parents, consistent with section 1118 of the ESEA and to make that plan available to parents in an understandable format and, to the extent practicable, in a language that parents can understand.

Comment: One commenter believed that the reference in § 200.27(a) concerning the application of the new science requirement by 2005–06 was inappropriate because improvement in meeting standards cannot be demonstrated without a proper assessment.

Discussion: the Secretary agrees that the reference to science in § 200.27(a) is confusing and that providing a general reference to improving the opportunities of students to meet the State's proficient and advanced levels of student achievement is more appropriate.

Changes: The Secretary has made this clarifying change in § 200.28(a)(1).

Section 200.28 Use of Funds in a Schoolwide Program

Comment: One commenter asked that § 200.28 be further clarified to confirm that consolidation of funds does not constitute a waiver of the school's obligation to comply with the requirements of the NCLB Act, nor does

it diminish the school's obligation to fulfill other programs' purposes. All program purposes and needs must be met, not merely addressed.

Discussion: The Secretary agrees with the commenter's concern and will provide further clarification in nonregulatory guidance.

Changes: None.

Comments: Several commenters recommended that § 200.28(c)(3)(i)(A) and (B) require that before consolidating Title I part C funds, a school first meet the unique educational needs of migratory students that result from their migratory lifestyle and document that these needs have been met. Several of these commenters further recommended that documentation could consist of maintaining a record of the actions taken by the school or LEA on behalf of migrant students.

Discussion: The Secretary agrees with these concerns and will provide further clarification in nonregulatory guidance.

Changes: None.

Comment: Several commenters recommended an addition to § 200.28(c)(3)(i) of the NPRM to include consultation with parents of migrant children or organizations representing those parents, or both.

Discussion: The Secretary concurs with commenters regarding the importance of involving parents of migratory children and the organizations that represent them.

Changes: The Secretary has clarified in § 200.28(c)(1)(i) that an LEA must consult with parents of migratory children or organizations representing those parents, or both.

Comment: One commenter noted that currently the latest list of programs identified by the Department that may be combined in a schoolwide program was published in a September 21, 1995 **Federal Register** notice. This does not allow for combining of funds from new programs created by the NCLB Act. The commenter recommended that the regulations specify which Federal funds administered by the Secretary may be combined in a schoolwide program.

Discussion: The Secretary understands the importance of LEAs and schools knowing which funds may be combined in a schoolwide program and will publish an updated list in the **Federal Register** soon after publication of the final regulations.

Changes: None.

Comment: One commenter noted that the provision in § 200.28(c)(3)(iii) allowing for consolidation of IDEA funds in a schoolwide program is not in the ESEA, and recommended that this provision should be deleted from the regulations.

Discussion: The provisions in the regulations concerning consolidation of special education funds are consistent with the requirements of section 613(a)(2)(D) of the IDEA. The regulations provide that the amount of funds consolidated for special education purposes may not exceed the amount received by the LEA under part B of IDEA for that fiscal year, divided by the number of children with disabilities in the jurisdiction of the LEA, and multiplied by the number of children with disabilities participating in the schoolwide program.

Changes: None.

Comment: One commenter noted that § 200.28(c)(4)(i)(A), of the proposed regulations, that provides that programs consolidated in a schoolwide program are exempt from statutory or regulatory provisions governing their operation, does not include an important qualification contained in section 1114 (a)(3)(A) of the ESEA. This statutory provision allows programs to be consolidated only ''if the intent and purpose of such other programs are met.'' This omission must be restored in order to conform to the ESEA.

Discussion: The Secretary agrees with the commenter.

Changes: The Secretary has added clarifying language in § 200.29(b)(1)(ii) requiring that a school consolidating and using in a schoolwide program funds from any other Federal program administered by the Department meet the intent and purposes of that program and ensure that the needs of the intended beneficiaries of that program are addressed.

Comment: One commenter urged that the regulations be changed to ensure that a school operating a schoolwide program does not use Title II, part D, Education Technology Grant funds for purposes other than those authorized by the statute. The commenter suggested that language be added to § 200.28(c)(4)(i)(C) to require that a schoolwide program as a whole, addresses the ''intent, purposes, activities and uses'' of funds, rather than just the ''intent and purposes'' of funds, for each Federal program whose funds were consolidated to support the schoolwide program.

Discussion: The Secretary believes that the language now in § 200.29(d) requiring that the intent and purposes of the programs consolidated in a schoolwide program be met provides sufficient protection to ensure that the needs of the children specifically designed to be served by those programs are met. The proposed change would take away the flexibility a school would have in operating schoolwide programs. The purpose of a schoolwide program is to enable a school to combine its Federal, State and local resources so it can focus on providing comprehensive services that best enable its students to meet State's academic content and student achievement standards. In exchange for this flexibility, the school must ensure that its students make progress toward meeting those academic content and student achievement standards.

Changes: None.

Comment: One commenter recommended adding a new paragraph (d) to § 200.28 mandating that States require LEAs to involve providers of federally funded adult education and career technical education programs to ensure the maximum support for the academic achievement of students in local schools.

Discussion: While the Secretary agrees that providers of Federally funded adult education and career technical education programs can play an important role in providing services to students in local schools, involving these providers in not a specific statutory requirement and may not be appropriate in every schoolwide program.

Changes: None.

LEA and School Improvement

Section 200.30 Local Review

Comment: One commenter objected to giving LEAs the responsibility for conducting the annual progress review to determine whether participating schools are making AYP, on the grounds that a statewide system would better ensure equity and reliability in making AYP determinations.

Discussion: The Secretary understands the concerns of the commenter, but believes that the combination of the statewide assessment system described in § 200.2 and the AYP requirements described in §§ 200.13 through 200.20, which LEAs must use in conducting their review of school performance, will ensure that such reviews are conducted in a fair and uniform manner across each State. While the statute clearly specifies that the local review and school improvement process is an LEA responsibility, it also ensures that, in carrying out this responsibility, LEAs will rely primarily on standards and indicators developed at the State level.

Changes: None.

Comment: One commenter expressed concern that the proposed regulations do not address the role of charter school LEAs or other single-school LEAs in the school review and improvement process.

Discussion: Single-school LEAs have the same role and responsibilities in the school review and improvement process as other LEAs, including responsibility for review of school progress in meeting adequately yearly progress requirements, identifying the school for improvement, corrective action, or restructuring, providing public school choice options under § 200.44, and making available supplemental educational services in accordance with §§ 200.45 and 200.46.

Changes: None.

Comment: One commenter expressed concern that the proposed regulations imply that LEAs are not required to use other academic indicators in determining whether a school has made AYP.

Discussion: As clarified in § 200.19(a), a State must use graduation rate for high schools and another academic indicator of its choosing for elementary schools and for middle schools to determine AYP. At the local level, an LEA may use additional academic assessments or indicators for the purpose of identifying additional schools for improvement, corrective action or restructuring. In addition, progress on these LEA academic indicators may permit a school to make AYP in accordance with the exception clause specified in § 200.20(b).

Changes: None.

Comment: One commenter objected to the proposed regulation permitting an LEA to limit its review of a school operating a targeted assistance program to the academic achievement of only those children served by the program. The commenter noted that this regulation could create a disincentive for schools to operate schoolwide programs and could hinder the development of single, statewide accountability systems covering all students.

Discussion: The Secretary agrees with the concerns expressed by the commenter, but notes that the regulations reflect the clear language of the statute. In addition, the Secretary believes that few schools will take advantage of this provision, because it would, by definition, limit review to the lowest-achieving students and thus might make it more difficult for a school to demonstrate AYP.

Changes: None.

Comment: One commenter recommended adding to the final regulations statutory language regarding the use of the results of the LEA's annual review of school performance.

Discussion: The Secretary believes that in the overall context of AYP and school improvement requirements, the purposes of the annual progress review and the use of the results of that review are sufficiently explained in the regulations. Any further explanation may be accomplished through nonregulatory guidance.

Changes: None.

Section 200.32 Identification for School Improvement

Comment: Several commenters maintained that the identification timeline in the proposed regulations does not allow sufficient time for States to make available assessment data from a given school year, or for school districts to analyze that data and identify schools for improvement, corrective action, or restructuring, prior to the beginning of the next school year.

Discussion: The identification timeline in the proposed regulations is faithful to the timeline specified in the ESEA. The Secretary recognizes that States may have to adjust their assessment schedules to comply with this timeline, but the centrality of the timeline to the integrity of the entire improvement process, as well as the plain language of the statute, permit no alternative.

Changes: None.

Comment: One commenter recommended that the timeline for identifying schools for improvement be based on the school year in which assessment results become available, rather than the school year in which the assessments are administered.

Discussion: Section 1116(b)(1)(B) of the ESEA requires identification ''before the beginning of the school year following such failure to make.'' The Secretary believes that this phrase unambiguously links identification to the school year in which the failure occurred, and not to the availability of assessment results documenting that failure. In addition, section 1116(a)(2) of the ESEA, incorporated into the regulations as § 200.49(e), reinforces this approach by requiring SEAs to make assessment results in a given school year available to LEAs before the beginning of the next school year. Any delay in this identification timeline would severely undermine the strong accountability, with consequences for schools and options for students, that is at the core of the NCLB Act.

Changes: None.

Comment: Two commenters expressed concern that the proposed regulations appear to hold LEAs responsible for identifying schools for improvement prior to the beginning of the school year even if SEAs fail to make assessment results available on a timely basis.

Discussion: Section 200.49(e) of the final regulations specifically requires SEAs to ensure that the results of academic assessments administered as part of the State assessment system for a given year are available to LEAs before the beginning of the next school year. In addition, § 200.49(e)(1) clarifies that the SEA must provide the required assessment data in sufficient time to permit the LEA to make the identification in accordance with § 200.32(a)(2). Finally, § 200.49(e)(2) prohibits an LEA from identifying a school for improvement, corrective action, or restructuring unless the SEA has provided assessment results to the school.

Changes: The final regulations include additional language in § 200.49(e)(1) requiring SEAs to make available assessment data for a given school year to LEAs ''in such time as to allow for the identification'' for improvement prior to the beginning of the next school year.

Comment: Several commenters objected to the flexibility provided in proposed § 200.32(d) and (e) regarding the identification of schools for improvement or removal of schools from improvement status on the basis of 2001–2002 assessment results. The commenters interpret the statute as requiring the identification for improvement of any school that fails to make AYP for two consecutive years, as well as the removal from improvement status of any school that makes AYP for two consecutive years, regardless of the years involved.

Discussion: The Secretary believes that the absence of any reference to 2001–2002 assessment results in the otherwise very specific transition provisions of the statute, combined with the strong likelihood that many States would not be able to make these results available to LEAs prior to the beginning of the 2002–2003 school year, supports a flexible approach to the use of those results for identification purposes during the transition to the NCLB Act.

Changes: None.

Comment: Two commenters expressed concern that the proposed regulations, which give LEAs flexibility in the use of 2001–2002 assessment data in making identification decisions not specifically covered under the transition provisions of the statute, could create confusion regarding the use of 2001–2002 assessment data in subsequent years.

Discussion: The Secretary agrees that the flexibility provided in the proposed regulations could be interpreted as permitting LEAs to ignore 2001–2002 assessment data in making

identification decisions in subsequent years. The regulations clarify that an LEA decision not to identify for improvement a school that, on the basis of 2001–2002 assessment data, does not make AYP for a second consecutive year, does not permit the LEA to ignore that failure in making future identification decisions.

Changes: Section 200.32(e) has been amended to clarify that if an LEA chooses not to identify for improvement a school that, on the basis of 2001–2002 assessment results, does not make AYP for a second consecutive year, it nevertheless must consider the school's 2001–2002 performance as the first year of not making AYP for the purpose of subsequent identification decisions.

Comment: One commenter asserted that the proposed regulations unfairly penalize schools that were hoping to exit improvement status by making AYP in two out of three years, as provided for under the previous statute. For example, under the old law, a school that made AYP in the 1999–2000 school year, failed to make AYP in 2000–2001, and made AYP in 2001–2002 would be removed from improvement status. Under the new law, however, such a school would continue to be identified for improvement until it makes AYP for two consecutive years.

Discussion: The reauthorized ESEA specifies the identification status of schools identified for improvement under the previous law, but makes no exceptions to the new requirement that schools may be removed from improvement only after making AYP for two consecutive years. The Secretary has provided limited flexibility to LEAs to identify for improvement or remove from improvement schools in certain situations not covered by the statutory transition provisions. In both instances, however, this flexibility is consistent with the ''two consecutive year'' standard of the statute. The Secretary's authority to provide flexibility in implementing the new law does not extend to overriding this standard.

Changes: None.

Comment: Several commenters objected to the proposed requirement that LEAs make choice immediately available to students attending schools that are identified for improvement after the beginning of the school year following the year in which the LEA administered the assessments that resulted in the identification for improvement. The commenters believe that this requirement will be unnecessary if identification takes place in accordance with the statutory timeline (prior to the beginning of the school year), and that if identification occurs following the beginning of the school year, the statute requires LEAs to provide choice no sooner than the first day of the school year following identification.

Discussion: The commenters are correct in their observation that the mid-year choice requirement of proposed § 200.32(f)(1) is unnecessary if identification occurs in accordance with the statutory timeline. The Secretary's intention, however, was to encourage adherence to that statutory timeline by removing a potential incentive for delaying identification until after the beginning of the school year. In other words, an LEA may not postpone its obligation to provide public school options to students attending schools identified for improvement simply by delaying identification.

Changes: None.

Comment: Several commenters objected to the proposed regulations requiring an LEA to count as a full year of improvement any year in which the LEA identifies a school for improvement after the beginning of the school year. The commenters maintained that mid-year identification would not provide adequate time for districts and schools to develop and implement effective improvement plans. They also noted that the statutory timeline is linked to identification and generally requires a ''full school year'' at each stage of the improvement process. One commenter suggested that while a school identified in mid-year should start the improvement process, it should not officially enter improvement status until the beginning of the next school year.

Discussion: The Secretary understands the concerns of the commenters, particularly with regard to giving schools adequate time to prepare and carry out effective improvement plans. However, the clear intention of the NCLB Act is to impose rigorous accountability measures on a precise timeline designed both to bring about rapid improvement in school quality and to provide immediate options to students attending identified schools. Giving primacy to the ''full school year'' language of the statute potentially rewards LEAs that violate the statutory identification timeline, delays the availability of public school choice and supplemental educational services to students, and unacceptably extends an already lengthy improvement timeline (which permits six years of not making before implementation of restructuring). The regulations underscore, in § 200.49(e), the importance of SEAs ensuring that LEAs and schools receive their assessment data in a timely manner so that they can meet the statutory school improvement deadlines.

Changes: None.

Section 200.33 Identification for Corrective Action

Comment: Two commenters objected to the flexibility provided to LEAs in proposed § 200.33(c) to remove from corrective action a school that, on the basis of assessments administered during the 2001–2002 school year, makes AYP for a second consecutive year. They maintained that the statute requires LEAs to remove schools from corrective action in such cases, and one commenter argued that LEAs also should use 2001–2002 assessment data to identify additional schools for corrective action.

Discussion: The Secretary believes that the proposed regulations are an appropriate way to address an inequity in the statutory transition provisions covering identification for corrective action. These provisions require LEAs to treat schools that were identified for corrective action prior to enactment of the NCLB Act as subject to corrective action for the 2002–2003 school year. Some of these schools, however, may have made AYP in both 2000–2001 and 2001–2002, thus meeting the statutory requirement for removal from corrective action. The proposed regulations permit LEAs to remove these schools from corrective action, but does not require such removal because some LEAs may, in part due to the uncertain timing of assessment results, prefer simply to adhere to the statutory transition provisions.

On the issue of identifying additional schools for corrective action, § 200.32(c)(1) already specifies the identification status of schools that have been identified for improvement for two or more consecutive years. LEAs must treat such schools as being in the second year of improvement under the new law for the 2002–2003 school year. Failure to make AYP in 2001–2002 would not change this designation. The proposed regulations thus reflect the clear intent of the NCLB Act to identify for corrective action, for the 2002–2003 school year, only those schools identified for corrective action under the previous law.

Changes: None.

Section 200.36 Communication with Parents

Comment: One commenter expressed concern about the rights of parents with limited English proficiency, in light of Title VI of the Civil Rights Act and Executive Order 13166, to receive communications about their child in a

language that they understand. In addition, two commenters urged the Secretary to require the use of native language to communicate with parents in areas where large numbers of students share the same primary language.

Discussion: Section 1116 of the ESEA requires SEAs and LEAs to keep parents informed during the school improvement process and, to the extent practicable, to provide information to parents with limited English proficiency in a language the parent understands. In addition, Title VI of the Civil Rights Act of 1964 and longstanding Department policy require SEAs and LEAs to communicate information to limited-English proficient parents that is communicated to non-limited English proficient parents. Under Title VI, SEAs and LEAs have flexibility in determining what mix of oral and written translation services may be necessary and reasonable for communicating this information. This policy is also consistent with Executive Order 13166.

It is the Department's position that, pursuant to the requirements of section 1116 of the ESEA, it is ''practicable'' to provide information to limited-English proficient parents orally in a language that they understand. This interpretation of Section 1116 of the ESEA also is consistent with Title VI, longstanding Department policy under Title VI, and Executive Order 13166.

Additionally, section 1116 of the ESEA requires written translations of printed information to be provided to parents with limited English proficiency in a language they understand, whenever such written translations are ''practicable.'' If it is not ''practicable'' to provide written translations of notices, section 1116 requires SEAs and LEAs to ensure that parents with limited English proficiency are provided oral translations of the written information. This requirement to translate orally written information whenever a written translation is not practicable is consistent with Title VI, longstanding Department policy under Title VI, and Executive Order 13166.

Changes: None.

Comment: One commenter suggested additional regulatory language to ensure effective communication with the parents of limited English proficient and migrant students. In particular, the commenter recommended the use of non-traditional communication vehicles, such as posting notices at churches and distributing information through social service providers.

Discussion: The Secretary agrees that effective communication with the parents of limited-English proficient and migrant students is important, but he believes that widely varying local circumstances argue in favor of addressing the concerns raised by the commenter in nonregulatory guidance rather than through ''one-size-fits-all'' regulatory prescription.

Changes: None.

Comment: One commenter expressed concern that it would not be possible for a State to communicate directly with parents, as required by the proposed regulations, if the State does not maintain information, such as street or e-mail addresses, on individual students. The commenter recommended requiring States to communicate to parents only through such broader means as the Internet and other media. Another commenter addressed a similar concern by recommending that States be permitted to fulfill their obligation by providing school improvement information to LEAs and schools, which would then distribute the information to parents, rather than requiring States to communicate directly with parents.

Discussion: The Secretary agrees that the proposed regulations should be amended to reflect the limited student information available to States in some cases. However, the final regulations continue to require States to communicate to individual students and their families, even if they must do so indirectly through LEAs and schools.

Changes: Section 200.36(b)(1) has been amended to permit States to distribute information to parents through LEAs and schools.

Comment: One commenter recommended that any information provided to parents also be provided to teachers and other school staff so that educators know and understand what is happening in their schools.

Discussion: Section 200.36 is intended to clarify statutory requirements regarding communication with parents during the school improvement process. Notice requirements affecting teachers and school staff are addressed elsewhere, such as in §§ 200.30 and 200.43.

Changes: None.

Comment: One commenter requested clarification of proposed § 200.36(c), which requires all communications to respect the privacy of students and their families.

Discussion: The proposed regulations are intended to help prevent, for example, the public disclosure of the names of students receiving supplemental educational services, as prohibited by § 200.46(a)(5) and (b)(2)(v). Further clarification will be provided in nonregulatory guidance.

Changes: None.

Section 200.37 Notice of Identification for Improvement, Corrective Action, or Restructuring

Comment: Two commenters recommended adding a definition of ''promptly'' in proposed § 200.37(a), which requires LEAs to ''promptly notify'' parents when their child's school has been identified for improvement. The commenters expressed particular concern that parents have sufficient time to consider public school choice options.

Discussion: The Secretary agrees that timely notification is essential to ensuring that parents are able to make informed choices regarding their children's education. Such notifications should be made as soon as possible. However, the precise amount of time required may vary depending on local circumstances. The Department has issued nonregulatory guidance on this issue.

Changes: None.

Comment: One commenter recommended including, in the notice to parents that their child's school has been identified for improvement, a description of the actions being taken to improve the school.

Discussion: The Secretary agrees that information on the action being taken to improve a school is important, and notes that § 200.38(a) requires an LEA to provide such information to parents. However, because parental consideration of choice and supplemental educational service options generally must occur at the same time a school is developing its school improvement plan, it will usually be impossible to include such information in the initial notice of identification.

Changes: None.

Comment: One commenter recommended that the explanation of the option to transfer described in § 200.37(b)(4)(i) include a reference to the provision of transportation to the new school.

Discussion: The proposed regulations referenced proposed § 200.44, which included choice-related transportation requirements, but the Secretary agrees that the restoration of the statutory reference to transportation in the notice requirement will clarify this issue.

Changes: Section 200.37(b)(4)(i) has been amended to include a discussion of transportation in the explanation of the option to transfer provided to parents as part of the notice of identification for improvement, corrective action, or restructuring.

Comment: Two commenters objected to the proposed requirement in § 200.37(b)(4)(ii) that LEAs provide information to parents on the performance of the school or schools to which their children may transfer. Both commenters found this requirement administratively burdensome, particularly in districts that offer a large number of choices and thus would have to document the performance of many schools. One commenter suggested that LEAs be permitted to ''direct'' parents to publicly available sources of such information, such as a school or district Web site.

Discussion: Since a basic principle of the public school choice option required as part of the school improvement process is to give parents in low-performing schools the opportunity to send their children to a higher-performing school, the Secretary believes the provision of the information called for in proposed § 200.37(b)(4)(ii) is essential. However, the regulations provide substantial flexibility to LEAs in selecting the most meaningful local measures of academic achievement, rather than mandating either the kind or number of such measures. LEAs are free, and indeed encouraged, to summarize school performance in a manageable and understandable format, rather than overwhelm parents with detailed reports. In addition, the final regulations clarify that, for the purposes of § 200.44, the only required indicator of performance is the academic achievement of students in the receiving schools. Finally, while it may be appropriate to direct parents to sources such as Web sites for additional information, basic performance information should be provided directly to parents, many of whom lack access to electronic information sources such as the Internet.

Changes: Section 200.37(b)(4)(ii) has been amended so that the only performance information required in the explanation of the public school choice option is the academic achievement of the schools to which a student may transfer.

Comment: One commenter suggested that the Secretary require, rather than encourage, LEAs to provide the additional information on public school choice options described in § 200.37(b)(4)(iii).

Discussion: The ESEA requires only that LEAs offer parents and students the option to transfer to another public school that is not identified for improvement, corrective action, or restructuring. This emphasis on academic performance is reflected in the information required by § 200.37(b)(4)(ii). The Secretary agrees that additional information on the options available to parents is desirable, but believes that LEAs should have flexibility to provide the most useful information in light of local needs and circumstances.

Changes: None.

Comment: One commenter recommended that the information on the school or schools to which a student may transfer include a description of parental involvement programs.

Discussion: The Secretary agrees that, in addition to the academic quality of the school, the opportunity for greater involvement in their child's education could be an important consideration for parents exploring public school choice options. However, we do not agree that such information should be required.

Changes: In order to clarify that information on parent opportunities may be provided in the explanation of the parents' option to transfer their child to another school, § 200.37(b)(4)(iii)(D) has been amended to specifically authorize provision of a description of parental involvement opportunities at the school or schools to which the student may transfer.

Comment: Two commenters objected to the proposed requirement that the annual notice of the availability of supplemental educational services include approved providers of technology-based or distance-learning services. One commenter maintained that the proposed regulations are unnecessary and implied a preference for technology-based providers over other providers, while another asserted that any clarification of means of providing services is more properly the role of SEAs, since they are responsible for approving providers.

Discussion: The success of the supplemental educational services component of the school improvement process depends on the availability of a sufficient number of providers to meet the diverse educational needs of students. Provider availability is a particular concern in poor urban and rural areas where it is reasonable to expect there will be the greatest demand for supplemental educational services. Technology provides a means to overcome geographic and demographic barriers to the provision of high-quality services. For this reason, the Secretary believes it is appropriate to emphasize the potential role of technology-based providers. Finally, the ESEA clearly assigns responsibility for providing annual notice to parents of the availability of supplemental educational services to the LEA, not the SEA.

Changes: None.

Comment: One commenter recommended including in the information about supplemental educational service providers the religious affiliation of such providers, the duration of services, whether services are school-based, and whether transportation to the provider is available.

Discussion: The Secretary believes that § 200.37(b)(5)(ii)(B) is sufficient to ensure the provision of such information in the annual notice of the availability of supplemental educational services, and will clarify this requirement in nonregulatory guidance.

Changes: None.

Comment: One commenter recommended requiring LEAs to include, in the explanation of public school choice and supplemental educational service options, a detailed discussion of procedures required to exercise such options, including any required forms, documentation, and schedules or deadlines.

Discussion: Procedures for exercising a public school choice or supplemental educational service option may vary widely from district to district depending on such factors as pre-existing choice programs, the timing of identification, and the use of technology. For this reason, the Secretary believes that the best way to address the commenter's concerns is through general guidelines in nonregulatory guidance.

Changes: None.

Section 200.38 Information About Action Taken

Comment: One commenter suggested that the final regulations require an LEA to include, in its explanation of corrective action or restructuring, a description of actions recommended by school-level staff or a school-level governance committee.

Discussion: The ESEA requires only that LEAs publish and disseminate information about measures actually taken to address the problems that led to the identification of a school for improvement, corrective action, or restructuring. Districts are free to provide additional information on the process that led to the adoption of such measures if they believe such information will support school improvement efforts.

Changes: None.

Section 200.39 Responsibilities Resulting From Identification for School Improvement

Comment: One commenter expressed concern that proposed § 200.39(a)(1)(i)

potentially misleads students and their families by suggesting that all students in schools identified for improvement will have the option to transfer to a better-performing school, when in fact the ESEA requires LEAs to give priority to the lowest-achieving students from low-income families in providing public school choice options.

Discussion: The regulation, like the statute, does indeed require that LEAs provide a public school choice option to all eligible students, defined as all students—regardless of achievement or family income—enrolled in a school identified for improvement, corrective action, or restructuring. The statutory priority on the lowest-achieving students from low-income families is a priority in providing transportation, as well as in making assignments to the family's preferred choice among available schools. It is not an invitation to LEAs to limit choice to only those students.

Changes: None.

Section 200.40 Technical Assistance

Comment: One commenter recommended that all technical assistance providers comply with the requirements of Title II of the Higher Education Act of 1965 (HEA), which requires institutions of higher education that conduct teacher preparation programs and receive Federal financial assistance under the HEA to issue reports on the ''pass rates'' of their teacher education graduates on State certification and licensure assessments, as well as on other aspects of their teacher education programs.

Discussion: The requirements in Title II of the Higher Education Act do not apply to other private organizations or to technical assistance providers.

Changes: None.

Comment: One commenter recommended that an LEA be required to ''publicly identify'' any entities providing technical assistance when it identifies a school for improvement.

Discussion: The ESEA requires only that an LEA ''ensure the provision of technical assistance as the school develops and implements'' its improvement plan. In addition, the improvement plan must include a description of the technical assistance to be provided by the LEA. This suggests that information on the precise nature of the technical assistance required, as well as the identity of the providers, is unlikely to be available at the time of identification.

Changes: None.

Comment: One commenter observed that the proposed regulations are inconsistent with the statutory requirements governing technical assistance to schools identified for improvement, particularly with regard to the goals of such technical assistance.

Discussion: The Secretary agrees that the proposed regulations inadvertently omitted the statutory reference to technical assistance in identifying and addressing any failure of the LEA or school in implementing the school plan.

Changes: Section 200.40(c)(1) has been amended to restore the omitted reference to technical assistance regarding LEA and school fulfillment of responsibilities under the school plan.

Section 200.41 School Improvement Plan

Comment: One commenter requested that the parental consultation requirement in § 200.41(a)(2) include a reference to a similar requirement in section 1118 of the ESEA.

Discussion: The Secretary believes that both the ESEA and the proposed regulations are unambiguous in requiring schools to consult with parents in developing or revising their school improvement plans, and that further clarification is unnecessary.

Changes: None.

Comment: One commenter suggested that the required consultation with parents, school staff, the LEA, and outside experts should take the form of written comments that are included in the school improvement plan.

Discussion: The ESEA does not require schools to seek comments in written form as part of the consultation process, but also does not preclude such an approach. The final regulations maintain this flexibility, which helps to ensure that school improvement planning is focused on results, not process.

Changes: None.

Comment: One commenter objected to the proposed regulation requiring school improvement plans to include ''measurable goals'' rather than the ''annual, measurable objectives'' terminology employed by the ESEA.

Discussion: The Secretary believes that the term ''annual, measurable objectives'' used in section 1116(b)(3)(A)(v) of the ESEA is ambiguous and, in particular, risks unintentional confusion with the annual measurable objectives required by § 200.18 as part of the definition of AYP. The substitution of the term ''measurable goals'' is intended to clarify that schools must set their own separate, interim performance goals that will contribute to the attainment of the annual measurable objectives required to make AYP and gain removal from improvement status.

Changes: None.

Comment: Two commenters requested that schools identified for improvement be permitted to use both Part A and non-Part A funds to satisfy the requirement in § 200.41(c)(5) that such schools spend not less than 10 percent of their part A allocation on professional development designed to help remove the school from improvement status.

Discussion: The proposed regulations accurately reflect the specific language of the ESEA, and the Secretary has no authority to modify this requirement.

Changes: None.

Comment: One commenter requested the addition of a reference to section 1119 of the ESEA in proposed § 200.41(c)(5), which outlines the requirements for school improvement-related professional development.

Discussion: The Secretary modified the statutory reference to section 1119 of the ESEA because this provision specifically covers professional development intended to ensure that all teachers are highly qualified, and not professional development designed to help remove a school from school improvement status.

Changes: None.

Comment: One commenter objected to the omission of the statutory requirement for an explanation of how funds reserved for professional development will be used to remove a school from improvement status, which in the proposed regulations was reflected only in a requirement for an assurance that such funds would ''contribute to removing the school from school improvement status.''

Discussion: The Secretary agrees that the proposed regulations could have inadvertently weakened the requirement for a firm commitment on the use of professional development funds in school improvement plans.

Changes: Section 200.41(c)(6) of the final regulations requires a school to specify how it will use its 10 percent reservation of Part A funds to gain removal from improvement status.

Comment: One commenter objected to the requirement that school improvement plans incorporate teacher mentoring programs.

Discussion: The Secretary has no authority to remove this requirement, which is specifically provided for in the ESEA. However, the final regulations clarify that the intention is to include teacher mentoring programs as a necessary element of the professional development provided as part of the school improvement plan.

Changes: The requirement for teacher mentoring programs has been moved to

§ 200.41(c)(5)(iii) of the final regulations.

Comment: One commenter objected to the omission of the notice requirement from the proposed regulation on school improvement plans.

Discussion: The notice requirement was omitted from proposed § 200.41 both because it concerned the initial identification for improvement, which in most cases will precede the development of the school improvement plan, and because it was included in proposed § 200.37, which covers all of the various statutory notice requirements related to the school improvement process. The Secretary agrees with the commenter, however, that it is important for the school improvement plan to describe how the school will notify parents of the identification for improvement.

Changes: Section 200.41(c)(7) requires the school improvement plan to include a description of how notice of identification for improvement will be provided to parents.

Section 200.42 Corrective Action

Comment: One commenter expressed concern that some of the corrective actions described in the proposed regulations may conflict with State charter school laws.

Discussion: Section 200.42(a) includes a range of corrective action options and requires any action taken to be ''consistent with State law.'' Where certain corrective actions specified in the ESEA and regulations conflict with State charter school laws, LEAs are not required to adopt those actions.

Changes: None.

Comment: One commenter requested clarification of the role of school support teams in providing technical assistance during corrective action.

Discussion: As described in § 200.42(b)(2), the LEA must continue to make available technical assistance, whether provided through school support teams or through some other mechanism, that meets the requirements of § 200.40.

Changes: None.

Comment: One commenter requested explanation of the proposed regulations regarding the appointment of an outside expert as a corrective action.

Discussion: The ESEA includes, as one of the corrective actions that may be taken by an LEA, the appointment of an outside expert ''to advise the school on its progress toward making AYP, based on its school plan under paragraph (3).'' The school plan cited in the statute, however, is the school improvement plan developed after initial identification for improvement and covering the two years of improvement efforts prior to the identification for corrective action. Since it presumably was at least in part the failure of this plan to improve the performance of the school that led to identification for corrective action, the Secretary believed that rather than providing advice based on this plan, it would be more appropriate for the outside expert to assist in revising the plan and in implementing the revised plan. Accordingly, § 200.42(b)(4)(iv) requires this approach when an LEA appoints an outside expert as a corrective action.

Changes: None.

Section 200.43 Restructuring

Comment: Three commenters requested clarification of the status of a school that has implemented a restructuring plan. One recommended that it be treated as a new school, and one asked whether such a school would be required to offer choice and supplemental educational services to its students.

Discussion: The ESEA does not address the status of a school that has implemented a restructuring plan. However, section 1116(b)(12) of the statute requires an LEA to remove a school from improvement, corrective action, or restructuring status only after the school has made AYP for two consecutive school years. The Secretary believes that the best interpretation of this language as it applies to a restructured school is that such a school remains ''in improvement'' until it makes AYP for two consecutive school years. For this reason, the LEA serving a restructured school must continue to provide public school choice options and make available supplemental educational services to eligible students enrolled in the school until the school makes AYP for two consecutive school years.

Changes: Section 200.43(c)(2) of the final regulations requires an LEA to provide public school choice options and make available supplemental educational services to students enrolled in a restructured school until the school makes AYP for two consecutive school years.

Comment: One commenter recommended that any entity selected to operate a school as part of a restructuring plan be required to demonstrate financial stability.

Discussion: The ESEA and proposed regulations require only that such an entity have a ''demonstrated record of effectiveness.'' States and LEAs, which presumably will enter into a contract with the entity, may identify other requirements or standards that the entity must meet. The ESEA requires that restructuring options be implemented ''consistent with state law.''

Changes: None.

Section 200.44 Public School Choice

Comment: One commenter requested clarification regarding LEA flexibility in providing public school choice options to students enrolled in schools identified for improvement, including whether an LEA may, in view of capacity constraints, offer choice to students only at some and not all of the schools it has identified for improvement.

Discussion: Both the ESEA and the proposed regulations clearly require, except where State law prohibits, LEAs to offer all students enrolled in all schools identified for improvement the option of transferring to another public school that has not been identified for improvement.

Changes: None.

Comment: Several commenters maintained that existing overcrowding of schools, teacher shortages, transportation difficulties, class-size limits, health and safety concerns, and other capacity issues prevent many LEAs from implementing the public school choice option in accordance with the requirements of § 200.44. One commenter, for example, recommended that the final regulations permit LEAs to preclude transfers to schools that have reached their ''maximum instructional capacity under State or local laws or ordinances.'' Another asked whether a State law limiting class size would permit an LEA to limit choice on the basis of the ''State law prohibition'' in § 200.44(a)(5).

Discussion: In general, as the Secretary has made clear in *Dear Colleague* letters, nonregulatory guidance, proposed regulations, and other policy statements, the ESEA does not permit an LEA to preclude choice options on the basis of capacity constraints. Rather, the statute requires an LEA to take measures to overcome issues such as overcrowding, class size limits, and health and safety concerns, that otherwise might prevent the LEA from complying with Title I public school choice requirements. This could mean, for example, adding classes and hiring additional teachers so that the LEA can offer choices to students while adhering to State-mandated class size limits.

In addition, LEAs have broad latitude in determining the schools to which students can transfer. They may, for example, consider health and safety factors in providing transfer options to

students and their parents. Such factors do not permit an LEA, however, to simply avoid its obligation to provide public school choice options as required by section 1116 of the ESEA. The expectation is that LEAs will need to find ways to provide choice, consistent with their obligations to provide a healthy and safe learning environment.

Changes: Section 200.44(d) of the final regulations clarifies that an LEA may not use lack of capacity to deny an eligible student the opportunity to transfer to another school not identified for improvement.

Comment: Two commenters requested that the final regulations include language permitting LEAs to limit the availability of choice options to comply with ''health and safety code requirements regarding facility capacity.''

Discussion: In implementing the public school choice requirements, an LEA must provide parents of students eligible to transfer a choice of more than one school if more than one school is available. The LEA is not required, however, to make available every school in the district. Rather, the LEA may take into consideration factors such as health and safety requirements or transportation costs in determining which schools in the district would be available to accept transfer students. Such factors may not be used, however, to deny students the opportunity to transfer to any other school.

Changes: Section 200.44(d) of the final regulations makes clear that an LEA may not use lack of capacity to deny an eligible student the opportunity to transfer to another school not identified for improvement.

Comment: One commenter recommended that the final regulations permit LEAs to offer supplemental educational services to those students whose transfer requests cannot be accommodated due to capacity constraints.

Discussion: Section 200.44(g)(2) of the final regulations permits an LEA with no eligible schools to which a student may transfer to offer supplemental educational services to eligible students enrolled in schools identified for their first year of improvement. However, since neither the ESEA nor § 200.44(d) of the final regulations permits an LEA to deny public school choice options to eligible students due to capacity constraints, there is no reason to offer supplemental educational services in lieu of choice under the circumstances suggested by the commenter.

Changes: None.

Comment: One commenter noted that some States and school districts currently operate public school choice plans and asked whether the new law requires additional choices beyond those already provided.

Discussion: If an existing choice plan meets the requirements of § 200.44, then the LEA is already in compliance with the ESEA. In most cases, however, the Secretary believes that it will be necessary to modify existing choice plans to meet these requirements, which include, for example, the provision of transportation, a choice of more than one school, and a priority for the lowest-achieving students from low-income families.

Changes: None.

Comment: One commenter expressed concern that proposed § 200.44(a)(2), which would require LEAs to offer choice ''not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in the identification of the school for improvement, corrective action, or restructuring,'' could require mid-year implementation of choice that would lead to major disruptions in both sending and receiving schools.

Discussion: Proposed § 200.44(a)(2) is based on the clear language of section 1116(b)(1)(E)(i) of the ESEA, which assumes SEA and LEA compliance with the equally clear statutory identification timeline. SEAs and LEAs that adhere to this timeline will not face the additional challenge of implementing the public school choice requirements of § 200.44 in the middle of a school year. The Secretary does not believe it is appropriate, however, to reward LEAs that do not comply with the law by permitting them to postpone their obligations under § 200.44 until the following school year and thereby deny students attending identified schools the opportunity to transfer immediately to a better school.

Changes: None.

Comment: One commenter noted that States and school districts may have their own ''improvement'' designations based on different criteria than those provided under section 1116 of the ESEA. For this reason, the commenter requested clarification that the standard proposed under § 200.44(a)(3)(i)(A) limits transfers to schools that have not been identified for improvement, corrective action, or restructuring under Title I.

Discussion: The Secretary agrees that the proposed regulations did not clearly reflect the statutory requirement under section 1116(b)(1)(E)(i) of the ESEA that an LEA provide a public school choice option ''that has not been identified for school improvement under this paragraph.'' The phrase ''under this paragraph'' expressly limits the exclusion from eligible choice options of schools identified under section 1116(b)(1) of the ESEA, and does not rule out schools that may have been identified for improvement under other State or local criteria as possible schools to which students may transfer.

Changes: The final regulations specify that transfers are limited to schools that have not been identified under §§ 200.32 through 200.34.

Comment: Two commenters requested clarification that proposed § 200.44(a)(3)(ii) refers only to public charter schools that are served by the LEA.

Discussion: The Secretary believes that both the ESEA and the regulations are clear in requiring choice only within LEAs. The precise relationship between public charter schools and LEAs, however, varies widely and is better addressed through nonregulatory guidance.

Changes: No change.

Comment: Several commenters objected to proposed § 200.44(a)(4)(i), which requires LEAs to offer parents of eligible students the choice of more than one school that is not identified for improvement, corrective action, or restructuring. The commenters argued that this requirement is inconsistent with both the NCLB Act and the Secretary's overall goal of regulating only where necessary to provide clarity or flexibility.

Discussion: The Secretary believes that the principle and intent of choice embodied in the NCLB Act has meaning only if parents and students have the ability to choose from more than one public school choice option. One school is effectively no choice. Choice implies, at a minimum, the opportunity to choose between at least two better-performing schools. However, the regulations do not prohibit an LEA from limiting choice options on the basis of such factors as transportation arrangements, so long as it provides more than one option to students enrolled in schools identified for improvement, corrective action, or restructuring.

Changes: None.

Comment: One commenter requested clarification as to whether an LEA may limit the number of schools to which a student may transfer on the basis of such factors as transportation arrangements, so long as the LEA provides parents and students more than one option from which to choose.

Discussion: The Secretary has issued nonregulatory guidance explaining that LEAs are indeed permitted to take into account logistical concerns, such as

transportation, in limiting the range of available choices to students exercising an option under § 200.44.

Changes: None.

Comment: One commenter recommended deletion of proposed § 200.44(a)(4)(ii), which requires LEAs to ''take into account'' parent preferences in making final assignments among public school choice options offered to students attending schools identified for improvement, corrective action, and restructuring. The commenter noted that this provision is not included in the ESEA and ''interferes with the local control of school systems.''

Discussion: The Secretary recognizes that the final decision regarding student assignment among available choices rests with the LEA, but believes that meaningful choice requires that LEAs take into account parental preferences.

Changes: None.

Comment: One commenter requested clarification of the eligibility for choice and supplemental educational services of students who plan to attend, but are not yet enrolled in, a school for which an LEA must provide such options.

Discussion: The answer to this question depends in large part on State and local definitions of ''enrollment,'' but the Secretary believes that in general LEAs should provide new students the same options offered to existing students at a given school.

Changes: None.

Comment: One commenter requested clarification of the limitation on the State law prohibition in § 200.44(b), including examples of improper application of the prohibition.

Discussion: Section 1116(b)(1)(E)(i) of the ESEA requires an LEA to provide public school choice to any student in a school identified for improvement, unless such public school choice is prohibited by State law. Section 200.44(b) of the final regulations clarifies that an LEA may invoke the State law exception only if the State law prohibits choice through restrictions on public school assignments or student transfers among schools. Such a State law could explicitly prohibit an LEA from permitting students to transfer to other public schools or it could, for example, enforce desegregation by restricting transfers in such a way that effectively makes choice impossible. A State law that limits class size, however, is not a State law prohibiting choice, because an LEA could add teachers to meet class size requirements and still permit students to transfer.

Changes: None.

Comment: Several commenters objected to the language in proposed § 200.44(c)(3) requiring LEAs to ''secure appropriate changes'' to desegregation plans to permit compliance with the public school choice requirements of § 200.44. Commenters noted that LEAs could only seek such changes and only courts or the responsible agencies could grant the changes. In addition, two commenters were concerned that this provision may impose the burden and expense of protracted litigation on LEAs.

Discussion: Nothing in the proposed regulations or these final regulations provides an LEA with the authority to violate an applicable desegregation plan; rather, § 200.44(c)(1) holds that the existence of a desegregation plan does not exempt an LEA from the public school choice requirements of § 200.44. In addition, § 200.44(c)(2) states that an LEA may take into account the requirements of its desegregation plan in determining how to implement a transfer option. An LEA is required to ''secure appropriate changes'' from the court only if it is unable to implement the choice requirement consistent with the plan. The Department of Education anticipates that courts and responsible agencies will recognize the benefits of allowing students to transfer from schools identified as needing improvement and will grant amendments to desegregation plans permitting such transfers. If a court or responsible agency denies an LEA's request to amend its desegregation plan to allow for choice, then the LEA should contact the Department of Education. It is not the Secretary's intent to deny Title I funding to an LEA that in good faith takes appropriate action to seek amendments to the desegregation plan in order to comply with the public school choice requirements of § 200.44.

Changes: None.

Comment: One commenter recommended that LEAs be permitted to limit eligible students to a single public school choice option, rather than the multiple options required by § 200.44(a)(4)(i), in order to support the goals of existing desegregation plans.

Discussion: Section 1116(b)(1)(E)(i) of the ESEA requires an LEA with Title I schools identified for improvement to provide students in those schools the opportunity to transfer to a school not identified for improvement. Consistent with § 200.44(a), eligible students must have the opportunity to express a preference among at least two eligible schools and that preference must be considered by the school district in making their assignment. An LEA may take into account the requirements of its desegregation plan in determining how to implement the transfer option. If its desegregation plan offers no opportunity for the LEA to implement the choice requirement consistent with the plan, the LEA would need to secure appropriate changes from the court.

Changes: None.

Comment: One commenter maintained that compliance with the priority in § 200.44(d), and a similar priority for supplemental educational services in § 200.45(d), will require students to re-apply annually for a public school choice option to ensure equity in the context of limited funding for choice-related transportation and supplemental educational services.

Discussion: The Secretary understands the concerns of the commenter, but notes that § 200.44(f) contains the statutory requirement permitting students who exercise a public school choice option to remain in the new school until the student has completed the highest grade in that school. For this reason, the Secretary believes that the priority in § 200.44(d) was intended to apply only to students requesting a choice option for the first time, not those who have already exercised such an option. As for the commenter's similar concern regarding supplemental educational services, § 200.45(b)(3) requires LEAs to make such services available only until the end of the school year in which they are first provided, a limitation that mandates annual re-application for such services.

Changes: None.

Comment: One commenter recommended that the Department regulate the State role in encouraging cooperative agreements between LEAs to make available choice to students in LEAs in which all schools have been identified for improvement, corrective action, or restructuring.

Discussion: While the Secretary agrees that it would helpful, and consistent with the spirit of the NCLB Act, for States to encourage cooperative agreements between LEAs that would increase the availability of public school choice options, it would be inappropriate to regulate in this area of State authority.

Changes: None.

Comment: One commenter recommended setting geographic limits on the distance between LEAs that arrange cooperative agreements for the purpose of expanding public school choice options available to students enrolled in schools identified for improvement, corrective action, or restructuring.

Discussion: The Secretary believes that geographic limits are the kind of issue the authorizers intended to

address when they called for such cooperative agreements ''to the extent practicable,'' a limitation that is repeated in § 200.44(h)(1).

Changes: None.

Comment: One commenter requested clarification as to whether ''receiving school districts,'' presumably under a cooperative agreement such as that provided for under § 200.44(h)(1), would be permitted to refuse to accept certain students, such as students with disabilities who might require special services and support.

Discussion: All public school districts, as recipients of Federal financial assistance, must comply with applicable Federal civil rights requirements, including those under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (ADA).

Changes: None.

Comment: One commenter objected to § 200.44(h)(2), which permits LEAs with no eligible schools to which a student may transfer to offer supplemental educational services in lieu of choice to students enrolled in schools identified for their first year of improvement. The commenter stated that the proposed regulations go beyond the scope of the statute.

Discussion: The proposed regulations are consistent with the NCLB Act's emphasis on increasing educational options for all students attending low-performing schools. The proposed regulations do not create a new authority, but merely highlight an existing one, since the provision of tutoring and other supplemental instructional services is already a permissible use of Federal funds as part of the regular Title I program in both schoolwide projects and targeted assistance schools. An LEA may implement any corrective action or restructuring measure earlier than what is required by the statute.

Changes: None.

Comment: One commenter suggested that if the transportation costs associated with public school choice become excessive, funds might be better used to pay for supplemental educational services.

Discussion: Section 200.44(h)(2) permits an LEA with no eligible schools to which a student may transfer to offer supplemental educational services to eligible students enrolled in a school in its first year of improvement. Neither the ESEA nor the regulations, however, allow an LEA to offer supplemental educational services in lieu of choice solely on basis of the costs incurred in providing choice in accordance with the requirements of § 200.44.

Changes: None.

Comment: Two commenters expressed concern that public school choice could require costly replication of specialized services for various student populations, including limited-English proficient and migrant students and students with disabilities.

Discussion: In order to provide public school choice, some school districts may need to make specialized services for special populations of students, such as limited-English proficient students and students with disabilities, available in other schools in order to provide those students with the opportunity to attend an eligible school, namely, a school that has not been identified for school improvement, corrective action or for restructuring, and that has not been identified by the State as persistently dangerous. However, in offering school choice, the school district has the flexibility to offer parents the option to enroll their child in eligible schools of choice that already provide the language or disability-related services needed by the student.

Changes: None.

Comment: One commenter expressed concern about the eligibility for choice and supplemental services of students who have been involuntarily transferred from Title I schools that are identified for improvement, corrective action, or restructuring.

Discussion: Generally, Title I affords parents of students in low-performing schools an option to choose a school that has not been identified for improvement for their child. There are a very few situations, however, that are handled differently. If a student is assigned to a particular school by a family court for child custody reasons and that school has been identified for improvement, the student could be eligible to transfer under the provisions in the ESEA. However, the student's parents may not be able to exercise that option without first obtaining permission from the court to move their child. In the case of a student assigned to a particular school by a juvenile court due to the student's violent or criminal behavior, or for disciplinary reasons sufficiently serious to justify placement in a particular learning environment, the LEA may limit or deny the choice option.

Changes: None.

Comment: Two commenters expressed concern that parental exercise of a choice option in the case of a student receiving special education services, without the approval of the student's Individualized Education Program (IEP) team, may constitute a unilateral change in placement under the IDEA that could violate the student's right to a free appropriate public education (FAPE).

Discussion: Under the IDEA, a change in the location of delivery of services, in and of itself, does not trigger the ''change of placement'' procedures of the IDEA. The LEA can allow the school of choice either to implement the IEP that the prior school developed for the new school year, or convene an IEP team meeting and develop a new IEP that meets the student's needs. If the LEA adopts the student's existing IEP, none of the ''change of placement'' procedures apply. However, the school district must comply with the ''change of placement'' requirements of the IDEA if the new IEP will change either the services in the IEP or the extent to which the student will participate with nondisabled students in academic and nonacademic activities. Similar rules apply to students who are covered only by Section 504 and Title II of the ADA.

Changes: None.

Comment: One commenter requested clarification that an LEA would be permitted to limit the choices of a student with a disability to those eligible schools with the capacity to provide the services required by the student's IEP.

Discussion: LEAs are not required to offer students with disabilities the same choices of schools as are offered to nondisabled students, but may match the abilities and needs of a student with a disability, as indicated on the student's IEP, to those schools that have the ability to provide FAPE to the student. However, school districts must offer students with disabilities and those eligible under Section 504 and Title II of the ADA the opportunity to be educated in an eligible school, namely, a school that has not been identified for school improvement, corrective action, or restructuring and that has not been identified by the State as persistently dangerous. Like other students, students with disabilities and those covered by Section 504 and Title II of the ADA must have the opportunity to express a preference among at least two eligible schools and that preference must be considered by the school district in making their assignment.

Changes: None.

Section 200.45 Supplemental Educational Services

Comment: Two commenters expressed concern that proposed § 200.45(b)(1) goes beyond the NCLB Act in requiring LEAs to ''arrange'' for each eligible student to receive

supplemental educational services, rather than ''make available'' such services at the request of parents.

Discussion: The ESEA requires LEAs that are identified for a second year of improvement or subject to corrective action or restructuring to ''make supplemental services available'' in accordance with section 1116(e) of the statute. Section 1116(e)(1) requires such LEAs to ''arrange for the provision of supplemental educational services to eligible children in the school from a provider with a demonstrated record of effectiveness, that is selected by the parents.'' The proposed regulations are consistent with this statutory language.

Changes: None.

Comment: One commenter urged the Secretary to issue ''clarifying regulations and guidance'' encouraging States and LEAs to promote maximum participation by providers that utilize distance-learning technologies.

Discussion: The Secretary recognizes the potential value of technology as a means to overcome geographic and cost barriers to the universal availability of high-quality supplemental educational services, particularly in poor urban and rural areas where it is reasonable to expect there will be the greatest demand for such services. This is why § 200.37(b)(5)(i)(A) requires the LEA's annual notice of the availability of supplemental educational services to specifically include providers of technology-based or distance-learning services, when such providers are on the SEA's list. However, the ESEA does not give the Secretary authority to promote one type of provider over another; rather, it places responsibility for promoting participation by the maximum number of providers on SEAs, which must develop standards for approving providers and maintain an updated list of approved providers from which parents may select. Unless evidence emerges that the State approval process presents barriers to participation by technology-based or distance-learning providers, the Secretary believes there is no need for further regulations on this issue.

Changes: None.

Comment: One commenter requested additional language in proposed § 200.45(b)(4)(i)(A) requiring an SEA, before granting a waiver from the requirement to provide supplemental educational services, to determine that the providers on its approved list makes services available within the LEA requesting the waiver through technology-based or distance-learning methods.

Discussion: The proposed regulations require the SEA to determine that none of the providers on its list makes available supplemental educational services to students served by the LEA before granting a waiver from the requirement to provide such services. Since the SEA's list presumably will include providers using technology-based or distance-learning methods, no additional language is needed.

Changes: None, except that the final regulation has been renumbered as § 200.45(c)(4)(i)(A).

Comment: One commenter maintained that since any transportation costs related to supplemental educational services would strain ''already tight school budgets,'' the final regulations should encourage the use of school-based services wherever possible.

Discussion: The Secretary appreciates the concern of the commenter, and acknowledges the potential benefits of providing supplemental educational services at the school site. However, the ESEA unambiguously leaves the selection of services up to the parents of eligible students.

Changes: None.

Section 200.46 LEA Responsibilities for Supplemental Educational Services

Comment: One commenter recommended that the regulations clarify that for students with disabilities, supplemental educational services must ''continue to meet the goals and objectives of the IEP.''

Discussion: For a student with disabilities, the supplemental educational services agreement must include a statement of specific achievement goals for the student, a description of how the student's progress will be measured, and a timetable for improving achievement, that are consistent with the student's IEP. However, the supplemental educational services do not also have to meet the goals and objectives of the IEP.

Changes: Section 200.46(b)(3) of the final regulations clarifies that each of the provisions of the statement included in the supplemental educational services agreement, and not just the timetable for improving achievement, must be consistent with the student's IEP or individualized services under Section 504.

Comment: One commenter requested clarification of the relationship of supplemental educational services to Individualized Education Programs (IEPs) under IDEA or individualized services under a section 504 plan, out of concern that if such services are written into these plans, they could be subject to challenge in a due process proceeding.

Discussion: § 200.46(b)(2)(i)(c) requires supplemental educational services to be ''consistent'' with IEPs and section 504 services, but these services are provided in addition to the instruction and services provided during the school day under the IEP or Section 504 plan and are not considered part of IEPs or section 504 plans.

Changes: None.

Comment: One commenter requested that the regulations provide an exemption from restrictions under the Family Educational Rights and Privacy Act to permit the sharing of IEP and section 504 plans with supplemental educational services providers.

Discussion: Under the Family Educational Rights and Privacy Act (FERPA), parental consent must be obtained before developing the supplemental services agreements provided for in section 1116(e)(3) of the ESEA and § 200.46(b), without regard to whether a particular student is a student with disabilities or a nondisabled student, because all supplemental services agreements will require the LEA to share information from education records with the services provider. Therefore, an exemption for students with IEPs or Section 504 plans is not appropriate.

Changes: None.

Comment: One commenter recommended strengthening proposed §§ 200.46(a)(4) and 200.47(a)(5) by adding language ensuring that eligible students with disabilities and students covered under section 504 of the Rehabilitation Act of 1973 ''are provided with equal access to each provider.''

Discussion: The Secretary has determined that no change is necessary. Sections 200.46(a)(4) and 200.47(a)(5) of the final regulations must be read consistent with the requirements of Section 504 and Title II of the ADA. Under Section 504, SEAs and LEAS, as recipients of Federal financial assistance, have responsibility for ensuring that there is no discrimination in the supplemental services program. SEAs and LEAS have similar duties under Title II of the ADA, which applies to public entities. In particular, SEAs and LEAs must ensure that students with disabilities and students covered by Section 504 receive appropriate supplemental educational services and necessary accommodations in the provision of those services. Consistent with this duty, LEAs may not, through contractual or other arrangements with private providers, discriminate against a student with a disability by failing to provide for appropriate supplemental educational services with necessary

accommodations. Such services and necessary accommodations must be available, but not necessarily from each provider. Rather, SEAs and LEAs are responsible for ensuring that the supplemental educational service providers made available to parents include some providers that can serve students with disabilities and students covered under Section 504 with any necessary accommodations, with or without the assistance of the SEA or LEA. If no provider is able to make the services with necessary accommodations available to a student with a disability, the LEA would need to provide these services, with necessary accommodations, either directly or through a contract.

Changes: None.

Comment: In giving further consideration to the proposed regulations during the review of public comments, the Secretary noted that while proposed § 200.46(a)(4) required an LEA to ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services, the proposed regulations were silent on the LEA's obligation to ensure the provision of appropriate services, including any necessary language assistance, to students with limited English proficiency.

Discussion: Eligible students are entitled to supplemental educational services regardless of their English proficiency and, in fact, some students may need such services due to their limited English proficiency. Under § 200.20, each LEA is required to report on the annual yearly progress of each subgroup, including students with limited English proficiency. Additionally, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, an LEA implementing the Title I program is prohibited from discriminating against students with limited English proficiency. For these reasons, the final regulations include new language emphasizing an LEA's responsibility to ensure that the supplemental education providers made available to parents include some who can serve students with limited English proficiency, with or without the assistance of the LEA.

Changes: Section 200.46(a)(5) of the final regulations require LEAs to ensure that students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

Comment: One commenter asked whether an LEA may identify and approve providers of supplemental educational services if an SEA fails to provide a list of approved providers in a timely manner.

Discussion: The ESEA does not authorize an LEA to identify and approve providers of supplemental educational services except, as described under section 1116(e)(11), when State law prohibits an SEA from carrying out this responsibility. In general, the Secretary would consider an SEA that fails to provide a list of approved providers in a timely manner to be out of compliance with the statute, and would take action to bring the SEA into compliance and ensure that LEAs can arrange for eligible students to receive supplemental educational services.

Changes: None.

Comment: One commenter asked whether LEAs are permitted to establish additional criteria for supplemental educational service providers on the SEA's list.

Discussion: With the narrow exception in § 200.46(c), the ESEA clearly assigns authority for identifying and approving supplemental service providers to the SEA. LEAs, which also may serve as providers and thus would face a potential conflict of interest in setting additional barriers to participation by SEA-approved providers, are not permitted to set additional criteria or otherwise modify the list of providers made available by the SEA.

Changes: None.

Section 200.47 SEA Responsibilities for Supplemental Educational Services

Comment: One commenter expressed concern that proposed § 200.47(a)(3), which requires SEAs to ''maintain by LEA an updated list of approved providers from which parents may select,'' could inadvertently lead to the exclusion of technology-based or distance-learning providers located outside the LEA.

Discussion: The Secretary agrees that the language of the proposed regulations could be misconstrued to exclude technology-based or distance-learning providers.

Changes: Final § 200.47(a)(3) includes additional language requiring the updated LEA lists of providers to include technology-based and distance-learning providers serving the respective LEAs.

Comment: None.

Discussion: In giving further consideration to the proposed regulations during the review of public comments, the Secretary noted that while proposed § 200.47(a)(5) requires an SEA to ensure that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services, the proposed regulations were silent on the SEA's obligation to ensure the provision of appropriate services, including any necessary language assistance, to students with limited English proficiency.

Eligible students are entitled to supplemental educational services regardless of their English proficiency and, in fact, some students may need such services due to their limited English proficiency. Under § 200.21, each SEA is required to report on the annual yearly progress of each subgroup, including students with limited English proficiency. Additionally, under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, an SEA implementing a Title I program is prohibited from discriminating against students with limited English proficiency. For these reasons, the final regulations include new language emphasizing an SEA's responsibility to ensure that the supplemental education providers made available to parents include some who can serve students with limited English proficiency, with or without the assistance of the SEA.

Changes: Section 200.47(a)(6) of the final regulations requires SEAs to ensure that students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

Comment: One commenter expressed concern over the exclusion of educational service agencies from the list of potential providers in proposed § 200.47(b)(1). The commenter noted that such agencies may be considered LEAs under section 9101(26) of the NCLB Act.

Discussion: The Secretary agrees that it is appropriate to clarify that educational service agencies may be supplemental educational service providers.

Changes: Educational service agencies have been added to the definition of entities eligible to be supplemental educational service providers in § 200.47(b)(1).

Comment: Several commenters objected to proposed § 200.47(b)(1)(iv), which would prohibit States from approving as a supplemental service provider any school that has been identified for improvement, corrective, or restructuring. Commenters asserted that this restriction would prevent some identified schools that operate ''very effective'' after-school programs from serving as providers, complicate efforts

to make services available on school grounds, and limit the availability of providers in poor and rural communities.

Discussion: The Secretary believes that schools that are identified for improvement or subjected to corrective action or restructuring need to be focused on carrying out comprehensive efforts to make in helping all student meet challenging State academic achievement standards, and not divert staff and other resources to the creation and operation of supplemental educational service programs. Though the proposed regulations excluded only identified schools as service providers, the same concerns apply to LEAs identified for improvement or corrective action. The purpose of supplemental educational services—increasing the academic achievement of eligible children on State assessments and helping them attain proficiency in meeting the State's academic achievement standards—is not well served if students obtain such services from an entity that is demonstrably failing to achieve those goals as shown by a consistent inability to make AYP. The final regulations do not hinder in any way the ability of a provider to offer services on school grounds or in LEA facilities. Finally, the success of supplemental educational services depends not merely on the availability of services, but on the availability of high-quality services that meet student needs. The Secretary believes there will be sufficient incentive for independent providers or potential providers, including those offering technology-based or distance-learning services, to offer such services in poor urban and rural communities.

Changes: Section 200.47(b)(1)(v) has been added to clarify that an LEA that has been identified for improvement or corrective action is not eligible to be a supplemental educational services provider.

Comment: One commenter supported proposed § 200.47(b)(1)(iv), which would prohibit States from approving as a supplemental service provider any school that has been identified for improvement, corrective action, or restructuring. However, the commenter requested clarification that highly qualified teachers employed by such schools are eligible to provide such services.

Discussion: The final regulations do not restrict in any way the ability of a highly qualified teacher employed by a school identified for improvement, corrective action, or restructuring from forming an entity that would serve as a supplemental educational services provider, or from working for such an entity.

Changes: None.

Comment: One commenter expressed concern that the purpose and quality of supplemental educational services may be undermined if providers are permitted to hire as instructors staff who teach at schools identified for improvement, corrective action, or restructuring.

Discussion: The Secretary understands the concern of the commenter, but believes that even the lowest-performing schools may have teachers who have the experience and skill to provide high-quality supplemental educational services. In addition, the Secretary has no authority to limit contractual agreements between teachers and other entities.

Changes: None.

Comment: One commenter recommended that the regulations encourage SEAs to include input from parents in developing standards for approving and monitoring supplemental educational service providers.

Discussion: The ESEA neither requires nor precludes participation by parents in the process of approving and monitoring supplemental educational service providers, and SEAs that wish to include parents in this process are free to do so.

Changes: None.

Comment: Several commenters maintained that proposed § 200.47(b)(3) could have permitted providers to exclude students with disabilities, based on the possibility of an ''arbitrary judgment'' regarding the ''minor adjustments'' required to serve them. Some commenters requested a definition of ''minor adjustments,'' including an explanation of who would pay for such adjustments, while others recommended that the final regulations simply prohibit providers from discriminating against any eligible student with a disability.

Discussion: The Secretary agrees with commenters that the proposed regulations potentially created confusion regarding the civil rights obligations that are applicable when students with disabilities and students covered by Section 504 and Title II of the ADA receive supplemental educational services. Under Section 504 and Title II, SEAs and LEAs have primary responsibility for ensuring that there is no discrimination in the provision of supplemental educational services. Thus, SEAs and LEAs are responsible for ensuring that the supplemental educational service providers made available to parents include some providers that can serve students with disabilities and students covered by Section 504 with any necessary accommodations, with or without the assistance of the SEA or LEA.

At the SEA level, this responsibility must involve efforts to identify and approve providers that will be available to serve these students with necessary accommodations. LEAs also are responsible for ensuring that supplemental services are available for students with disabilities and students covered by Section 504, and may have to provide services and necessary accommodations directly to these students in the absence of a private provider that is able to provide supplemental educational services with necessary accommodations.

Private supplemental service providers are not deemed recipients merely by virtue of their provision of these services and therefore are not covered under Section 504; nor are they covered under Title II of the ADA since they are not public entities. For this reason, proposed § 200.47(b)(3), which governed the obligations of private providers of supplemental educational services for students with disabilities and students covered by Section 504 and Title II of the ADA, has been removed from the final regulations. However, private providers may have certain responsibilities under Federal, State and local civil rights laws, and SEAs must ensure that providers fulfill these responsibilities as a condition of approval as a supplemental educational services provider. For example, private providers that are not religious entities must comply with the nondiscrimination requirements of Title III of the ADA (Title III).

Under Title III, which is enforced by the U.S. Department of Justice, private entities that are places of public accommodation (except for religious entities) must make reasonable modifications to their policies, practices, and procedures to ensure nondiscrimination on the basis of disability, unless to do so would fundamentally alter the nature of the program. Likewise, these providers must take those steps necessary to ensure that students with disabilities are not denied services or excluded because of the absence of auxiliary aids and services, unless taking those steps would fundamentally alter the nature of the services or would result in an undue burden (i.e., significant difficulty or expense). Private providers may also be subject to Title VII of the Civil Rights Act concerning discrimination in employment.

Changes: Proposed § 200.47(b)(3) has been removed from the final regulations.

Comment: Two commenters found proposed § 200.47(b)(3), which appears to permit providers to exclude some students with disabilities, to be inconsistent with proposed §§ 200.46(a)(4) and 200.47(a)(5), which require LEAs and SEAs to ensure that these students ''receive appropriate supplemental educational services and accommodations in the provision of those services.''

Discussion: The Secretary agrees with the commenters, as explained in the discussion of the previous comment.

Changes: Proposed § 200.47(b)(3) has been removed from the final regulation.

Comment: Several commenters objected to proposed § 200.47(b)(4)(i), which would prohibit States from requiring providers to hire staff who are highly qualified, as defined by §§ 200.55 and 200.56. The commenters argued that the proposed regulations are inconsistent with the letter and spirit of the NCLB Act, which prohibits Title I programs from hiring new teachers who are not highly qualified and requires States to adopt plans for ensuring that all public school teachers are highly qualified by 2005–2006.

Discussion: The Secretary believes that requiring supplemental educational service providers to use only highly qualified staff, as defined in the NCLB Act, would severely limit the availability of providers, particularly in poor urban and rural areas. For example, retired teachers might not be able to provide services through approved providers. States, LEAs, and schools receive substantial resources through Federal education programs that may be used to help ensure that all teachers are highly qualified. Because these resources are unavailable to supplemental service providers, few providers would be able to meet the same standard. In addition, unprecedented accountability requirements will help to ensure the quality of instruction offered by providers. All providers must have a ''demonstrated record of effectiveness'' to win approval by the SEA, must be selected by parents, must enter into agreements with specific achievement goals for each student, and must meet those goals to remain on the SEA's list of approved providers. Furthermore, parents of eligible students must request services annually, giving providers a strong incentive both to produce results as measured by improved achievement and to offer high-quality customer service to parents and students. Finally, even though States may not bar participation by providers who do not use only highly qualified staff, they would be permitted to indicate the qualifications of provider staff in information provided to parents.

Changes: None.

Comment: Several commenters also objected to proposed § 200.47(b)(4)(ii), under which States could not require, as a condition of approval, that supplemental educational service providers document that they use instructional strategies based on scientifically based research. The commenters believe that this proposal would have undermined one of the core principles of the NCLB Act, which requires the use of instructional strategies based on scientifically based research in nearly all of its authorities, including Part A of Title I.

Discussion: The use of instruction based on scientifically based research is indeed a core principle of the NCLB Act. It is absent, however, from the statutory definition of supplemental educational services, which refers only to services that are ''research-based.'' This term suggests that Congress intended a different standard to apply to supplemental educational services, one based on the unique accountability inherent in such services. However, the Secretary agrees that States should be permitted, but not required, to include the use of instruction grounded in scientifically based research in the criteria used to approve supplemental educational service providers.

Changes: Proposed § 200.47(b)(4)(ii) has been removed from the final regulations.

Section 200.48 Funding for Choice-Related Transportation and Supplemental Educational Services

Comment: A number of commenters raised objections to proposed § 200.48(a)(2), which covers funding requirements related to the provision of public school choice options and supplemental educational services. Their comments focused primarily on concerns that the proposed regulations were confusing and deviated from what commenters believed was the clear language of the ESEA.

Discussion: Proposed § 200.48(a)(2) reflects the Secretary's best interpretation of a section of the ESEA that includes ambiguous and sometimes contradictory provisions. This interpretation is based primarily on section 1116(b)(10)(A) of the statute, which states that ''Unless a lesser amount is needed to comply with paragraph (9) [choice-related transportation] and to satisfy all requests for supplemental educational services under subsection (e), a local educational agency shall spend an amount equal to 20 percent of its allocation under subpart 2 [Title I, Part A allocations]'' for choice-related transportation and supplemental educational services.

The primary effect of this provision, as described in proposed § 200.48(a)(2), is to clearly obligate an LEA to spend ''an amount equal to'' 20 percent of its allocation under subpart 2 on choice-related transportation, supplemental educational services, or a combination of the two, regardless of the actual source of the funds. The emphasis is on the amount that must be spent—an amount equal to 20 percent of its subpart 2 allocation—not the source of the funds. The final regulations maintain this requirement.

LEA discretion in spending such funds is limited by the requirement in section 1116(b)(10)(A)(i) and (ii) of the ESEA that an LEA spend an amount equal to 5 percent of its allocation under subpart 2 on choice-related transportation and 5 percent on supplemental educational services, assuming there is demand for both. In other words, if students require transportation to a school selected under § 200.44, and parents have requested supplemental educational services under § 200.45, the LEA does not have discretion to use the full 20 percent reservation on only one of these activities.

Proposed § 200.48(a)(2)(iii)(A), which was intended to prevent an LEA from using the entire 20 percent on choice-related transportation and ignoring demand for supplemental educational services, should have clarified that an LEA also is not permitted to use the entire amount for supplemental educational services and potentially deny choice to students by failing to provide or pay for choice-related transportation.

On the other hand, if there is demand for either choice-related transportation or supplemental educational services, but not both, the Secretary believes that section 1116(b)(10)(A) of the statute requires an LEA to spend the full 20 percent on the required activity, and not the maximum of 15 percent suggested by some commenters.

In addition, the claim by some commenters that section 1116(b)(10)(B) of the ESEA caps an LEA's spending on supplemental educational services at an amount equal to 5 percent of its allocation ignores the requirements of the introductory clause of section 1116(b)(10)(A) of the statute and the overall legislative context of this provision. Section 1116(b)(10)(B) appears to set such a cap, and thus

contradict the introductory clause of subparagraph (A), which requires the expenditure of an amount equal to 20 percent of an LEA's subpart 2 allocation ''to satisfy all requests for supplemental educational services under subsection (e).'' However, the plain language of section 1116(b)(10)(B) of the statute refers to a maximum amount to be spent on supplemental services ''under this part.'' ''[T]his part'' refers to the source of funds, which is Title I, Part A. Thus, the maximum amount that an LEA is required to spend out of its Title I, Part A funds is an amount equal to 5 percent of its allocation under subpart 2 of this part. Subparagraph (B) does not change or otherwise reduce the obligation under subparagraph (A) for an LEA to spend an amount equal to 20 percent of its subpart 2 allocation, but simply places a 5 percent limitation on the required use of Title I, Part A funds for this purpose. An LEA, for example, could use funds allocated under Part A of Title V of the ESEA to meet the remaining 15 percent requirement. However, the 5 percent limitation on the required use of Title I, part A funds for this purpose does not prevent an LEA, at its option, from using a higher percentage of Title I, part A funds for this purpose.

Finally, one commenter observed that the proposed regulations appear to ignore section 1116(b)(9) of the ESEA, which requires affected LEAs to provide or pay for choice-related transportation, without specifying either the source of funds or any limit on such costs. Section 1116(b)(9) must be read in context with section 1116(b)(10), which was negotiated during the House Senate conference committee meetings on the ESEA. Earlier versions of the bill had uniformly required transportation for all students exercising a choice option until all needs were met, while limiting the contribution of subpart 2 funds for transportation to 15 percent of an LEA's allocation. If transportation costs exceeded this 15 percent cap on subpart 2 funds, an LEA would have had to use other funds to pay the balance of the choice-related transportation costs. However, the final language of the NCLB Act required only the expenditure of an ''amount equal to 20 percent of its allocation under subpart 2,'' thereby extending the cap to funding from all sources and limiting the obligation to pay transportation costs until all needs were met.

Changes: The final regulations maintain the NPRM requirement in § 200.48(a)(2) that an LEA spend an amount equal to 20 percent of its Title I, part A allocation on choice-related transportation and supplemental educational services, unless a lesser amount is needed to meet the requirements of §§ 200.44 and 200.45. Section 200.48(a)(2)(iii)(A) has been amended to clarify that an affected LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A for transportation required under § 200.44 and an identical amount for supplemental educational services under § 200.45, unless a lesser amount is needed to comply with all requests for choice-related transportation and supplemental educational services.

Comment: One commenter requested regulatory clarification that Title I, Part A funds may be used to pay the administrative costs associated with supplemental educational services.

Discussion: Section 1116(b)(10) of the ESEA requires an LEA to spend an amount equal to 20 percent of its Title I allocation for transportation costs related to public school choice and to provide supplemental educational services. This requirement establishes a minimum amount an LEA must spend on the actual supplemental educational services in order to make those services available to as many eligible students as possible. As a result, the Secretary has revised § 200.48(a)(2)(iii)(B) of the final regulations to make clear that an LEA may not include costs for administration or transportation incurred in providing supplemental educational services, or any administrative costs associated with the provision of public school choice options under § 200.44, in the amounts required to be spent to meet the requirements of section 1116(b)(10) of the ESEA. Such costs, however, are allowable Title I expenditures and may be taken off the top of the LEA's Title I allocation like other proper administrative costs.

Changes: Section 200.48(a)(2)(iii)(B) has been amended to clarify that administrative costs associated with providing supplemental educational services may not ''count'' toward meeting the minimum expenditure requirements in section 1116(b)(10) of the ESEA.

Comment: Two commenters objected to proposed § 200.48(a)(2)(iii)(B), which prohibits an LEA from including supplemental educational services-related administrative or transportation costs as part of the minimum 5 percent of an LEA's Part A allocation that must be spent on satisfying all requests for such services. One of the commenters asserted that since a provider would be permitted to include transportation costs in its fees, LEAs should be permitted to include similar costs under the 5 percent minimum.

Discussion: The ESEA is silent on the treatment of administrative or transportation costs associated with supplemental educational services. The Secretary believes, however, that the funds made available for supplemental educational services under § 200.48(a)(2) are intended to pay for actual services and not administrative or transportation costs. Funding limitations may restrict significantly the availability of supplemental educational services in many LEAs, and permitting LEAs to count administrative or transportation costs toward satisfying the funding requirements of § 200.48(a)(2) would only further reduce the number of students receiving supplemental educational services. In addition, the proposed regulations should have stated that an LEA may not use administrative or transportation costs related to supplemental educational services to satisfy any of the funding requirements of § 200.48(a)(2), and not just the 5 percent minimum requirements under § 200.48(a)(2)(iii)(A).

Changes: The final regulations clarify that LEAs may not include administrative or transportation costs associated with the provision of supplemental educational services in meeting the funding requirements of § 200.48(a)(2).

Comment: One commenter requested that the final regulations clarify that LEAs have fulfilled their responsibility to fund ''all requests for supplemental educational services'' once they have spent an amount equal to 20 percent of their Part A allocations on choice-related transportation, supplemental educational services, or a combination of the two.

Discussion: The Secretary believes that it is clear from the proposed regulations that an LEA's obligation to ''satisfy all requests for supplemental educational services'' is limited by available funding specified under § 200.48(a)(2). This limitation is explicitly acknowledged in proposed § 200.48(a)(3) and (4), which permit but do not require LEAs and SEAs to make available additional funding for choice-related transportation and supplemental educational services from other sources.

Changes: None.

Comment: One commenter requested that the final regulations permit the use of alternatives to census poverty estimates in calculating the per-child funding for supplemental educational services under proposed § 200.48(c).

Discussion: Section 1116(e)(6) of the ESEA explicitly requires an LEA to use census poverty estimates to calculate the per-child amount available for

providing supplemental educational services. The Department provides these estimates to each State when it makes annual Title I allocations, and thus they are available to each LEA. The Secretary has no authority to permit the use of alternative poverty data to determine the per-child amount available for supplemental educational services. We note, however, that an LEA does not use the census poverty estimates to identify those low-income students eligible for supplemental educational services. Rather, an eligible student is a student from a low-income family as determined by the LEA for purposes of allocating Title I funds to schools under section 1113 of the ESEA.

Changes: None.

Section 200.49 SEA Responsibilities for School Improvement, Corrective Action, and Restructuring

Comment: Several commenters recommended modifying proposed § 200.49(b)(2)(ii), which permits an SEA to use school improvement funds to directly provide school improvement activities ''if requested by an LEA,'' by returning to the language of section 1003(b)(2) of the ESEA, which permits SEA retention of such funds ''with the approval of the local educational agency.'' The proposed regulations could be interpreted as preventing a State from developing a cost-effective, statewide approach to supporting school improvement efforts absent a request from LEAs.

Discussion: The Secretary agrees that the proposed regulations could be subject to misinterpretation.

Changes: Section 200.49(b)(2)(ii) has been changed to permit SEAs to directly support school improvement activities ''with the approval of the LEA.''

Comment: One commenter expressed concern that while proposed § 200.49(e) requires SEAs to make the results of academic assessments in a given year available to LEAs before the beginning of the next school year, the inclusion of local assessments, over which SEAs have little or no authority, in State assessment systems may prevent SEAs from meeting this requirement.

Discussion: SEAs are responsible for ensuring that their State assessment systems, which may include local assessments, comply with all the requirements of the ESEA.

Changes: None.

Comment: One commenter expressed concern that charter schools, many of which enjoy LEA status or are treated as LEAs in the administration of Federal education programs, might not be subject to the rigorous accountability of the NCLB Act if they are effectively permitted to monitor themselves.

Discussion: Section 1111(b)(2)(K) of the ESEA recognizes the unique and varying circumstances of charter schools by requiring that accountability be overseen for charter schools in accordance with State charter school law. The Secretary agrees that the inclusion of this language in the final regulations would help clarify that while the accountability provisions of the NCLB Act apply to charter schools, they are not intended to expand the authority of SEAs or LEAs over charter school operations except to the extent authorized by State charter school law.

Changes: Section 200.49(f) of the final regulations incorporates the charter school accountability language of section 1111(b)(2)(K) of the ESEA.

Section 200.50 SEA Review of LEA Progress

Comment: One commenter requested clarification of the SEA review of LEA progress required by proposed § 200.50(a), which does not appear to include progress on other indicators, such as graduation rates.

Discussion: The Secretary agrees that proposed § 200.50(a)(1)(ii)(A) appears to require progress only in meeting State student academic achievement standards, rather than the broader definition of suggested by the statutory reference to section 1111(b)(2) of the ESEA.

Changes: Section 200.50(a)(1)(i) has been amended to require ''as defined under §§ 200.13 through 200.20,'' which includes progress on other academic indicators in the State plan.

Comment: Two commenters objected to the permissive authority in proposed §§ 200.50(d)(3) and (d)(4) to identify an LEA for improvement or remove an LEA from improvement, respectively, on the basis of 2001–2002 assessment data. The commenters interpret the ESEA as requiring the identification for improvement of any LEA that fails to make AYP for two consecutive years, as well as the removal from improvement status of any LEA that makes AYP for two consecutive years, regardless of the years involved.

Discussion: The Secretary believes that the absence of any reference to 2001–2002 assessment results in the otherwise very specific transition provisions of the new law, combined with the strong likelihood that many States would not be able to make these results available to LEAs prior to the beginning of the 2002–2003 school year, supports a flexible approach to the use of those results for identification purposes during the transition to the new law. To avoid any confusion about the use of 2001–2002 assessment results in subsequent years, however, the Secretary has added language clarifying that an SEA decision not to identify for improvement an LEA that, on the basis of 2001–2002 assessment data, does not make AYP for a second consecutive year, does not permit the SEA to ignore that failure in making future identification decisions.

Changes: Section 200.50(d)(3)(ii) clarifies that if an SEA chooses not to identify for improvement a school that, on the basis of 2001–2002 assessment results, does not make AYP for a second consecutive year, it nevertheless must consider the LEA's 2001–2002 performance as the first year of not making AYP for the purpose of subsequent identification decisions.

Comment: One commenter objected to the flexibility provided SEAs in proposed § 200.50(e)(3) to remove from corrective action an LEA that, on the basis of assessments administered during the 2001–2002 school year, makes AYP for a second consecutive year. The commenter maintained that the ESEA requires SEAs to remove LEAs from corrective action in such cases, as well as to use 2001–2002 assessment data to identify additional LEAs for corrective action.

Discussion: The Secretary believes that the proposed regulations are an appropriate way to address an inequity in the statutory transition provisions covering identification for corrective action. These provisions require SEAs to treat LEAs that were identified for corrective prior to enactment of the NCLB Act as subject to corrective action for the 2002–2003 school year. Some of these LEAs, however, may have made AYP in both 2000–2001 and 2001–2002, thus meeting the statutory requirement for removal from corrective action. The proposed regulations thus permit SEAs to remove these LEAs from corrective action, but does not require such removal because some SEAs may, in part due to the uncertain timing of assessment results, prefer to simply adhere to the statutory transition provisions. As for identifying additional LEAs for corrective action on the basis of 2001–2002 assessment data, proposed § 200.50(e)(1) already permits an SEA to take corrective action against any LEA that it has identified for improvement, but the statutory transition provisions suggest that mandatory identification for corrective action in the 2002–2003 school year is limited to those LEAs identified under the previous law.

Changes: None.

Section 200.51 Notice of SEA Action

Comment: Two commenters requested clarification on whether SEAs, rather than communicating directly to parents as required by proposed § 200.51(a)(2)(i), are permitted to work with the LEA to deliver information about the LEA review and improvement process directly to parents.

Discussion: The Secretary agrees that it may be more effective for SEAs, in cases where an SEA does not have access to individual student addresses, to communicate with parents through means provided by the LEA.

Changes: Section 200.51(a)(2)(i) has been changed to permit an SEA, in cases where an SEA does not have access to individual student addresses, to provide information on the LEA review and improvement process by using LEA- and school-level delivery mechanisms.

Section 200.54 Rights of School and School District Employees

Comment: Numerous commenters objected to proposed § 200.54, which would have given LEAs greater flexibility in negotiating collective bargaining agreements and other agreements between employers and employees that are consistent with the school and LEA improvement requirements of proposed §§ 200.30 through 200.53. Commenters maintained that the proposed regulations were inconsistent with both the statute and with many State and local laws governing collective bargaining agreements.

Discussion: The Secretary believes that section 1116(d) of the ESEA was not intended to deny LEA and school leaders the management tools needed to implement effective LEA and school improvement measures, which may often involve changes in the assignment and duties of LEA and school personnel. However, the Secretary agrees that the proposed regulations arguably were inconsistent with a strict reading of the NCLB Act and may have conflicted with applicable State and local laws.

Changes: Proposed § 200.54 has been removed from the final regulations.

Qualifications of Teachers and Paraprofessionals

Section 200.55 Qualifications of Teachers

Comment: Several commenters asked for clarification as to which subjects are ''core academic subjects.'' One commenter asked that foreign languages and the arts be excluded from the definition of core academic subjects. One commenter asked why science was listed as a stand-alone discipline when social studies was broken down into civics, geography, and history. Another commenter asked why special education was not listed as a core academic area.

Discussion: The definition of core academic subjects is in section 9101(11) of the ESEA, and is repeated in § 200.55(c) of the regulations. The statute defines core academic subjects as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. Hence, the definition lists science generally but civics, geography, and history separately. The statute does not identify special education as a core academic subject, and the Secretary lacks authority to delete or change the subjects included in this statutory definition.

Changes: None.

Comment: A commenter recommended that newly hired Title I teachers serving private school students meet the same standards of quality as those who teach in public schools.

Discussion: We agree with this recommendation.

Changes: Section 200.55 (a)(2) and (b) has been modified to clarify that the requirements governing ''highly qualified'' teachers apply to teachers employed by an LEA with funds under part A of Title I, who teach eligible private school students, to the same extent as they apply to those who teach eligible public school students.

Comment: One commenter recommended that the regulations clarify that a teacher in a targeted assistance program is one who teaches students participating in that program.

Discussion: We believe that the existing language is clear and that no further clarification is needed.

Changes: None.

Comment: One commenter recommended that the ''highly qualified'' requirement not apply to all teachers in a school that operates a schoolwide program.

Discussion: Inherent to the concept of schoolwide programs is the elimination of any distinction between Title I and non-Title I students; that is, a schoolwide program is intended to provide an instructional program that helps all students in the school. Therefore, it would subvert the intent of schoolwide programs to have requirements that govern highly qualified teachers apply to some, but not all, teachers in a schoolwide program school.

Changes: None.

Comment: One commenter recommended that § 200.55(b)(1) clarify that the requirement that ''all teachers in the State'' be highly qualified by the end of the 2005–2006 school year applies only to public elementary and secondary school teachers, and not to others, such as private school and college teachers.

Discussion: The Secretary agrees with the comment.

Changes: Section 200.55(b) has been revised to clarify that the requirements governing highly qualified teachers apply to ''all public elementary and secondary school teachers.'' This clarification was also made in § 200.56(b)(1) and (b)(2). In addition, § 200.55(d) has been added to clarify that the requirements of the section do not apply to teachers hired by private elementary and secondary schools.

Comment: As proposed, § 200.55(b)(2) provided, as an example of teachers who do not need to meet the highly qualified requirements because they do not teach a core academic subject, ''some vocational educational teachers.'' One commenter recommended deletion of the word ''some.''

Discussion: We disagree with the comment. If a vocational education teacher teaches a core academic subject, such as applied physics, section 1119 of the ESEA requires that teacher to be highly qualified. On the other hand, if a vocational education teacher teaches only a trade, such as auto mechanics, the teacher would not need to meet these requirements since the law does not treat that area of study as a core academic subject. Hence, § 200.56(b)(2) only exempts ''some'' vocational educational teachers.

Changes: None.

Comment: A number of commenters requested clarification about how the ''highly qualified'' requirements apply to special education teachers and teachers of limited-English proficient (LEP) students. Several recommended that special education teachers be deemed to have met the ''highly qualified'' requirements that apply to other teachers if they are certified or licensed in special education and have passed an appropriate State test.

Discussion: The ESEA specifies that all teachers of core academic subjects are to meet the requirements set forth in the statute. Students with limited English proficiency or with disabilities are expected to meet the same standards as all other students, and their teachers should be expected to have met the same standards for content knowledge. On the other hand, special educators who do not directly instruct students on any core academic subject or who provide only consultation to highly qualified teachers of core academic subjects in adapting curricula, using

behavioral supports and interventions, and selecting appropriate accommodations do not need to meet the same ''highly qualified'' subject-matter competency requirements that apply under the NCLB Act to teachers of core academic subjects. SEAs and LEAs must ensure that all special education personnel, including related services providers, meet the personnel-standards requirements of section 612(a)(15) of the IDEA and 34 CFR § 300.136. Special education teachers who are providing instruction in core academic subjects also must meet the ''highly qualified'' requirements of the ESEA.

The Secretary recognizes that there is an urgent need for highly qualified teachers, and that critical shortages exist in some areas, particularly math and science teachers, and special education teachers. Nevertheless, the NCLB Act sets high standards for students, as well as teachers, and states should work to meet them. The statute provides a certain amount of flexibility in how the standards are met. Teachers can demonstrate competency by taking a test, and States have flexibility to tailor those tests to the subjects taught by teachers, including special education teachers and teachers of LEP students. This issue will be addressed further in guidance.

Changes: None.

Section 200.56 Definition of ''Highly Qualified Teacher''

Comment: Several commenters recommended tightening the requirements for teachers in alternative route programs so that these individuals receive, as quickly as possible, the training and full State certification they need to be effective teachers.

Discussion: We agree with the comment. Our proposal that a teacher in an alternative route program be considered highly qualified if the teacher ''is making satisfactory progress toward full certification as prescribed by the State and the program'' reflects the need for States to ensure that alternative routes to certification do not become vehicles for granting long-term waivers of certification requirements. Still, we understand that, for these teachers to be effective, those in alternative route programs need to be prepared to teach their students from the moment they step into their classrooms, and receive the follow-up support they need as beginning teachers. We also believe that, in order to ensure that alternative route programs do not become long-term vehicles for waiving State requirements for full certification, it is reasonable to establish a maximum period—three years—in which a teacher in an alternative route can be considered to be fully certified without having received State certification.

Changes: Section 200.56(a)(1)(iii)(B) is amended by adding language that requires teachers in alternate route programs to (1) receive high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching, (2) participate in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program, (3) assume functions as a teacher only for a specified period of time not to exceed three years before receiving full State certification, and (4) demonstrate satisfactory progress toward full certification as prescribed by the State. The regulations have been further amended by requiring that the State ensure, through its certification and licensure process, that these provisions are met.

Comment: A commenter recommended deleting the proposed language that would permit teachers in alternative route programs to be deemed to have obtained full State certification for purposes of meeting the requirements governing highly qualified teachers. Several other commenters expressed support for the Department's proposal.

Discussion: We do not agree with those commenters who wish to delete the flexibility that we would provide LEAs for teachers in alternative routes to certification. First, Congress has chosen both to authorize and fund two alternative route programs, Troops-to-Teachers and Transition to Teaching, in Title II, part C of the ESEA, and has permitted States and LEAs to use Title II, part A formula grant funds to hire teachers in alternative route programs. Hence, we do not believe that Congress intended that teachers in alternative route program would be unable to teach until they had obtained full State certification. Beyond this, we believe that LEAs can and should be able to continue to effectively use alternate routes to certification as a mechanism for increasing the number of teachers who are capable of providing effective instruction, and, indeed that these alternative routes can also serve as models for the certification system as a whole.

Changes: None.

Comment: A commenter recommended that teachers participating in alternative certification programs be required to demonstrate subject matter competency.

Discussion: Sections 9101(23)(B) and (C) of the ESEA, and § 200.56(b) and (c) of the regulations already require this.

Changes: None.

Comment: A commenter requested that the regulations clarify that current teachers may demonstrate their subject area competency in the same ways as new teachers can, or through a state-established system of evaluation as section 9101(23)(c)(ii) of the ESEA permits.

Discussion: Section 200.56(c)(2) already provides this clarification.

Changes: None.

Comment: One commenter recommended that teachers be allowed to demonstrate subject-matter competency needed to be highly qualified on the basis of a minor in an academic area. Another commenter requested that where an evaluation of teacher performance is used to demonstrate competency, LEAs, rather than SEAs, be allowed to determine the standard of evaluation.

Discussion: We disagree with both recommendations. Section 9101(b)(ii) of the ESEA permits middle and secondary school teachers to demonstrate subject-matter competency by successful completion, in each academic subject the teacher teaches, of an academic major or coursework equivalent to an academic major (or a graduate degree or advanced certification or recredentialing). The law does not authorize receipt of a minor in the subject being taught as sufficient to demonstrate competency. Similarly, section 9101(23)(c)(ii) of the ESEA expressly permits the demonstration of subject-matter competency to be based on ''a high objective State standard of evaluation,'' not a ''local standard'' of evaluation. Moreover, the Secretary lacks authority to delete or change the aspects of this statutory definition.

Changes: None.

Comment: Section 9101(23(A)(ii)) of the ESEA, like § 200.56(B)(3), provides that to be highly qualified a teacher may not have had ''certification or licensure requirements waived on an emergency, temporary, or provisional basis.'' One commenter recommended that the terms temporary, emergency, and provisional licensure be defined.

Discussion: State certification and licensure is a matter of State law and policy, and hence the definition of these terms is left to State decisionmaking. We do not believe that attempting to establish a common definition of these terms is needed. We add only that with one exception the Secretary interprets the phrase ''waived on an emergency,

provisional, or temporary basis,'' to encompass any form of a waiver, by whatever name a State uses, under which the State permits a teacher to teach without having obtained full certification or licensure applicable to the years of experience the teacher possesses. That exception is for teachers in alternative routes to certification consistent with § 200.56(a)(2)(ii).

Change: None.

Comment: One commenter requested that all of the highly qualified teacher provisions apply to charter school teachers.

Discussion: Section 9101(23)(A)(i) of the ESEA provides that, for teachers of public charter schools, obtaining full State certification (or passing the State teacher licensing examination and holding a license to teach) means that teachers have met the requirements of their State charter school laws. Thus, the certification and licensure requirements of the ESEA do not apply to charter school teachers if State law exempts charter school teachers from these requirements. The statute's definition of highly qualified teachers provides no other exceptions for charter school teachers.

Changes: None.

Comment: One commenter recommended that, as part of the definition of highly qualified, all teachers be required to complete an approved educator preparation program.

Discussion: We assume that the comment was meant to apply to teachers progressing through alternate routes to certification. The Secretary agrees that proposed § 200.56(a)(1)(iii)(B) should be modified to include a requirement that teachers in alternative route programs receive high-quality professional development before beginning to teach. However, the Secretary does not believe that those progressing through alternative routes to teaching should need to complete a State ''approved educator preparation program,'' particularly since this kind of requirement would very likely discourage a great many talented individuals who would want to change careers and become teachers from ever doing so.

Changes: § 200.56(a)(2)(ii)(A) now contains language that requires teachers in alternative route programs to receive rigorous training before assuming instructional duties and to participate in a teacher mentoring program.

Comment: One commenter requested that the language in paragraph (b)(1) be revised to require teachers new to the profession either to hold a Bachelor's degree or, for those in teacher preparation programs, to have completed all of the requirements for the degree with the exception of student teaching.

Discussion: Sections 9101(23)(B)(i)(I), 9101(23)(B)(ii), and 9101(23)(C)(i) of the ESEA expressly require all teachers to hold a Bachelor's degree in order to be considered highly qualified. The Secretary lacks authority to delete or change the subjects included in this statutory definition.

Changes: None.

Comment: A commenter requested clarification of the terms ''advanced certification or credentialing.''

Discussion: The NCLB Act offers these vehicles as alternative means by which middle and high school teachers not new to the profession may demonstrate subject matter competency in the subjects they teach. Each State may define these terms, and establish policies that implement them, as it believes will meet the purpose of the law—to enable teachers to demonstrate subject matter competency.

Changes: None.

Section 200.57 Plans to Increase Teacher Quality

Comment: One commenter recommended that the regulations should require the State to outline specific steps for carrying out the highly qualified teacher provision, and how the State intends to monitor LEAs in this regard.

Discussion: The Secretary agrees with this recommendation.

Changes: Section 200.57(a) has been amended to require that the State's plan describe the strategies the state will use to help LEAs and schools have all teachers meet the highly qualified requirements no later than the end of the 2005–2006 school year, and to monitor the progress of LEAs and schools in meeting these requirements.

Comment: One commenter recommended that the regulations include the statutory references to the ''parents right to know'' provision.

Discussion: The Secretary believes that it is critical that parents be kept well informed on the status of their child's education, and so he agrees with this recommendation.

Changes: A new section, § 200.61, has been added that restates the language on a ''parent's right to know,'' as stated in section 1111(h)(6) of the NCLB Act.

Comment: A commenter recommended that the regulations clarify that State plans to increase teacher quality must indicate both the steps States will take to ensure that minority students have equal access to high quality teachers, and how the States will measure their progress in meeting this requirement.

Discussion: The Secretary agrees with this recommendation. Including this information in the State plan merely ensures that, through the plan, the SEA is ensuring that LEAs implement the assurance they provide the State in section 1111(c)(1)(L) of the ESEA that they ''ensure, through incentives for voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.'' Indeed, given this LEA assurance, the Secretary also believes that comparable information should be included in the local plan to increase teacher quality.

Changes: Section 200.57(a) has been amended to require that the SEA take specific steps to ensure that Title I schools provide instruction by highly qualified teachers, including steps to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers. SEAs must evaluate and publicly report their progress with respect to these steps.

Section 200.58 Qualifications of Paraprofessionals

Comment: One commenter asked that the regulations clarify that it is the paraprofessional's choice as to which of the three allowable options (two years of study at an institute of higher education, an associate's degree, or demonstrating knowledge and ability to assist in instruction through an assessment) the paraprofessional will meet. The commenter also recommends that the regulations clarify that once a paraprofessional has met qualification requirements in one district, he or she does not have to re-qualify after moving to another school district.

Discussion: The Secretary does not believe a change in the regulations is necessary. Any needed clarifications will be addressed in future nonregulatory guidance.

Changes: None.

Comment: Several commenters asked for greater clarification about which paraprofessionals must meet the requirements in § 200.58. One commenter requested that the regulations be revised to clarify that the requirements apply only to paraprofessionals hired by the school district or school. Another commenter asked whether the requirements apply to paraprofessionals with non-instructional duties working in a schoolwide project school.

Discussion: The requirements of section 1119(c) of the ESEA and § 200.58 apply to individuals hired by an LEA whether individually or as part of a partnership. They do not apply to volunteers or other paraprofessionals who may be employed by a private contractor. They also do not apply to individuals with solely non-instructional roles in schoolwide project schools.

Changes: Section 200.58(a)(1) has been amended to clarify that the qualification requirements apply to each paraprofessional ''who is hired by the LEA'' and who meets the other criteria set out in this section of the regulations.

Comment: Two commenters asked that the regulations be modified to provide a four-year transition period for paraprofessionals to obtain a high school diploma or the equivalent. Another commenter recommended that the regulations include a grandfather clause that would exempt paraprofessionals with ten or more years of experience from having to meet any of the qualification requirements.

Discussion: Section 1119(f) of the ESEA requires that LEAs receiving Title I, part A funds ensure that all paraprofessionals working in a program supported with Title I, part A funds, regardless of the paraprofessional's hiring date, have a high school diploma. The ESEA provides no authority for a phase-in of this requirement or to exempt paraprofessionals with ten or more years of experience from meeting this requirement.

Changes: None.

Comment: One commenter requested that the regulations be modified to permit a paraprofessional enrolled in an associate's degree program to be considered as meeting the qualification requirements through an alternative qualification process.

Discussion: The statute does not authorize paraprofessionals to meet the qualification requirements in the manner suggested.

Changes: None.

Comment: Two commenters objected to the qualification option that paraprofessionals have an associate's degree.

Discussion: An associate's degree is one of the three ways that the statute provides for paraprofessionals to demonstrate they are qualified. A paraprofessional may (1) complete two years of study at an institution of higher education, or (2) have an associate's degree, or (3) pass a state or local assessment that demonstrates knowledge of and ability to assist in the instruction of reading, writing or mathematics (or reading readiness, writing readiness, or mathematics readiness), as appropriate. The options recognize that, depending on a paraprofessional's background and experience, there is more than one way to demonstrate the appropriate competency.

Changes: None.

Comment: Several commenters sought clarification of what it means for a paraprofessional to have completed at least two years of study at an institution of higher education. One commenter asked that the regulations specify the specific number of semester hours necessary to demonstrate that a paraprofessional has completed the required two years of study. On the other hand, other commenters asked that the regulations make it clear that there is no specific number of credit hours that defines two years of study.

Discussion: The number of credit hours necessary to demonstrate that a paraprofessional has completed at least two years of study at an institution of higher education will vary by institution. Therefore, a ''one-size-fits-all'' definition would be inappropriate. Each State may choose to define, for paraprofessionals working in the State, what these two years of study encompass. If it does not do so, the policies of each institution will govern whether a paraprofessional has completed two years of study.

Changes: None.

Comment: One commenter requested that the regulations make it clear that paraprofessionals providing instructional support for teachers of eligible students attending private schools must meet the same standards as other paraprofessionals.

Discussion: The Secretary agrees with this recommendation. Paraprofessionals hired by an LEA to provide instructional support for Title I, part A teachers of eligible students attending private schools are employees of the school district and must meet the same requirements as any other paraprofessionals providing instructional support in a program supported by Title I, part A funds.

Change: Section 200.58(a)(3)(iii) is added to clarify that the qualification requirements apply to paraprofessionals hired by an LEA to provide instructional support to public school teachers providing Title I services to eligible private school students.

Comment: Several commenters sought clarification of the option that paraprofessionals may meet a rigorous standard of quality by demonstrating competency through a formal State or local academic assessment. One commenter requested clarification that the assessment does not have to be in writing. Other commenters wanted the regulations to require States and districts to develop these assessments; make clear that States or districts may adopt an existing assessment; require that assessments be available before September 2003; specify that the assessment should be made available at no cost to the paraprofessionals; and clarify that Title I, part A funds may be used to develop or purchase such assessments.

Discussion: Under the ESEA, States and LEAs have considerable flexibility in how they design and administer their assessments. The Secretary does not believe that additional regulations are necessary and intends to highlight this flexibility in future nonregulatory guidance.

Change: None.

Comment: Two commenters sought clarification on how the requirements apply to paraprofessionals hired ''on'' January 8, 2002 as opposed to those before or after that date.

Discussion: The Secretary agrees that clarification is needed.

Changes: Section 200.58(d) is amended to clarify that existing paraprofessionals are those hired on or before January 8, 2002.

Comment: Several commenters sought clarification on how the requirements apply to paraprofessionals in specified circumstances, *e.g.*, paraprofessionals with multiple roles, such as translators who also provide instructional support, paraprofessionals who provide instructional support to teachers of subjects other than core academic subjects, such as physical education, and non-instructional computer technicians.

Discussion: The ESEA is very explicit about the requirements and to whom they apply. The requirements apply to any paraprofessionals in Title I, part A programs who are assigned an instructional support duty, even as one of many assigned responsibilities, identified in section 1111(g)(2) of the ESEA and § 200.59(b). With regard to computer technicians, § 200.58(a)(2)(ii) of the regulations states that solely providing technical support for computers is a non-instructional duty.

Changes: None.

Comment: One commenter sought clarification on how the requirements apply to paraprofessionals working in a variety of pre-Kindergarten programs, such as Head Start, or pre-Kindergarten programs funded with Head Start and State pre-Kindergarten funds.

Discussion: A number of questions have been raised about how the paraprofessional qualification

requirements apply to paraprofessionals working in these pre-Kindergarten programs. The Secretary intends to address this issue in nonregulatory guidance.

Change: None.

Section 200.59 Duties of Paraprofessionals

Comment: One commenter wanted changes in the proposed § 200.59 in order to reinforce the difference between instructional and non-instructional duties.

Discussion: The Secretary agrees with the recommendation.

Changes: Section 200.59(b) is amended to read, ''A paraprofessional covered under § 200.58 may perform the following instructional support duties:'' Regardless of an employee's title, an individual hired by an LEA who does not perform instructional support duties as identified in § 200.59 is not a ''paraprofessional'' for purposes of Section 1119 of the ESEA or these regulations. Moreover, it is possible that one employee, for example, performs parental involvement that is instructional support while another employee performs parental involvement that is not instructional support. The Department intends to issue guidance to help explain that distinction.

Comment: Several commenters recommended deleting language that would specify that one-on-one tutoring must take place outside of the regular school day.

Discussion: The Secretary agrees that there may be circumstances in which tutoring could be provided during the school day at a time when a student is not receiving instruction from a teacher.

Changes: Section 200.59(b)(1) is amended to remove the language requiring one-on-one tutoring to take place outside of the regular school day.

Comment: Many commenters addressed the regulatory provisions in paragraph (c), and asked that it clarify what it means for a paraprofessional to work under the direct supervision of a teacher. For example, several commenters said that the proposed language was too prescriptive, while another proposed that the regulations require paraprofessionals to work in the same room as the teacher. One commenter sought additional clarification of what ''close and physical proximity to a teacher'' means, while still another commenter recommended deleting this language.

Discussion: This regulatory provision responds to a finding of the National Assessment of Title I that, even though the prior statute also required paraprofessionals to work under the direct supervision of a teacher, 41 percent of paraprofessionals reported that half or more of the time they spent teaching or helping to teach was on their own, without a teacher present.

Changes: None.

Participation of Eligible Children in Private Schools

Section 200.62 Responsibilities for Providing Services to Private School Children

Comment: One commenter recommended that the regulations confirm that Title I services and benefits to private school students be secular, neutral, and non-ideological.

Discussion: The Secretary concurs. Section 1120(a) of the ESEA requires that Title I services and benefits provided to eligible private school children be secular, neutral, and non ideological.

Changes: Section 200.62 incorporates the statutory language that reflects the recommended change.

Section 200.63 Consultation

Comment: One commenter recommended that the consultation topics listed in § 200.63(b) be examples of timely and meaningful consultation by the LEA rather than required topics for consultation.

Discussion: Section 1120(b)(2) of the ESEA requires that consultation by an LEA occur prior to an LEA's making any decision that affects the opportunities of private school children to participate in Title I. The Secretary believes that all of the consultation topics listed in § 200.63(b) are necessary because they affect the opportunities of private school children to participate in Title I.

Changes: None.

Comment: One commenter asked that § 200.63(b)(5), concerning an LEA's responsibility for assessing services to private school children, be clarified by adding a reference to the LEA's assessment responsibility under § 200.10.

Discussion: The Secretary concurs that a reference to § 200.10 clarifies the LEA's assessment responsibility.

Changes: Section 200.63(b)(5) contains a reference to § 200.10.

Comment: One commenter recommended that § 200.63(b)(6), concerning size and scope of equitable services, be clarified by including a reference to § 200.64, that addresses factors for determining equitable participation of private school children.

Discussion: The Secretary agrees that a reference to § 200.64 clarifies an LEA's responsibility to consider the factors listed in that section when determining equitable participation for private school students.

Changes: Section 200.63(b)(6) contains a reference to § 200.64.

Comment: One commenter suggested that § 200.63(b)(7) singles out one method for determining poverty data for private school children, and asked that the words ''including whether the LEA will extrapolate data from a survey'' be deleted.

Discussion: Section 1120(c) of the ESEA lists four ways an LEA may determine the number of private school children from low-income families. The Secretary's intent is to give direction for consultation rather than to indicate a preference for any method.

Changes: To make the intent clear, § 200.63(b)(7) has been amended to clarify that consultation regarding the source of poverty data for private school children must include a discussion of extrapolation only if a survey is used.

Comment: One commenter recommended that the SEA be allowed flexibility in implementing § 200.63(e)(1), that outlines the records an LEA must maintain and submit to the SEA when documenting that it has consulted with private school officials.

Discussion: The Secretary believes that the language in § 200.63(e) accurately reflects the statute and gives an SEA the flexibility needed to implement provisions of this section.

Changes: None.

Comment: One commenter requested that § 200.63(e)(2), that requires an LEA to report to the SEA that it has consulted private school representatives, be amended by adding a provision requiring that an LEA indicate the reason why the private school officials did not provide affirmation.

Discussion: The Secretary believes that the proposed regulations accurately reflect the NCLB Act. The Secretary assumes, and would encourage, that any documentation that an LEA provides to the SEA concerning its consultation with private school officials would include an explanation about why private school officials did not provide the requisite affirmation.

Changes: None.

Section 200.64 Factors for Determining Equitable Participation of Private School Children

Comment: One commenter asked that the clause ''In the aggregate,'' at the beginning of § 200.64(a)(1), concerning equal expenditures, be deleted.

Discussion: The Secretary concurs and believes that this clause was

included in error. This same clause is contained elsewhere in § 200.64(a)(1).

Changes: Section 200.64(a)(1) has been amended to remove ''In the aggregate.''

Comment: One commenter stated that the language concerning equal expenditures lacks specificity and could result in confusion. The equitable services requirements would not apply to all of the district-wide activities for which an LEA must reserve funds under § 200.77. For example, an LEA would not need to ensure that private school students receive equitable services from funds reserved to meet transportation costs related to public school choice or to provide supplemental services to students in public schools identified as in need of improvement. The commenter asked that § 200.64(a)(2) be changed to make clear that the equitable services requirement applies only to reserved funds that affect services to private school students. Another commenter stated that funds reserved under § 200.77 are not limited to instructional activities, and that § 200.64(a)(2) should not limit the use of the funds only to ''instructional activities.'' In order to be consistent with the language in § 200.77, the commenter recommended the use of the more inclusive word ''services.''

Discussion: The Secretary agrees that, where applicable, funds an LEA reserves under § 200.77 must be used to provide equitable services for private school children. An LEA must also, when reserving funds under § 200.77, ensure that it provides instructional and related activities for eligible private school children that are equitable to activities provided for public elementary or secondary school students.

Changes: Section 200.64(a)(2)(i)(A) is amended to make clear that an LEA must provide equitable services to private school students from funds it reserves off the top of its allocation if those funds are used to provide instructional and related activities to public elementary and secondary school students.

Comment: One commenter recommended that § 200.64(a)(2)(i) be changed to specify that the equitable services an LEA must provide include ''necessary educational support such as technology and interpreters''.

Discussion: The needs of the private school participants determine what Title I services an LEA provides. Technology and interpreters are two of many Title I service options available, but may not be what is required in all instances.

Change: None.

Comment: One commenter stated the language in § 200.64(a)(2)(i), concerning district-level funds reserved for student instructional and related activities, is confusing with regard to how an LEA provides equitable services to private school children from Title I funds reserved by the LEA for district-wide activities. The commenter believes that equitable services should be based on a comparison to services and benefits provided to public school students rather than on the proportion to the number of private school children from low-income families residing in participating attendance areas.

Discussion: The Secretary believes that, in order to ensure that private school children receive an equitable share of services from funds an LEA reserves under § 200.77, the amount of funds made available from that reserve for equitable services must be proportionate to the number of private school children from low-income families residing in participating attendance areas. The Secretary agrees that this regulatory language needs to be modified in order to make this policy clearer.

Changes: The Secretary has amended proposed § 200.62(a)(2)(i)(B) to clarify that equitable services must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

Comment: None.

Discussion: In giving further consideration to the proposed regulations, Departmental staff determined that § 200.64(b)(2)(iii)(B) needed further clarification concerning the need for private school participants to meet the State's student academic performance standards. Because a private school's curriculum may not be aligned with State standards, it may be inappropriate to expect private school participants to meet the same State standards. The Secretary is making a clarifying change to give an LEA the flexibility to use equivalent standards to measure the academic progress of private school participants.

Changes: The Secretary has made this change.

Comment: One commenter recommended a technical correction in § 200.64(b)(3)(i), concerning an LEA's choice to provide services to private school children either directly or through a third-party contractor, to replace the word ''must'' with the word ''may'' and thereby make the language consistent with the statute.

Discussion: The Secretary concurs with this change.

Changes: Section 200.64(b)(3)(i) has been amended to make clear that an LEA may provide equitable services either directly or through a third-party provider.

Comment: One commenter suggested that § 200.64(b)(3)(ii) of the regulations be clarified so that, if an LEA provides services through a contract with a third-party provider, the contractor must be independent of the private school and of any religious organization.

Discussion: The Secretary agrees with the recommended change. Section 1120(c)(2)(B) of the ESEA requires that a third-party provider who provides equitable services to private school students must be independent of the private school and of any religious organization and that the contractor be under the control and supervision of the LEA.

Changes: The Secretary has amended § 200.64(b)(3)(ii) to include the statutory language.

Comment: One commenter suggested that § 200.64(b)(4) be changed to clarify that timely and meaningful consultation with private school officials must take place in accordance with § 200.63 before an LEA makes final decisions with respect to providing Title I services to eligible private school children.

Discussion: The Secretary agrees that an LEA must make final decisions with respect to the services it will provide to eligible private school children only after timely and meaningful consultation with private school officials in accordance with § 200.63.

Changes: Section 200.64(b)(4) has been amended to reflect the recommended clarification.

Section 200.65 Determining Equitable Participation of Teachers and Families of Participating Private School Children

Comment: A commenter recommended clarifying § 200.65(a)(1), concerning the reservation of funds for parent involvement and professional development activities, by inserting the word ''applicable'' before ''funds''.

Discussion: The Secretary agrees with this recommendation because the equitable services requirements apply to most, but not all, funds reserved for professional development and parent involvement activities. For example, equitable services for private school teachers would not apply to professional development funds an LEA in improvement must reserve in order to improve the quality of its schools.

Changes: The Secretary has made this change.

Comment: A commenter recommended that § 200.65(a)(1) be changed so that an LEA must ensure

that ''pupil services personnel,'' in addition to teachers who provide services to private school children, be involved in professional development on an equitable basis.

Discussion: The requirement for equitable services in section 1120(a) of the ESEA applies to private school teachers of students participating in Title I to improve the achievement of those students. To the extent that ''pupil services personnel'' are involved with improving the achievement of participating private school students, they may participate in professional development activities under Title I.

Changes: None.

Comment: One commenter did not agree that the amount of funds an LEA must make available under § 200.65(a)(1) to ensure equitable services to private school children must be based on the proportion of private school children from low-income families residing in participating school attendance areas. The commenter believed that the measure of service equity is more appropriately based on the services provided to the teachers and parents of private school students compared to services provided to teachers and parents of public school students.

Discussion: The Secretary believes that the best way to ensure that the equitable participation of teachers and families of participating private school children occurs is to base the amount available for those services from the applicable reserve on the proportion of private school children from low-income families residing in participating public school attendance areas. To make this policy more clear, the Secretary has made a clarifying amendment.

Change: The Secretary has amended § 200.65(a)(2) to clarify that the amount of funds available to provide equitable services from reserved funds for parent involvement and professional development must be proportionate to the number of private school children from low-income families residing in participating public school attendance areas.

Allocations to LEAs

Section 200.70 Allocation of Funds to LEA in General

Comment: One commenter recommended clarifying the references to total population used for determining whether an LEA is a small or large LEA in § 200.70(c) and (d) to indicate that this means total census population.

Discussion: The language in the proposed regulations is consistent with the statutory language in section 1124(a)(2)(B)(vi)(II) of the ESEA, which defines a small LEA as one with a total population of less than 20,000. However, the Secretary, in fact, provides States with data from the Census Bureau on the total resident population for each LEA in order for the SEA to identify large and small LEAs for the purpose of redistributing Title I, Part A funds among its small LEAs using alternative poverty data. We agree that the commenter's recommendation adds clarity. Such a change will make the regulations consistent with the Department's current practice of providing States with total census population data for each LEA.

Changes: The Secretary has changed the ''total population'' references in §§ 200.70(c) and (d) and 200.74(a) to ''total census population''.

Comment: One commenter asked what was meant by the term ''limited instances'' used in the preamble to the proposed regulations, which stated that § 200.70 establishes the principle that an SEA must change the allocations determined by the Department in limited instances.

Discussion: As a general rule, the Department of Education determines allocations for LEAs. Sections 200.70 through 200.75 outline the specific, limited instances when an SEA must adjust the allocations determined by the Department. For example, the list of LEAs that the Secretary uses to determine LEA allocations is provided by the Census Bureau and is based on the geographic boundaries of LEAs as they existed several years ago. Because that list does not match the current universe of LEAs in many States, SEAs must adjust the Department's LEA allocations to account for school district consolidations, break-ups, and boundary changes and to account for the creation of new LEAs (such as charter school LEAs) that are legitimately eligible for Title I, part A funds. In addition, SEAs must adjust the Department's allocations to (1) reserve funds for school improvement, State administration, and the State academic achievement awards program; and (2) allow, in certain cases, for the use of alternative poverty data to redistribute Department-determined Title I allocations among districts with fewer than 20,000 total residents.

Changes: None.

Section 200.72 Procedures for Adjusting Allocations Determined by the Secretary To Account for Eligible LEAs not on the Census List

Comment: One commenter recommended that this section be revised to require that an SEA provide final allocations to LEAs no later than 60 days following the receipt of the final allocation notification from the Department.

Discussion: While the Secretary supports the need for SEAs to determine final allocations as quickly as possible, it is sometimes impossible for an SEA with a significant number of newly created or expanding charter school LEAs to make final allocations within the 60 day deadline recommended by the commenter. In many cases the poverty and enrollment data for the charter school LEAs and the districts from which they draw their students are not available until the beginning of the school year. The data available at the beginning of the school year are often estimates, which the SEA uses to determine preliminary allocations. The SEA must adjust these allocations later in the school year after it receives actual data in order to determine final LEA allocations.

Changes: None.

Section 200.73 Applicable Hold-Harmless Provisions

Comment: One commenter believed that the language of this section implied that an LEA must meet the eligibility requirements for three of the four Title I, part A formulas in order to benefit from the hold-harmless protection.

Discussion: For the Basic, Targeted, and Education Finance Incentive Grant formulas, § 200.73(d)(1) requires that an LEA be eligible under each of those formulas in order for the applicable hold-harmless provision to apply.

Changes: The Secretary has amended the language in § 200.73(d)(1) to clarify that, to benefit from the hold-harmless provision under a particular formula, an LEA need only be eligible under that formula.

Section 200.75 Special Procedures for Allocating Concentration Grant Funds to Small States

Comment: One commenter raised a concern whether the Concentration Grant hold-harmless provision applies to the special procedures that a small State may use in allocating those funds to LEAs.

Discussion: The Concentration Grant hold-harmless provision described in § 200.73(d)(2) applies to LEAs in all States. Therefore, an SEA must pay an LEA not meeting the eligibility thresholds for Concentration Grants its hold-harmless amount for four consecutive years. This hold-harmless provision applies to a small State that uses the flexibility available to it under section 1124A(d) of the ESEA and

§ 200.75 of the regulations when allocating Concentration Grant funds to eligible LEAs in which the number or percentage of formula children equals or exceeds the Statewide average number or percentage of those children.

Changes: The Secretary has added a reference § 200.75(a)(2)(ii) to make clear that the Concentration Grant hold-harmless provision in § 200.73(d) applies to small States using the special procedures outlined in § 200.75.

Procedures for the Within-District Allocation of LEA Program Funds

Section 200.77 Reservation of Funds by an LEA

Comment: One commenter asked why there is a provision regarding reserving funds for capital expenses since there are no funds appropriated for the Capital Expenses program and the authorization for that program will expire on September 30, 2003.

Discussion: Section 200.77(f) of the regulations continues the authority for an LEA reserve Title I funds that are reasonable and necessary to administer programs for public and private school children. An LEA may still use Title I funds it reserves for administration to pay for capital expenses associated with providing services to private school children even though Congress has appropriated no funds specifically for capital expenses in fiscal year 2002 and the authorization, which governs the use of funds appropriated for the program will expire on September 30, 2003.

Changes: None.

Comment: One person commented that an LEA should have the flexibility to meet the reserve requirements for professional development in §§ 200.52(a)(3)(iii) and 200.60 from non-Title I funds and asked whether the parental involvement reserve can be met from non-Title I funds.

Discussion: In all three instances, the Title I statute requires that these reserve requirements be met from Title I funds received by the LEA.

Change: None.

Section 200.78 Allocation of Funds to School Attendance Areas and Schools

Comment: One commenter recommended amending the language in § 200.78(a)(2)(ii)(B)(*1*) related to obtaining a poverty count of children in private schools through a survey to make it consistent with the statute.

Discussion: In obtaining a count of private school children from low-income families for within-district Title I, part A allocation purposes, the regulations provide that an LEA could, instead of using the same poverty data it uses to count public school children, use comparable poverty data from a different source such as a private school survey so long as that survey protects the identity of families of private school children. In order to be consistent with the language in the statute, the Secretary agrees with the language change in § 200.78(a)(2)(ii)(B)(*1*) that the commenter suggests. However, in order to provide LEAs with the greatest flexibility possible in obtaining poverty data for students attending private schools, the Secretary is adding language that enables an LEA to use comparable poverty data from a different source such as scholarship applications.

Changes: The Secretary has made the suggested change and added further clarifying language noted in the discussion by adding a new paragraph (a)(2)(ii)(C) to § 200.78.

Comment: One commenter recommended changing the language in § 200.78(a)(2)(iv) to make it consistent with the provisions in § 200.63 that address district consultation with private school officials and reference § 200.78. The commenter believed this change would make clearer that an LEA has the final authority to determine the method used to calculate the number of private school children from low-income families for Title I allocation purposes only after the LEA has engaged in timely and meaningful consultation with private school officials.

Discussion: The Secretary agrees that the commenter's proposed change makes it clearer that an LEA must engage in timely and meaningful consultations with local private school officials before making a final decision about the method it will use to determine the number of private school children from low-income families who reside in participating public school attendance areas. The change would also make this provision consistent with the requirements in § 200.63.

Changes: The Secretary has modified § 200.78(a)(2)(iv) to make clear that an LEA must consult with appropriate private school officials about the method of collection of poverty data.

Fiscal Requirements

Section 200.79 Exclusion of Supplemental State and Local Funds From Supplement, Not Supplant and Comparability Determinations

Comment: One commenter asked for clarification, in either the regulations or guidance, to indicate that the use of Title I funds to pay for substantial increases in transportation costs of an LEA directly attributable to the public school choice provisions of section 1116 of the ESEA do not violate supplement, not supplant or comparability provisions. Another commenter asked whether an LEA could combine State and local funds with Title I, part A funds to pay for transportation costs associated with implementing the public school choice provision in section 1116 of the ESEA. If an LEA can combine State and local funds with Title I funds for transportation costs, the commenter further asked whether an LEA will be in compliance with the supplement, not supplant requirement even though it is using Title I funds to supplement local funds for transportation.

Discussion: The Secretary will address this issue in guidance. Generally, however, an LEA must first determine what its transportation costs would be in the absence of Title I. Additional transportation costs attributable to the public choice provision of section 1116 of ESEA may be met with Title I, part A funds.

Changes: None.

Subpart C—Migrant Education Program

Section 200.82 Use of Program Funds for Unique Program Function Costs

Comment: One commenter recommended adding in § 200.82(e) the term ''MEP'' to clarify that the comprehensive State plan is for the delivery of MEP services.

Discussion: The Secretary agrees with the suggested editorial change.

Change: Section 200.82(e) has been amended to refer to a ''comprehensive State plan for MEP service delivery.''

Comment: Three commenters recommended adding several additional items to the list of examples in § 200.82 of ''other administrative activities * * * unique to the MEP'' for which an SEA may expend MEP funds that it does not reserve for general administration. The commenters recommended adding one or more of the following activities: parent advisory council activities; advocacy and outreach activities for migratory children and their families; planning, operation and evaluation of program effectiveness; and services to migratory children who are failing, or most at risk of failing, to meet the State's academic standards and whose parents do not have a high school diploma or its recognized equivalent or who have low levels of literacy.

Discussion: The Secretary agrees that, under the statute, MEP funds can be expended for all of these activities. However, the Secretary does not agree that each of these activities constitutes

the other administrative activities unique to the MEP, or activities that are the same or similar to administrative activities that LEAs perform under Title I, part A, for which MEP funds not reserved for general administration may be expended under § 200.82. Of the commenters' suggestions, the Secretary believes that activities associated with an SEA's establishment and operation of a State parent advisory council, and its evaluation of the effectiveness of the State MEP are the appropriate additional examples of those other administrative activities that are the subject of § 200.82.

Change: Section 200.82(g) and (h) has been added to clarify that the establishment and implementation of a State parent advisory committee and the evaluation of the effectiveness of the State MEP are additional examples of other administrative activities, unique to the MEP, or are the same or similar to administrative activities that LEAs perform under Title I, part A for which an SEA may expend MEP funds that are not reserved for general administration.

Section 200.83 Responsibilities of SEAs To Implement Projects Through a Comprehensive Needs Assessment and a Comprehensive State Plan for Service Delivery

Comment: None.

Discussion: In giving further consideration to the proposed regulations, Departmental staff determined that § 200.83(a)(3)(ii) refers to the ''general educational needs of migratory children'' that must be addressed by an SEA's MEP service delivery plan, while § 200.83(a)(2)(ii) refers to the ''other needs of migratory children'' that are to be identified in an SEA's needs assessment. Given that both references are intended to refer to the same needs, and that section 1306(a) of the ESEA provides that these needs are to be ''special educational needs of migratory children,'' the Secretary believes that it is desirable to improve the clarity of both of these regulations so that they reflect special educational needs that an SEA's needs assessment must address.

Change: The ''special educational needs'' of migratory children that are identified and addressed through the SEA's comprehensive needs assessment and State plan for service delivery are those identified in section 1306(b)(1) of the ESEA, *i.e.*, (1) unique needs arising from these children's migratory lifestyle, and (2) those needs that must be addressed in order to permit these children to participate effectively in school. Section 200.83(a)(2)(i) and (a)(3)(i) already provide that the SEA's needs assessment and service delivery must address the unique needs arising from migratory lifestyle. Section 200.83(a)(2)(ii) and (a)(3)(ii) have been revised to clarify that the needs assessment and service delivery also must address other needs of migratory children that must be met in order for these children to participate effectively in school.

Comment: One commenter recommended the inclusion of additional, detailed requirements and examples for carrying out parental consultation under § 200.83(b). The commenter proposed adding language to this paragraph to require that this consultation include (1) interpreter services; (2) notices to parents in a language that the parents can understand; taking into account language proficiency and literacy levels; (3) the use of non-traditional communications vehicles, such as posting notices at churches and other social service facilities; and (4) the establishment of networks with other care-givers who serve the population of migratory workers. The commenter stated that providing these examples of communication strategies would help ensure more effective communications with the families of migratory children.

Discussion: Section 200.83(b) requires an SEA to develop its MEP service delivery plan in consultation with parents. The Secretary believes that this level of detail is more appropriate for nonregulatory guidance. However, the Secretary does agree that, consistent with § 1304(c)(3)(B) of the ESEA, § 200.83(b) should clarify that the required parental consultation regarding the SEA's MEP service delivery plan must be through a format and language that parents understand.

Change: Section 200.83(b) has been amended to note that consultation shall be in a format and language that parents understand.

Section 200.84 Responsibilities of SEAs for Evaluating the Effectiveness of the MEP

Comment: One commenter recommended amending § 200.84 to specifically include the use of alternatives to standardized testing used with other children when an SEA evaluates the effectiveness of its MEP. The commenter suggested that migratory children often cannot be assessed through standard or traditional means since standardized testing used with other children to determine overall program progress is not likely to be valid with the population of migratory children.

Discussion: The Secretary does not believe the commenter's proposed additional language to § 200.84 is needed. The Secretary believes that specific details about the methods an SEA might use for determining the effectiveness of its MEP are more appropriately presented in nonregulatory guidance.

Change: None.

Subpart D—Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-risk of Dropping Out

Section 200.90 Program Definitions

Comment: One commenter asked that a provision be added to clarify that the supplement, not supplant requirement applies to Title I, part D, subpart 2.

Discussion: This fiscal requirement does not apply because NCLB does not specifically make the supplement, not supplant requirement applicable to programs authorized under part D, Subpart 2 of Title I.

Changes: None.

Subpart E—General Provisions

Section 200.100 Reservation of Funds for School Improvement, State Administration, and the State Academic Achievement Awards Program

Comment: One commenter stated that the $400,000 cap on the amount a small State may reserve for State administration is inadequate.

Discussion: Section 1004 of the ESEA authorizes an SEA to reserve for State administration up to one percent from funds allocated to the State under Title I, part A (Grants to LEAs), part C (Migrant Education), and part D, Subpart 1 (State Agency Neglected or Delinquent Program. The ESEA further provides that if the amount calculated as available to be reserved for State administration totals less than $400,000, an SEA may reserve up to $400,000. The Department cannot increase these limitations through regulations.

Changes: None.

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Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Miscellaneous Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AB10

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Miscellaneous Provisions

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends a number of existing provisions in the WIC Program regulations. In response to issues raised by WIC State agencies and other members of the WIC community, the United States Department of Agriculture (the Department) proposes two principal changes. First, this rulemaking would streamline the Federal requirements for financial and participation reporting by State agencies. Second, it would clarify the rules on confidentiality of WIC information in order to strengthen coordination with organizations and private physicians, and to provide guidance to State agencies on responding to subpoenas and other court-ordered requests for confidential information.

These two provisions are intended to strengthen services to WIC participants, improve Program administration, and increase State agency flexibility in managing the Program. The other provisions in this rule have been designed to improve program administration or to incorporate program policies that have been in effect for some time into regulations.

DATES: To be assured of consideration, comments must be postmarked on or before April 1, 2003.

ADDRESSES: Comments should be sent to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, VA 22302. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday), at the above address.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Chief of the Policy and Program Development Branch, Supplemental Food Programs Division, at the address indicated in the **ADDRESSES** section or at (703) 305–2730, during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

1. Definitions of ''Sign or Signature'' and ''Electronic Signature'' (§ 246.2)

This rule proposes to amend § 246.2 to add new definitions of ''sign or signature'' and ''electronic signature.'' These definitions would give State agencies the option to use electronic signatures in their administration of the WIC Program. WIC regulations require signatures in various contexts. For example, § 246.7(i)(9) requires the ''signature'' of the competent professional authority (CPA) who determined that the applicant is at nutritional risk and the ''signature'' of the administrative person who determined that the applicant meets WIC income eligibility requirements. In addition, § 246.7(i)(10) requires the ''signature'' of the applicant, parent, or caretaker as part of the WIC application/certification process, and § 246.12(r)(2) requires participants and their representatives to ''sign'' when they receive WIC supplemental foods or food instruments. Currently, the terms ''sign'' or ''signature'' throughout part 246 could be interpreted to exclude the use of electronic signatures. With advancements in technology, we do not want to limit State agencies' authority to use such tools. Many State agencies are using or implementing automated management information systems whereby all information collected from applicants is typed into an electronic record/data system at the time of application. As part of the move to automated records and paperless systems, some State agencies are interested in using electronic signatures.

While new technologies continue to emerge, currently, electronic signatures include a broad range of signature types. For example, an applicant could sign his/her name on a device similar to a note pad, called a digital pen and pad. The signature becomes digitized and is stored in the data system as an exact replica of the applicant's signature. Other types of electronic signature devices allow for the collection of an applicant's signature with the digital pen and pad and the signature is subsequently converted and stored as a unique series of digits or numbers. For administrative purposes, an electronic signature could be a unique key and/or personal identification number assigned by staff that is authorized to determine a WIC applicant's nutrition risk or income eligibility. Depending on its application, a combination of electronic signature tools may be necessary to address appropriately the reliability and integrity of the technology and/or security of the State agency's system.

This rule would define ''electronic signature'' in the same way as it is defined in the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229, signed June 30, 2000), also known as ESIGN. ESIGN covers the use of electronic signatures in most business, consumer, and commercial transactions, but does not generally cover ''governmental'' transactions. However, we believe the broad application of ESIGN will make the definition of ''electronic signature'' the standard. Therefore, we propose to adopt the ESIGN definition of ''electronic signature'' for WIC purposes.

This rule would make clear that electronic signatures may be used only if the State agency ensures the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices and WIC Program regulations concerning confidentiality. State agencies interested in using electronic signatures will need to assess the suitability of electronic signatures for various applications, security issues, and cost implications. Interested State agencies should explore available technology, including off-the-shelf software that may meet WIC's needs at a reasonable price. This rule would not require the use of electronic signatures.

2. Selection of Local Agencies (§ 246.5)

The Department proposes to remove the requirement in §§ 246.5(c)(1) and (d)(2) of the regulations for WIC State agencies to fund new local agencies in areas based on the sequential order of neediest areas listed in the Affirmative Action Plans that are part of each State agency's Plan of Operation. This change is intended to give State agencies more flexibility in using their WIC Program grants as efficiently and practically as possible to best meet the needs of program participation. In order to do this, it may not always be practical to adhere strictly to the sequential order of neediest areas when funding local WIC agencies for expansion.

At §§ 246.5(c)(1) and (d)(2), emphasis is placed on expanding the Program through the selection of local agencies that are next in line on the basis of need as established by the State agency's Affirmative Action Plan. Although State agencies should continue to consider the relative need of certain areas for program expansion as identified in the Affirmative Action Plan when selecting new local agencies, we are aware that there are certain practical considerations in expanding program operations that may override the choice

of a local agency in an area that is next in line according to the Plan. For example, while it remains important to expand operations in the ''neediest one-third of all areas unserved or partially served'', as required in § 246.4(a)(5)(i), it may be impossible to do so at a particular point in time because of lack of funding. An inadequate health care system infrastructure (public or private) to provide health-related services to support the opening of a local agency is a common situation that State agencies often face in attempting to expand in remote areas. The cost of opening new WIC clinics in such areas, even if those areas happen to be ''next in line'' for expanded services may exceed the funds that the State agency has available for caseload growth. By comparison, it may be more cost-effective and expeditious to expand caseload in other areas that are also underserved, but possess the health care infrastructure to support additional WIC services.

3. Mid-Certification Actions (§ 246.7(h))

The Department proposes several revisions to this section. The most significant proposed change would require local agencies to reassess a participant's *income* eligibility (including household composition) during the certification period if information is received about a change in circumstances, indicating possible ineligibility. Although many State agencies require reassessment of income eligibility based on receipt of information indicating a change, current regulations do not mandate such reassessments. This proposal would strengthen Federal requirements for local agencies to act on information about changes in household circumstances that affect only the income eligibility of participants, not the nutrition risk eligibility.

Income Eligibility Reassessments

Currently, WIC program regulations (§ 246.7(h)(1)) require local agencies to disqualify an individual in the middle of a certification period if, on the basis of a reassessment of Program eligibility status, the individual is found to be ineligible. Because of the ambiguity in the reference to reassessment of ''Program eligibility'' during certification periods, the Department wishes to exercise its interpretive discretion to specify that mid-certification reassessments pertain to *income* eligibility, not to the participant's nutrition risk status.

This proposed interpretation is consistent with the Department's policy about mid-certification reassessments. Many State agencies already specify in their formal policies that disqualifications due to reassessments are appropriate only in response to information that establishes ineligibility based on income. It has not been the Department's position that local agencies should reassess nutrition risk status during the certification period or disqualify a participant based on a learned improvement in nutrition risk status. Provided that the individual remains *income-eligible* for WIC benefits, the Department believes that enrollment in the Program generally entails a commitment to the participant for a full certification period. This policy regarding nutrition risk status recognizes the preventive nature of the WIC Program.

However, the Department also believes that local agencies *should* follow up on information that a change in income or household size may make a participant ineligible to continue to receive WIC benefits. Current regulations only require State agencies to ensure that local agencies disqualify participants who are found to be ineligible only *if* a reassessment of program eligibility is conducted. The regulations do not currently mandate that any reassessment be performed. This proposed change would require that local agencies reassess income eligibility when information is received indicating that a change in income eligibility has occurred. Local agencies would not be required to seek out information. However, if information comes to their attention, either from the participant or from other sources, which suggests ineligibility, this would trigger the regulatory requirement to reassess WIC income eligibility.

For an adjunctively income-eligible participant, the trigger action for income reassessment within a certification period would be *confirmation* that the individual or other eligible family member is no longer participating in any of the programs forming the basis for adjunctive income eligibility. This proposed provision would require local agencies to ask the adjunctively income-eligible participant for proof of current eligibility to participate in another qualifying program only when that local agency has reason to believe that the original program participation has ended. If, on the basis of the reassessment, the participant is no longer eligible to receive WIC benefits because of income, then disqualification proceedings would be initiated.

Disqualification based on a reassessment of income ineligibility also applies to other household members currently receiving WIC benefits. When one household member is reassessed for income eligibility and determined ineligible based on household size and income, in effect all participating members of that household have been reassessed and are equally ineligible. Therefore, the regulations have been revised to require that if one member of a household is reassessed for income eligibility and determined ineligible, all other participating household members in the economic unit must be disqualified. This provision applies to normal income screenings as well as to proof that a participant is no longer receiving benefits under another program that confers adjunctive income eligibility.

The Department is not interested in limiting State agency flexibility in this area, but is establishing clear Federal requirements that are both reasonable and responsible. The Department understands that many State agencies already have similar or even more stringent policies in place regarding reassessing income eligibility during the certification period. State agency policy need not be changed as long as State requirements meet the minimum Federal requirements.

The Department is aware that some State agencies oppose both reassessment of income eligibility and program disqualification based on such reassessment during a certification period. Some of the arguments offered to FNS include the disparity of treatment among participants according to their willingness to report income changes, and the consideration that financial situations of many participants are tenuous and subject to fluctuations. Another concern is the fact that other family members who are also WIC participants will be disqualified if a reassessment reveals the family to be over the income standard.

The philosophical issue underlying the arguments for or against mid-certification reassessments and disqualifications for income ineligibility is whether WIC's commitment to improving an individual's nutritional status during a period of time (*e.g.,* during a 6-month certification period) is more or less important than ensuring the integrity of income eligibility standards. The Department can find no statutory justification for allowing known income ineligible persons to continue to receive WIC benefits. The Department agrees with the rationale that because nutritional status may take at least a full certification period to improve, a commitment to the participant is implied. However, that commitment may not be extended to persons who no longer meet the basic income eligibility requirements set forth

in the Child Nutrition Act. A participant whose household income clearly exceeds the income standards used by the State agency is no longer eligible for WIC benefits. Federal policy should be unequivocal regarding the ineligibility of known over-income participants.

Again, the Department is not requiring local agencies to seek out information about the income status of participants during the certification period. Rather, if information regarding a change in income and/or family size is brought to the attention of the local agency, action must be taken to reassess the participant's income eligibility for program benefits. The proposed language represents a reasonable approach that balances responsible action against unnecessary paperwork burden.

The Department also proposes to indicate clearly the mandatory or optional nature of other mid-certification actions addressed in this section. As proposed, *mandatory* mid-certification actions would include reassessment of income eligibility based on information received and disqualification of participants, including family members, if found to be over-income. *Optional* mid-certification disqualification actions would include those necessitated by funding shortages or the failure to pick up food instruments or supplemental foods for a number of consecutive months as established by the State.

4. Requesting Pregnancy Tests, Checking Identification and Other Basic Certification Procedures (§ 246.7(c))

We propose to expand § 246.7(c) to address several basic certification procedures, along with the delineation of eligibility criteria, in an effort to highlight the importance of certain procedures, such as providing proof of residency and proof of identity, and ensuring that applicants are not charged for certification. To accomplish this, the following changes are being made:

(a) The provisions currently found at §§ 246.7 (l)(2) and (m), addressing proof of residency/proof of identity, and program certification without charge to the applicant, respectively, are being moved to more prominent positions in the regulations;

(b) A new provision concerning pregnancy tests is proposed; and

(c) A reference is made to the application processing standards contained in paragraph (f) of this section.

Pregnancy Tests

In response to questions that have arisen in recent years, we are proposing basic guidelines that State and local agencies must observe if documentation of pregnancy is part of the certification process. Some State and local agencies have expressed an interest in requiring proof of pregnancy to stem possible abuse from ineligible applicants claiming categorical eligibility as pregnant women. We realize that pregnancy in its very early stages may not be immediately apparent. We also understand why a local agency may wish to obtain confirmation of the pregnancy before it issues WIC benefits, especially if incidents of possible fraud have been reported. For these reasons, we are proposing in a new paragraph (c)(2)(ii) that State agencies may issue benefits to applicants who claim to be pregnant (assuming that all other eligibility criteria are met) but who do not have documented proof of pregnancy at the time of the certification interview and determination. The State agency should then allow a reasonable period of time, not to exceed 60 days, for the applicant to provide the requested documentation. If such documentation is not provided as requested, the local agency would then be justified in terminating the woman's WIC participation in the middle of a certification period.

5. Determining Income Eligibility (§ 246.7(d))

The Department proposes several changes to this section of the regulations.

A. Use of State or Local Income Health Care Guidelines to Determine Income Eligibility for WIC

The first proposed revision, at paragraph (d)(2)(iii) would require State agencies using State or local income guidelines for free or reduced-price health care to base the income eligibility determinations of WIC applicants on the income and family definition and exclusions outlined in paragraphs (d)(2)(iii) and (d)(2)(iv), respectively. This change would continue to allow variation among the State agencies only with regard to the actual income guidelines used (*i.e.*, the percent of gross income above the Federal poverty income guidelines, up to a maximum of 185 percent), but not with the definition of income, family, or exclusions from income. This proposed revision would continue the WIC Program's current policy of excluding from these requirements persons who are determined adjunctively or automatically income eligible.

We are proposing this change for two reasons:

1. The number of WIC State agencies that use State or local free or reduced-price income guidelines has declined over the years. At this time, all 88 WIC State agencies use income guidelines which are set at 185 percent of the Federal poverty income guidelines, established and updated annually by the Department of Health and Human Services.

2. Current WIC Program regulations at § 246.7(d)(2)(iii) allow State agencies using State or local free or reduced-price health care income guidelines to use the State or local definition of income, provided that the values of in-kind housing or other in-kind benefits are not counted toward an applicant's income determination and that no one with gross income over 185 percent of the Federal poverty income guidelines is determined eligible for WIC. Because the local agency must ensure that the applicant's income is within the Federal guidelines after applying the State or local income definition, procedurally it would be simpler for local agencies to apply the WIC income definition and exclusions outlined in the regulations to all applicants rather than apply two sets of income guidelines and family definitions and exclusions.

B. Consideration of Loans as Income

Finally, this proposal would specify that funds from loans are excluded from consideration as income when determining an applicant's income eligibility. Program regulations have not specifically addressed this issue; however, FNS Instruction 803–3, Rev. 1, clarifies that funds from loans are not to be counted as income because they are only temporarily available and must be repaid.

6. Limitation on the Use of Possibility of Regression as a Nutrition Risk Criterion (§ 246.7(e)(1)(vi)

Historically, program regulations have permitted WIC participants to remain on the program due to the possibility of regression, *i.e.*, previously certified participants who might regress in nutritional status if they are not allowed to continue to receive WIC benefits. The possibility of regression has been allowed as a nutrition risk criterion in order to prevent the ''revolving door'' situation in which individuals improve their nutritional status as the result of participation in the WIC Program and are therefore removed, only to deteriorate in nutritional status at a later date and have to re-enter the program.

It has always been the Department's position, however, that the possibility of regression should not be used excessively as a nutrition risk criterion,

because this practice may result in participants with no current nutrition risk condition continuing to be served while other eligible applicants who do have current nutritionally-related medical conditions or deficient diets go unserved. To encourage the limited use of regression, the Department confirmed the State agency's authority to limit the number of times and circumstances under which a participant may be certified for possible regression in a final rule published on February 13, 1985 (50 FR 6108).

The use of regression as a basis for certification has continued to cause concern, particularly as the Department has intensified its efforts to encourage State agencies to target benefits to those persons at greatest nutritional risk. Therefore, the Department issued further guidance on the use of regression in FNS Instruction 803–2, Rev. 1, which recommends that possibility of regression be employed as a reason for certification one time at most. The Instruction also clarifies that certification based on possible regression for Priority II infants is generally inappropriate, because the infant's certification is based upon the mother's nutrition risk condition, and there is no prior condition on which to base the infant's supposed regression.

While the possibility of regression can be a legitimate basis for certification, a regulatory limit on its use would ensure that possibility of regression is not employed repeatedly as a basis of continued program participation by persons who are not currently at nutritional risk. Such a limit is consistent with the Department's efforts to target benefits to those persons in greatest need and at greatest nutritional risk. Further, a limit on the use of possibility of regression as a basis for certification is logical because the term itself implies that there must be a prior nutrition risk condition on which the regression would be based. Therefore, it follows that once a participant has been certified one time for possible regression to a prior condition, there is no longer a prior nutrition risk condition to justify an additional certification on this basis.

In view of these concerns, we propose to prohibit the use of possibility of regression as the basis of nutrition risk eligibility for *consecutive* certifications.

Example: A child might be initially certified for WIC based on iron-deficiency anemia; at the end of that 6-month certification period, s/he might have improved just enough to be barely outside the definition of anemia established by the Centers for Disease Control and Prevention (CDC), and could legitimately be certified for another 6 months based on the possibility of regression to his/her earlier anemic condition. At the end of this second certification period, if this child does not exhibit some other condition that is an allowed nutrition risk, s/he would no longer be eligible to receive WIC benefits.

State agencies who elect to use the possibility of regression as a basis for WIC certification would be expected to certify the WIC participant either at the same priority level for which s/he was initially certified (based on a specific medical, anthropometric, or dietary condition) or at the Priority VII level (if the State agency is using Priority VII). State agencies should also keep in mind that in those situations where a waiting list must be used because funding levels are limited, the certification of an applicant based on the possibility of regression to a prior condition can exclude the certification of another applicant who may be at greater nutritional risk, and should make their decisions about the use of regression (as well as the priority levels to which it applies) very carefully.

Commenters should note that this proposal would not place an absolute limit on the number of times that regression can be used as the nonconsecutive basis for certification. This provision would not restrict, for example, the certification of a child on the basis of possibility of regression several times during the years that s/he is categorically eligible. The Department believes that this provision places a reasonable limit on the use of possibility of regression but, at the same time, recognizes instances in which a subsequently developed nutrition risk condition may warrant an additional certification period based on the real possibility of regression to that condition. Finally, the provision in no way infringes upon the State agency's authority to limit the *circumstances* under which a participant may be certified for possible regression, as long as the condition in question is one to which an individual can actually regress. Because it is not possible for a woman who has been receiving WIC benefits as a pregnant woman to regress to that pregnancy once it has ended, it would not be appropriate to certify her as a postpartum woman based on a condition that was caused by or unique to her pregnancy, such as hyperemesis gravidum (morning sickness) or pregnancy-induced hypertension.

7. Certification Periods (§ 246.7(g)(1))

In response to concerns cited by Congress, State agencies, and the National WIC Association (NWA) (formerly known as the National Association of WIC Directors (NAWD)), the Department proposes to modify the timeframes for certification periods in order to make them more consistent across participant categories. Current regulations establish the following timeframes for certification:

A/an:	Is currently certified:
Pregnant woman	For the duration of her pregnancy, and up to 6 weeks after the infant is born or the pregnancy is ended.
Postpartum woman	Up to 6 months after the baby is born or the pregnancy is ended (postpartum).
Breastfeeding woman	Every 6 months ending with the infant's first birthday.
Infant	Approximately every 6 months. The State agency may permit its local agencies to certify infants under 6 months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
Child	Approximately every sixth month ending with the last day of the month in which a child reaches his/her fifth birthday.

Some State agencies have expressed concern that the timeframes for establishing certification periods are complicated and administratively burdensome. These State agencies contend that current regulations require the frequent proration of monthly food benefits and special data processing capabilities to accommodate specific cut-off dates. NWA/NAWD has also expressed concern about the lack of consistency in certification period timeframes.

The Department fully supports greater simplicity and consistency in this area. Therefore, the Department proposes to adopt the recommendation made by NWA/NAWD to allow certification periods for all participant categories to be extended to the end of the month.

Specifically, the following maximum certification periods are proposed in § 246.7(g)(1):

A/an:	Will be certified:
Pregnant woman	For the duration of her pregnancy, and up to the last day of the month in which the infant becomes 6 weeks old. (For example, if the infant is born June 4, 6 weeks after birth would be July 16, and certification would end July 31.)
Postpartum woman	Up to the last day of the sixth month after the baby is born (postpartum).
Breastfeeding woman	Approximately every 6 months ending with the last day of the month in which the infant turns 1 year old.
Infant	Approximately every 6 months. The State agency may permit its local agencies to certify infants under 6 months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
Child	Approximately every sixth month ending with the last day of the month in which a child reaches his/her fifth birthday. (No change from current regulations)

The Department believes that these proposed timeframes will alleviate concerns voiced by State agencies. However, we want to emphasize that State and local agencies should continue to exercise good judgment in assigning certification periods, particularly in the case of pregnant participants. The current regulatory provision, which limits the certification period for pregnant women to up to 6 weeks postpartum, was designed to facilitate the scheduling of the mother's and infant's visit to the clinic soon after delivery and to encourage the prompt reassessment of continued program eligibility. Scheduling the postpartum clinic visit within this timeframe best serves the health care needs of the mother and the infant, and strengthens the program's tie to health services. Commenters should note that this proposed change would have the effect of extending a woman's certification under the pregnant woman category to up to 9 weeks postpartum. Some State and local agencies may not want to extend the certification periods for these women, preferring instead to concentrate their resources on women who are in the early months of pregnancy.

Finally, the proration of program benefits for all participant categories continues to be an effective means of targeting benefits and managing program costs. State agencies should also be aware that these proposed regulations would not remove their authority to maintain current certification period lengths or to permit local agencies to shorten certification periods on a case-by-case basis. The Department encourages State agencies to exercise this authority as appropriate.

8. Certification Forms (§ 246.7(i))

The Department proposes to allow State agencies the option of substituting simpler language in order to make the ''rights and obligations'' statement contained in § 246.7(i)(10) clearer to applicants. State agencies would also have the option of modifying the language at § 246.7(j)(2)(i)–(iii), which must be read to or by the participant (or parent/caregiver of a participating infant or child) at the time of certification along with the statement of ''rights and obligations'' contained in paragraph (i)(10). Modification of the ''rights and obligations'' statements would be subject to FNS approval during the State Plan approval process. Approval of alternate language would be contingent upon whether the language substitutions convey the same meaning and intent as the existing regulatory text.

In addition, in § 246.7(i)(11), the required content of the certification form statement which acknowledges the potential disclosure of applicant and participant information would be revised to incorporate the changes proposed in § 246.26(d) pertaining to confidentiality and data sharing. These changes primarily pertain to expansion of the types of programs with which information can be shared. The proposed changes are discussed later in this preamble as part of a larger discussion about confidentiality.

9. Continuation of Benefits During Fair Hearings (§ 246.9(g))

It has come to the Department's attention that current provisions at § 246.9(g) allow for the continuation of benefits for a categorically ineligible participant who has appealed an adverse action to terminate benefits and is waiting for a fair hearing decision. The situation involves breastfeeding participants who continued to receive WIC benefits although they had discontinued breastfeeding and were more than 6 months postpartum. These participants, as postpartum non-breastfeeding women, are no longer categorically eligible for program benefits and should be terminated from the WIC Program. Under these circumstances, when a change in the participant's breastfeeding status becomes known to the WIC local agency and the participant is not eligible to continue receiving benefits as a postpartum participant, the agency would issue a notice of adverse action to terminate benefits. Such written notice must be issued not less than 15 days before the benefits are actually terminated. However, the language at paragraph (g) of this section technically allows the categorically ineligible individual to continue to receive WIC benefits during the appeal process. To correct this minor inconsistency, the Department proposes to revise paragraph (g) to prohibit any participants who have become categorically ineligible from continuing to receive benefits while a fair hearing decision is pending.

10. Prohibition Against the Use of Program Funds To Provide Retroactive Benefits (§ 246.14(a))

This proposed rule would specify that WIC Program funds may not be used to provide retroactive benefits to participants. Regulations have not previously addressed the issue of retroactive benefits, although it has been a long-standing policy in the WIC Program (based on fundamental principles of appropriation law) that such benefits are inappropriate. The WIC food package is designed to be consumed during specified periods when participants are undergoing critical growth and development. Providing WIC foods to persons after they have passed through such periods is not consistent with the nutritional goals of the WIC Program, nor is it appropriate to give participants more food than they can reasonably consume within a given period of time. In either case, it is not an effective use of program benefits. A regulatory prohibition against the use of program funds to provide retroactive benefits would clearly and formally establish the

inappropriateness of such benefits in WIC.

11. Transportation as Allowable Costs (§ 246.14(c)(7))

The Department has learned that a number of urban and suburban localities experience difficulties in serving needy program eligibles due to inadequate access to transportation by existing or potential WIC participants. Limited, expensive, or nonexistent transportation has been identified as a primary barrier that prevents or discourages potentially eligible persons and participants from getting to WIC clinics. To address this problem, several State agencies have purchased mobile vans to deliver WIC services to participants in ''non-rural'' areas. State agencies have also requested approval to purchase vans to transport participants to and from inner city and suburban clinics. Currently, however, the allowability of such transportation costs is limited to assisting *rural* participants. Because State agencies may purchase vans to bring WIC services to participants, it seems only reasonable to allow the transportation of WIC participants to WIC clinic sites in any situation, rural or non-rural, where access is a barrier. The Department wants to remove unnecessary barriers that prevent State and local agencies from reaching potentially eligible persons. Therefore, the Department proposes to revise § 246.14(c)(7) by removing the limiting word ''rural'' from the allowability of costs in transporting applicants and participants to clinics.

In developing policies to allow reimbursement to local agencies for transportation costs, State agencies should consider other competing demands for nutrition services and administration (NSA) funds. State and local agencies should note that alternatives to providing transportation to participants exist, such as establishing fixed-location satellite clinics in strategic locations with sufficient access to public transportation. State agencies may want to limit approvals to those areas where transportation is urgently needed to ensure access and where they stand to get the biggest return in terms of increased participation. Finally, State agencies should be aware that approving local use of NSA funds for transportation of some participants may raise issues of fairness and civil rights concerns; participants residing in areas where transportation to and from the WIC clinic is not provided may argue that they too qualify or deserve such a service given their circumstances. This underscores the need for State agencies to develop a carefully-structured rationale for allowing the provision of transportation assistance to certain participants that cannot be perceived as a discriminatory policy.

Local agencies seeking to provide transportation must obtain prior approval from the State agency, and must document that the transportation service is essential to assure program access. A fee may be charged for providing transportation services. The State agency must advise participants that the provision of transportation is offered as a convenience to the participant, and is not a condition of eligibility or a standard program benefit. Finally, the Department proposes to require that a State agency which elects to allow the provision of transportation to participants must include its policy for approving such costs in the portion of the State Plan that describes the State agency's plans to provide program benefits to eligible persons most in need of such benefits. Section 246.4(a)(21) would be revised accordingly to reflect this requirement.

12. Capital Expenditures Which Require Agency Approval (§ 246.14(d))

The Department proposes three revisions to this section: A. Paragraph (d)(1) would be deleted because the purchase of automated information systems constitutes a capital expenditure and therefore is subject to the requirements for prior approval from FNS. This modification simplifies prior approval requirements.

B. Paragraph (d)(3) would also be deleted. Current WIC regulations at § 246.14(d)(3) require prior FNS approval for management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency. However, on May 17, 1995, the Office of Management and Budget (OMB) published a revision to its Circular A–87, Cost Principles for State, Local and Indian Tribal Governments. The revision no longer requires prior approval of the cost of management studies. To be consistent with revised OMB Circular A–87, prior approval of the cost of management studies is no longer required for WIC State agencies. State agencies were advised of this change through WIC Policy Memorandum 98–8, issued by FNS on September 30, 1998.

C. The third revision to this section redesignates paragraph (d)(2) as paragraph (d). The newly designated paragraph (d) would then be revised to eliminate the specific dollar threshold for capital expenditures above which State agencies must obtain the prior approval of FNS. The dollar threshold is being eliminated in recognition of a change in OMB Circular A–87 that allows Federal awarding agencies to waive prior approval requirements in regard to capital expenditures for equipment. Therefore, rather than specify a dollar threshold, newly designated paragraph (d) will be revised to say that State agencies must obtain prior approval for capital expenditures in accordance with FNS policy and guidance. Please note, however, that FNS waiver authority is applicable only to the requirement for prior approval. Equipment costs that do not meet requirements or tests for allowability (as determined by audits or other means) may still be disallowed.

The Department believes that these provisions are reasonable and will not compromise accountability.

13. Other Program Income (§ 246.15(b))

The Department proposes to revise paragraph (b) of this section to authorize the use of the addition method of applying program income. As required at 7 CFR 3016.25(g)(1) and (2), the deduction method of applying program income must be used unless the addition method is authorized through program regulations. If the addition method is authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The following example describes the difference between the deduction and the addition methods of applying program income:

> If a State agency receives a WIC grant of $1 million and it generates program income of $5,000, the deduction method would allow the State to spend $1 million: $995,000 to be funded by the Federal grant, and $5,000 to be funded by the program income. The remaining $5,000 in Federal grant funds is returned to FNS for reallocation. Using the same amounts, under the addition method the State agency could spend a total of $1,005,000—its $1 million grant *plus* its program income of $5,000.

The Department believes that State agencies should be authorized to use the addition method of applying program income because the addition method encourages State agencies and clinics to make the best use of Program funds, including generating new revenues that are used for Program purposes.

14. Closeout Procedures (§ 246.17(b)(2), § 246.12(f)(2)(iv), and § 246.12(q))

To help ensure timely allocation of funds and closeout of WIC expenditures for the previous fiscal year, the Department proposes that the current 150-day reporting cycle, as described in

§ 246.17(b)(2), be reduced to 120 days. Under the current 150-day reporting cycle, the participant has 30 days to redeem the food instrument from the date it first becomes valid (as described in § 246.12(q)), and the vendor has a maximum of 90 days from the first valid date of the food instrument to submit it for payment (§ 246.12(f)(2)(iv)). Thus, in the first 90 days of the reporting cycle, if the participant uses his/her full 30 days to redeem the food instrument at an authorized vendor's place of business, that vendor still has 60 days to submit the food instrument to the State agency for payment. The State agency then has the remaining 60 days left in the 150-day cycle in which to review the food instrument for accuracy, approve payment to the vendor, bill appropriate companies, and receive payment of any negotiated rebates.

The Department notes that most State agencies are already reporting 99 percent of food outlays within 120 days or less. Conference Report language from the Agriculture Appropriations Act for Fiscal Year 1998 (House Report 105–825) specifically directs the Department to reduce to 120 days the time period in which States are required to report on monthly obligation of funds. To reduce the expenditure reporting cycle from 150 days to 120 days, the Department proposes to revise § 246.12(f)(2)(iv) to reduce the amount of time currently allowed for redemption of the food instrument by authorized vendors from 90 days to 60 days. This reduction would still allow the vendor a minimum of 30 days to submit a food instrument for payment, even if a participant took the entire allowable 30 days to redeem the food instrument. As it is in the vendor's interest to receive payment for the food instruments as soon as possible, the Department does not believe that this change would impose a burden on vendors. Comments are welcomed on the impact of the provision, and any specific problems that State agencies foresee in meeting a shorter reporting cycle.

15. State Audit Responsibilities (§§ 246.20(b)(1) and (2))

Proposed language at § 246.20(b)(1) would direct State agencies to the requirements of 7 CFR part 3052 for obtaining audits. State agencies would be required to instruct local agencies, including private nonprofit local agencies, that they must obtain audits in accordance with 7 CFR part 3052. Further, State agencies would inform local agencies that they may choose to obtain either an organization-wide audit or a WIC Program-specific audit if allowed to do so under the provisions of 7 CFR part 3052.

This proposed language is needed for two primary purposes:

First, it references Departmental audit requirements at 7 CFR part 3052. Second, the revised language establishes State agency responsibility for ensuring that local agencies are appropriately audited.

Consistent with the proposed revisions to paragraph (b)(1) of this section as described above, the Department further proposes to delete paragraph (b)(2). The references in paragraph (b)(1) to 7 CFR part 3052 which contain the requirements for organization-wide audits make the specific listing of those requirements in paragraph (b)(2) redundant.

16. State Agency Reporting Requirements (§§ 246.25(b) and (c))

The Department proposes a number of revisions to the State agency reporting requirements at §§ 246.25(b) and (c). A reporting system should yield useful management tools for both Federal and State program managers, and should be responsive to requests for program information from Congress and the general public. The objectives of the proposed revisions to § 246.25 in this rulemaking are to encourage faster reporting, better quality data, more efficient data collection, and a reduction in the current paperwork burden on State agencies.

Participation Reporting

Under the regulatory requirements as detailed in § 246.25, State agencies should report actual and projected participation and expenditure information on a monthly basis. In order to bring the regulatory language up to date with current reporting practices, the Department proposes several revisions to these monthly reporting requirements, listed in paragraph (b)(1).

A. The stated *purpose* for reporting monthly financial and program performance data is to support program management and funding decisions.

B. Most of the items specified in paragraph (b)(1) as currently requiring monthly reporting would be retained, except that the requirement to report itemized NSA expenditures would be dropped; instead, only the monthly totals of NSA expenditures would be reported.

C. Itemized NSA expenditures would be reported annually, as an addendum to the fiscal year closeout report.

D. State agencies would also report actual and projected food funds expenditures and available food and NSA funds, which would be listed by the funding source year. This information is necessary in order to improve monitoring of program expenditures as well as to keep FNS fully informed about State agency plans to use available funds. It is, in fact, the reporting of this data that alerts FNS to impending caseload management problems. Early warning and prudent action based on this information should avert the need for severe caseload fluctuations.

Section 17(i)(2) of the Child Nutrition Act of 1966 (CNA) as amended, requires the Secretary to reallocate funds periodically, if a State agency is unable to spend its full allocation. To fulfill this obligation, FNS must make funding determinations that involve continuous forecasting and reevaluation of State agencies' funding needs through the analysis of reported data. The Department would retain regulatory language at paragraphs (b)(1)(i) and (ii) of § 246.25, which specifies additional information that State agencies may be required to include in their monthly financial and participation reports. This information pertains to the amount of excess cash allowances held by local agencies and the actions taken by the State agency to reduce such excess balance.

The Department proposes to revise paragraph (b)(2) of this section to delete the quarterly report of participants by category (*i.e.*, pregnant women, breastfeeding women, postpartum women, infants, and children) and by priority level. This revision corresponds to reporting changes made in Fiscal Year 2001 to reduce paperwork. Additionally, the number of migrant participants, as well as itemized NSA funds expenditures, which current regulations require to be reported monthly, would be reduced to an annual reporting requirement.

Reporting quarterly on participation by priority and category became a requirement with the May 3, 1988, publication of revised program regulations. The Department's purpose in requiring State agencies to report this information four times a year was two-fold. First, it enabled FNS to determine how well State agencies were targeting limited program benefits to persons eligible within the highest priority groups. Second, the data were used in the formula for allocation of food funds. In Fiscal Year 1993, State agencies began reporting these data annually instead of quarterly. WIC funding formulas no longer utilize priority data and priority participation is relatively stable. Thus in Fiscal Year 2000, State agencies began reporting these data every other year instead of annually.

The regulatory language would be revised to reflect the current practice in which State agencies report participation by priority every other year. While State agencies continue to track participation by priority on a monthly basis for program management purposes, they only have to report the data to FNS once every other year.

As previously mentioned, the regulatory language would be revised to require that the itemized NSA expenditures are reported through an addendum to the annual closeout report. The itemized NSA expenditures are used to determine a State agency's compliance with the statutory requirements (section 17(h)(3)(A)(i)(I) and (II) of the CNA) to spend at least one-sixth of its NSA expenditures on nutrition education and its proportionate share of the national minimum breastfeeding promotion expenditures.

Section 17(g)(4) of the CNA requires that not less than nine-tenths of one percent of the annual WIC Program appropriation shall be available first for services to eligible members of migrant populations. In order to determine the migrant expenditure target amount each year, FNS needs documentation of each State agency's annual average migrant participation. To calculate each State's share of the migrant expenditure target, FNS uses a 12-month average of State migrant participation. Because a 12-month average is used for establishing the annual migrant expenditure target, yearly submission of the average of 12 months of data is sufficient.

Racial/Ethnic Group Reporting

The Department also proposes revisions to §§ 246.25(b)(3) and (c) to reflect current reporting practices that have reduced reporting of participant category by priority level and racial and ethnic participation data to a biennial basis. Prior to Fiscal Year 1993, racial and ethnic participation information had been collected and reported annually by all local agencies, through the State agencies, on the form FNS–191 (Racial/Ethnic Group Participation Report). Not only did the FNS–191 constitute a significant reporting burden, but it was also duplicative. Racial and ethnic data are captured by the Participant Characteristics (PC) Minimum Data Set (MDS), a comprehensive reporting format designed by FNS to provide information for the biennial report provided to the Secretary of Agriculture and to Congress on income and nutritional risk characteristics, migrant farmworker status, and other matters determined by the Secretary. Beginning with the 1992 PC report, WIC State agencies have provided an MDS using a census or a State-representative sample of WIC participants, making use of ongoing data collection routinely conducted as a component of WIC certification. The racial/ethnic group data collected on the MDS is identical to the data collected on the FNS–191. Therefore, the Department proposes the following revisions to the biennial reports at § 246.25(b)(3) that reflect the current reporting practices:

A. Add a new paragraph (b)(3)(i) that names and describes the participant characteristics reporting requirements;

B. Redesignate paragraph (c) of this section as paragraph (b)(3)(ii); and

C. Specify that racial and ethnic participation data submitted for the Report on Participant Characteristics will also be used to fulfill civil rights reporting requirements.

Finally, the Department proposes to add a new paragraph (c) to this section to collect data that were previously only reported on the FNS–191. In addition to racial/ethnic data provided by the FNS–191, the name, address, telephone number, and number of clinics of all WIC local agencies were reported. FNS has compiled this information into an annual directory of local agencies, and it has become an indispensable resource for program communications. The local agency directory has been used to provide referrals to participants inquiring about the availability of WIC Program services, to maintain continuity of program services for migrants and other transient participants, and to provide a cross-reference for the PC MDS data to ensure complete coverage of all local agencies. To prevent the loss of this valuable local agency information, the Department proposes to revise the regulatory language to require State agencies to submit additions and deletions of local agencies administering the WIC Program, as well as local agency address changes, when such changes occur.

17. Confidentiality of Participant Information (§§ 246.26(d) through (i)

The Department proposes several revisions to the participant confidentiality provisions in § 246.26(d) of the current regulations. This rule would completely revise paragraphs (d) and (g) and add new paragraphs (h) and (i) to address the use and disclosure of confidential information. The Department proposes these changes in order to remove barriers to coordination among programs caused by restrictions on sharing participant information, and to provide regulatory clarification and guidance on legal issues pertaining to the release of confidential applicant and participant information in connection with court proceedings, criminal investigations, or instances of known or suspected child abuse or neglect.

State agencies are reminded that under both the current and proposed confidentiality provisions, confidential applicant and participant information may be used or disclosed only to the extent permitted by those provisions. Any other use or disclosure is not permitted. Additionally, State agencies should be aware that information obtained from WIC applicants or participants is protected by these provisions regardless of the manner in which the information is recorded or stored. For example, confidential information that is written in a participant case file, confidential information that is stored on a magnetic medium, such as computer tape or disk, or as part of a general office record such as a sign-in sheet, are equally protected. State agencies must ensure that confidential information stored on computer disks or tapes will not be available to persons or programs that are not authorized to receive such data.

The additional flexibility afforded by this proposed rule would not disturb the balance between sharing information in the interest of enhanced services and safeguarding information so that barriers to Program participation are not created. We are fully committed to the principle that the integration of health care and social service programs must proceed with careful regard for an individual's right to privacy.

A. Definition of Confidential Applicant and Participant Information

Current Program regulations, at § 246.26(d), limit the use and disclosure of information obtained from applicants and participants. The current confidentiality provisions do not differentiate between the treatment of information about applicants and participants obtained from other sources or generated as a result of WIC application, certification, or participation. This rule would make clear in proposed § 246.26(d)(1) that confidential applicant and participant information is any information about an applicant or participant (whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation) that individually identifies those individuals and/or a family member(s).

B. Use in the Administration and Enforcement of the WIC Program

Presently, applicant/participant information may be used and disclosed to only the following:

1. Persons directly connected with the administration or enforcement of the WIC Program;
2. Representatives of public organizations designated by the chief State health officer (or the governing authority in the case of Indian State agencies) which administer health or welfare programs that serve persons categorically eligible for the WIC Program; and
3. The Comptroller General of the United States, for audit and examination.

In addition, current § 246.25(a)(4) requires State agencies to provide the Department and the Comptroller General of the United States access to all Program records, except medical care records of individual participants unless they are the only source of certification data.

This rule would clarify the scope of the first category by emphasizing that even when confidential applicant/participant information is used for the administration or enforcement of the WIC Program, it may only be used by persons who have a need to know the information. Confidential applicant/participant information may include sensitive financial and medical information and not all State agency or local agency personnel need access to this information. Also, the proposed rule makes clear that this information may be used for the administration and enforcement of *any* WIC Program, not just by the State agency or local agency where the applicant or participant is certified. This clarification is necessary to facilitate the transfer of participants from one State agency or local agency to another and for Program oversight.

C. Use and Disclosure for non-WIC purposes

Currently, State agencies choosing to disclose applicant/participant information to public organizations designated by the chief State health officer pursuant to the second category discussed above must execute a written agreement with each agency. The agreement must limit the use of the information by the receiving agency to establishing eligibility for their own programs and conducting outreach for such programs. The organizations must assure that WIC applicant/participant information will not be disclosed to a third party. Also, § 246.7(i)(9) in current regulations requires State agencies to inform WIC applicants on the WIC certification form that information they provide may be disclosed to public organizations that administer other health or welfare programs for purposes of determining eligibility and conducting outreach.

Although section 17 of the CNA does not address the confidentiality of WIC information, the current regulations at § 246.26(d) and the guidance provided in FNS Instruction 800–1 reflect the Department's commitment to maintaining the confidentiality of the financial and health information of WIC applicants and participants. The current narrow avenues of disclosure of confidential applicant/participant information reflect the Department's position that an individual's right to privacy interests should not be surrendered as a condition of Program participation. Even more fundamentally, the Department understands that individuals may refuse to apply or participate in the WIC Program if they fear that their privacy will not be safeguarded.

At the same time, the Department recognizes that there are legitimate reasons for disclosing confidential information, many of which directly benefit the applicant or participant. One important reason is to facilitate the delivery of health services and other benefits for which WIC applicants or participants are eligible. Coordination among programs and ''one-stop shopping'' represent a dynamic area of growth and development in public service delivery. Requests for access to WIC applicant and participant information as a practical means of facilitating services have increased as States and local agencies strengthen coordination efforts with other agencies or persons delivering benefits or services to WIC applicants/participants. Members of Congress have also encouraged greater coordination among health, education, and social service programs as an effective means of maximizing funds and reaching individuals who are eligible for several programs. Finally, there are indications that the ''users'' of public health, education, and social service programs desire a more convenient, coordinated, integrated system of service delivery.

The Department's goal is to facilitate these coordination efforts without sacrificing the privacy interests of applicants and participants. We are committed to maintaining the confidentiality of applicant/participant information as programs coordinate services and share information, although the task becomes more challenging. One way to control the access of confidential information while promoting coordination is through the use of a written agreement between programs, specifying how and with whom data may be disclosed, and the proposed use of such information.

For these reasons, the Department proposes to allow State agencies greater flexibility in determining organizations to which they may disclose confidential applicant/participant information pursuant to written agreements as well as the permissible uses of such information. Specifically, in proposed § 246.26(d)(2) the reference to ''health or welfare'' programs would be removed. This would provide State agencies greater latitude in choosing appropriate programs with which to coordinate and share information. Additionally, proposed § 246.26(h)(3)(i) would expand the permitted uses of confidential applicant/participant information to add three new categories. As noted above, currently applicant/participation information may be used by another public organization only for the purpose of establishing eligibility and conducting outreach for the programs administered by that organization. The three new categories of permissible use proposed by this rule are:

- Enhancing the health, education, or well-being of WIC applicants or participants;
- Streamlining administrative procedures in order to minimize burdens on staff and applicants or participants; and
- Assessing and evaluating a State's health system in terms of responsiveness to participants' health care needs and health care outcomes.

However, as a balance to this proposed expansion, the Department proposes a new § 246.4(a)(24) that would require State agencies to include in their State Plan a list of the programs with which the State agency or its local agency has or intends to execute written agreements for the disclosure and use of confidential applicant/participant information and planned use of the information, consistent with the uses authorized in proposed § 246.26(d). This rule includes a cross-reference to the State plan requirement in proposed § 246.26(h)(3). This list is to be included in the State Plan for informational purposes only; FNS does not need to approve State agencies' decisions in this matter as long as the reasons for sharing information are consistent with the authorized uses in the proposed rule.

This broader language would address some situations that State agencies have cited as examples of administrative inefficiency or as barriers to the health

and well-being of WIC applicants and participants resulting from the current confidentiality provisions. For example, these proposed changes would:

- Permit streamlining of duplicative administrative and health procedures among programs;
- Make it easier to coordinate with public educational programs, such as the Expanded Food and Nutrition Education Program (EFNEP), or with educational organizations that provide health services to WIC applicants or participants;
- Encourage sharing information with other programs in which WIC participants are currently enrolled, such as Head Start; and
- Permit sharing with child protective service programs certain information that is deemed to be critical to the health and well-being of WIC participants.

This proposed rule also would make clear in proposed §§ 246.26(d)(2) and (h)(3) that the conditions for disclosing confidential applicant/participant information extend to non-WIC use of the information by the State agency and its local agencies. In these cases, the written agreement would be between the WIC State agency or local agency and the unit of the WIC State agency or local agency that will be using the information for non-WIC purposes. The rule proposes to require a written agreement in these instances because the State or local agency personnel who will be using the information for non-WIC purposes may be unfamiliar with the limits on the use of the information. Requiring a written agreement in these cases provides an additional safeguard for this sensitive information.

Some State agencies have objected to the requirement of written agreements prior to disclosing applicant/participant information because of the amount of paperwork that can be involved, especially when programs are not administered at the State level. The Department agrees that written agreements may not always be practical for sharing information, and later in this preamble we discuss the situations in which release forms may be used. However, there are ways to limit the amount of paperwork involved in written agreements in some situations. For example, FNS Instruction 800–1 states that separate agreements do not have to be executed for each program. Instead, the chief State health officer (or his equivalent) may list in one agreement all of the programs with which information is to be disclosed. Responsible officials for each of the programs listed would then sign the written agreement. This rule would retain the requirement for written agreements between WIC and other program providers because such agreements establish accountability. They also provide a protocol for sharing data, thus protecting confidential information.

State agencies that choose to share information as authorized by Program regulations are not required to obtain a separate release form signed by the applicant or participant. However, this rule would require State and local agencies that choose not to use release forms to notify applicants and participants at the time of application or through a subsequent notice that information about their participation in the WIC Program may be used by State and local WIC agencies and public organizations in the administration of their programs that serve persons eligible for the WIC Program. This requirement is contained in proposed §§ 246.7(i)(11) and 246.26(h)(2) of this proposed rule.

D. Child Abuse and Neglect Reporting

In the past, questions have arisen about the disclosure of applicant/participant information to child protective services or other State or local officials in cases of known or suspected child abuse or neglect. The Department's current policy, as detailed in FNS Instruction 800–1, is determined by Federal and State law. The Department's policy stems from a requirement in Section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a). This Act authorizes the Secretary of Health and Human Services to make grants to States to assist them in developing and implementing child abuse and neglect prevention and treatment programs. A State's statute must require that known or suspected child abuse or neglect be reported to specified persons in order for that State to receive such grants. Generally, the Department's regulations take precedence over State laws or regulations. However, in this case State laws requiring the reporting of suspected child abuse reflect federal statutory intent designed to safeguard the health and well-being of the nation's children.

If a State statute requires known or suspected child abuse or neglect to be reported, then WIC staff must report or release applicant/participant information to State or local officials who have requested such information. If State law does not require that known or suspected child abuse be reported by public programs, such as WIC, the guidance in FNS Instruction 800–1 encourages WIC State agencies to consult with State legal counsel to determine the appropriateness of reporting such information. The Department's position remains the same as that stated in guidance. However, we propose to codify the current policy as stated in FNS Instruction 800–1 in proposed § 246.26(d)(3).

In the absence of State reporting laws, the proposed language at § 246.26(h)(3)(i)(C) would allow State agencies the option to disclose such information if a written agreement has been executed between the WIC State or local agency and the appropriate child protective service organization. The written agreement could also be used to strengthen ties between WIC and agencies that provide child abuse counseling.

E. Release Forms

State agencies have requested latitude to allow medical information to be disclosed to private parties such as physicians treating WIC applicants or participants. After examining the issue, we concluded that permitting a general or blanket release form under which an applicant or participant would permit a local or State agency to release confidential information to unidentified parties would be inappropriately broad. At the same time, the Department recognizes that some increased flexibility in disclosing medical information can be beneficial to the applicant or participant, as well as the respective party.

As a result, this rule proposes in § 246.26(d)(4) to allow disclosure of confidential applicant/participant information when an applicant or participant signs a form authorizing disclosure and specifying the parties to which the information may be disclosed. In addition, the applicant or participant must be given the right to refuse to sign the release form and notified that consent is not a condition of WIC Program participation and that refusal to sign the release form will not affect the application or participation in the WIC Program. To underscore the voluntary nature of the release form, the proposed rule would permit only release forms authorizing disclosure to the applicant or participant's physicians or other health care providers at the time of application or certification for the WIC Program. All other requests for signature of release forms would be required to take place after the application and certification process is completed. In addition, to the extent that an applicant or participant voluntarily signs a release form, agreeing that confidential information may be disclosed, the restrictions in

proposed §§ 246.26(d) and (h) would not apply.

F. Access by Applicants and Participants

This rule would codify in proposed § 246.26(d)(5) the current policy of requiring State and local agencies to provide applicants and participants access to the information they provide. In the case of an applicant or participant who is an infant or child, the State or local agency would be required to provide access to the parent or guardian of the infant or child, assuming that any issues regarding custody of guardianship are resolved. This rule would not require State and local agencies to provide access to any other information concerning an applicant or participant, such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision that is being appealed by the applicant or participant pursuant to § 246.9.

G. Access by the USDA and the Comptroller General of the United States

This rule would also revise paragraph (g) in § 246.26 to clarify that access to Program records by the Department and Comptroller General of the United States includes confidential applicant and participant information. This rule also proposes to amend § 246.25(a)(4) to require State and local agencies to make available to the Department and the Comptroller General all Program records, including confidential applicant and participant information. However, the proposed rule would prohibit any reports or other documents resulting from the examination of such records that are publicly released from including confidential applicant or participant information. We also want to point out that the provisions providing access to the Department and the Comptroller General extend to contractors and other agents of the Department or the Comptroller General who may be performing research or other activities on behalf of the Department, so long as those activities relate to the administration or enforcement of the WIC Program.

H. Subpoenas and Search Warrants

The Department additionally proposes to add a new paragraph (i) to § 246.26 that would specify the procedures State and local agencies must follow in responding to requests from courts for confidential information pertaining to WIC applicants, participants, and vendors. The Department proposes to add these procedures to the WIC regulations in response to an increase in instances in which State and local agencies are presented with subpoenas or search warrants for confidential applicant and participant information. This rule proposes step-by-step procedures that State and local agencies, in consultation with legal counsel, would be required to follow in handling these requests. The proposed procedures are intended to create a basic, standard approach that emphasizes the importance of preserving confidentiality within the scope of the Federal regulations governing the WIC Program. At the same time, these procedures would protect WIC staff from adverse legal action for refusals to release confidential information.

In proposed § 246.6(i), the Department proposes to identify the situations in which State or local agencies must release information: when served with a search warrant or when served with a subpoena which the court has already denied the State or local agency's attempt to quash or which the local agency and legal counsel have reviewed and determined not to attempt to quash. If the State or local agency fails to comply in these situations, WIC staff may face adverse legal action, including imprisonment.

This rule proposes different procedures for responding to subpoenas as opposed to search warrants in recognition of the differences between these legal documents. A subpoena is a written directive for information to be provided by an individual or entity. Generally, a subpoena directs an individual or entity to appear at a stated time and place and give information on a topic about which the individual or entity is knowledgeable. One type of subpoena is a ''subpoena *duces tecum*.'' A subpoena *duces tecum* is a written directive that orders the production and delivery of documents. Documents may be requested by type, *e.g.*, all records for participants of a certain age and gender, or by topic, *e.g.*, all documents which deal with immunization. The deadline for delivery, as well as the site for delivery, is generally specified. Search warrants are issued by the courts and are used by law enforcement officers to obtain information, and sometimes objects, from specific premises. Compliance with a search warrant is required at the time the search warrant is served.

Compared to a search warrant, with which State or local agency compliance must be immediate, a response to a subpoena may involve a process of several steps. This process, as outlined at proposed paragraph (i)(2), would allow State and local agencies, in consultation with legal counsel, to determine how to respond to a subpoena when it is initially received. However, if efforts to quash the subpoena (*i.e.*, receive court approval not to comply with the directive) have been denied by the court, then the State or local agency must comply.

Subpoenas *duces tecum* for information about Program participants have been the most common type of court-ordered directive. Subpoenas, whether directed to an individual or an entity, generally do not initially represent a court's ruling that a WIC State or local agency must release the requested information. However, subpoenas cannot be ignored. The Department proposes that the primary consideration in deciding how to respond to subpoenas follows the provisions of proposed § 246.26(i). Under the proposed procedures, State and local agencies, acting on the advice of legal counsel, would first determine whether the requested information is in fact confidential applicant or participant information prohibited from release under the federal regulations. If not, the state or local agency would provide the information requested. If so, however, we propose that the State or local agency, or legal counsel acting on its behalf, must proceed to attempt to quash the subpoena. In doing so, the State/local agency or legal counsel may be required to appear before the court to argue against the release of information. The Department further proposes that at a minimum in attempting to quash a subpoena, the State/local agency or legal counsel acting on its behalf must inform the court of the federal regulatory prohibitions against providing the requested information. If the court denies the motion to quash the subpoena and rules that the information must be released, then, as proposed in this rule, the State/local agency or legal counsel would attempt to limit the extent of the disclosure of confidential WIC Program information by:

- Ensuring that the information released is only what is essential to respond to the subpoena; and
- Limiting to the greatest extent possible the public access to the confidential WIC information disclosed.

Occasionally, State and local agencies have confronted serious dilemmas when requested confidential applicant or participant information was key to the solution of criminal investigations of felonies. Program regulations prohibited disclosure of the information, even

though Program interests would have been well served in furthering the investigations. The Department therefore proposes to recognize, in new § 246.26(i)(2)(iii), that in rare instances a State or local agency in consultation with legal counsel could decide that disclosing confidential applicant or participant information would be in the best interest of the Program. Because requests arising from investigations of this caliber and seriousness are rare, we expect State and local agencies to conclude only infrequently that such disclosure is necessary.

In § 246.26(i)(3), the Department proposes to set forth procedures for State and local agencies to follow when they are served with search warrants. As proposed, the State and local agency are required to:

- If a local agency, immediately notify the State agency;
- Immediately notify legal counsel;
- Comply with the search warrant;
- Inform the individual(s) producing the search warrant of the confidential nature of WIC information; and
- Review the search warrant and provide only the specific information requested in the warrant and no other information.

Search warrants differ from subpoenas in that generally, they are issued or approved by a court in criminal matters only when law enforcement officials have made an adequate showing of the need for the search. Failure to comply with a search warrant at the time it is served could result in the immediate imprisonment of WIC State or local agency staff. As stated above, State or local legal counsel should be alerted to the request for the provision of the information required in the search warrant immediately upon service of the warrant. WIC clinic staff should retain a copy of the search warrant for their files as evidence of the cause of the specific information's being released.

The proposed process for responding to court-ordered requests for confidential WIC Program information will assist State and local agencies in handling future requests. These proposed procedures are intended to achieve two objectives. First, the Department intends to clarify through regulations the primacy of Federal authority to limit disclosure of information in the interest of preserving the confidentiality of WIC applicant/participant information. The Department further intends to communicate a national, uniform approach to disclosure of WIC records that will assist the courts in handling matters related to the confidentiality of Program information. Because of variation in State law, however, the Department encourages legal counsel for State and local agencies to consider these proposed revisions carefully, and to provide comments that will assist the Department in issuing final regulations that are sufficiently flexible to accommodate State laws in this area.

18. Conflict of Interest

One of the recommendations included in an August 1999 Report by the General Accounting Office (GAO) addressing fraud and abuse in the WIC Program (''FOOD ASSISTANCE: Efforts to Control Fraud and Abuse in the WIC Program Can Be Strengthened'') stated that WIC State agencies should be required to have policies and procedures for addressing employee conflicts of interest at the local agency level. Conflicts of interest may arise when local agency employees who participate in the WIC Program are in a position to certify their own eligibility and issue their own benefits. They may also arise when there is no separation of duties within the local agency staff so that an employee can certify and issue benefits to the same individual. The GAO report indicated that 45 percent of the local WIC agencies do not have conflict-of-interest policies in place for employees who also receive WIC benefits. Furthermore, an estimated 30 percent of the local agencies do not separate duties within the certification process. In this latter case, employees could certify and issue WIC benefits to relatives and friends.

The Department realizes that in many local agencies, the WIC clinics do not have enough employees on site to separate these essential duties. However, GAO reminds the Department that even in such understaffed situations, prudent precautions can and should be taken. For example, one agency uses a separate agency number for issuing WIC benefits to employee participants. Another agency requires a supervisor's sign-off whenever an employee is going to both certify and issue benefits to the same individual because staffing levels are low.

Consistent with GAO's recommendation, a new paragraph (a)(25) would be added to § 246.4 to require that State agencies develop and implement reasonable policies and procedures to prevent conflicts of interest within the local agency staffs.

19. Participant and Employee Fraud and Abuse (§ 246.4(a))

The GAO study on fraud and abuse in the WIC Program also noted that consistent and reliable information regarding participant fraud and abuse—who is committing the fraud and how often, what types of fraud are being committed, and how much program funding is lost—is important in evaluating the effectiveness of both Federal and State agency efforts aimed at preventing and detecting these problems. Currently, State agencies do not collect information on the number and characteristics of participants who engage in participant fraud and abuse. In fact, nearly half of the states that were included in the GAO study reported that they do not maintain such data. Without this information, FNS is not able to assess the extent of participant fraud and abuse, evaluate State and local agencies' efforts to control it, or identify the changes needed to improve program integrity.

GAO suggests that not collecting such information may send an unintentional message to agency officials and other stakeholders that preventing and detecting participant/employee fraud and abuse is a low priority, thus damaging the public's trust in the WIC Program. Therefore, this rule proposes that State agencies include as part of the annual State Plan of Operation a description of the system(s) that are in place at the local agency level for collecting and maintaining information on cases of fraud and abuse by participants as well as by employees (including any violations caused by employee conflicts of interest described above). The information should include the nature of the fraud detected and the associated dollar losses that are the actual or estimated result of such fraud and abuse. This requirement would be added to § 246.4 of the regulations as a new paragraph (a)(26).

20. State Plan Requirements (§ 246.4(a))

The proposed revisions described above will also require several changes to the State Plan. Therefore, § 246.4(a)(11)(i) would be revised to incorporate the following provisions:

(1) State agencies which allow local agencies the option of requesting documentation of pregnancy from applicants would specify in their State Plans the type of documentation that is requested, and would also provide assurance that the request for documentation will not constitute a barrier to participants.

(2) States would specify any alternate language, developed at their option, that will be used to inform WIC applicants of their rights and responsibilities, as provided in § 246.7(i)(10) of this proposed rule. The alternate language must be approved by FNS before it can be used by WIC local agencies.

(3) State agencies must describe their policies concerning the approval of local agency costs for transporting participants to and from WIC clinics, as provided in § 246.4(a)(18).

(4) A new paragraph (a)(24) would be added to this section to require that State agencies list all programs with which written agreements for sharing participant information have been or will be executed. State agencies would also be required to specify the reason(s), as specified by § 246.26(d)(2)(i), for sharing information with each program.

Procedural Matters

Executive Order 12866

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Roberto Salazar, Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant effect on a substantial number of small entities. State and local WIC agencies would be most affected because there are several additional program administration requirements. However, this rule also reduces considerably more program administration requirements. The net effect on State and local agencies is expected to result in reduced and streamlined administrative procedures. Participants and applicants would also be affected by changes in application processing, certification, and the disclosure of information.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is submitting for public comment the change in the information collection burden that would result from the adoption of the proposals in this rule, as indicated below.

ESTIMATED ANNUAL REPORTING BURDEN

Section of regulations	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting:				
246.4(a)(11)(i)	88	1	1.00	88.00
246.4(a)(11)(ii)	88	1	.50	44.00
246.4(a)(18)	88	1	1.00	88.00
246.4(a)(24)	88	1	1.00	88.00
Total Reporting Burden	88		3.50	308.00

Comments are invited on:

- Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility;
- The accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and the information to be collected; and
- Ways to minimize the burden of information collection on those who are required to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

In addition to the proposed reporting requirements noted above, this rulemaking would also update regulatory language at section 246.25 regarding the State agency reporting requirements to reflect the current reporting requirements that began in Fiscal Year 1993. Revisions to the information collection burden associated with these reporting changes have been previously approved by OMB as follows:

- FNS–798 and –798A, WIC Financial Management and Participation Report with Addendum (OMB #0584–0045);
- FNS–648, WIC Local Agency Directory Report (OMB #0584–0431).

Comments may be sent to Laura Wittenberg, Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. (A copy may also be sent to Debra Whitford at the address below.) For further information, or for copies of the information collection, please contact Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, VA 22302, or telephone (703) 305–2730.

Comments and recommendations on the proposed information collection must be received by January 31, 2003. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of the preamble to the final rule. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 10404, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or

more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of that rule.

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

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, add new definitions of ''Electronic signature'' and ''Sign or signature'' in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Electronic signature means an electronic sound, symbol, or process, attached to or associated with an application or other record and executed and or adopted by a person with the intent to sign the record.

* * * * *

Sign or signature means a handwritten signature on paper or an electronic signature. If the State agency chooses to use electronic signatures, the State agency must ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices and the confidentiality requirements in § 246.26.

* * * * *

3. In § 246.4:

a. Revise paragraphs (a)(11)(i) and (a)(11)(ii);

b. Add a sentence to the end of paragraph (a)(21); and

c. Add new paragraphs (a)(24), (a)(25), and (a)(26).

The revision and additions read as follows:

§ 246.4 State plan.

(a) * * *

(11) * * *

(i) Certification procedures, including:

(A) a list of the specific nutritional risk criteria by priority level which explains how a person's nutritional risk is determined;

(B) hematological data requirements including timeframes for the collection of such data;

(C) the State agency's income guidelines for Program eligibility;

(D) adjustments to the participant priority system (*see* § 246.7(e)(4)) to accommodate high-risk postpartum women or the addition of Priority VII; and

(E) alternate language for the statement of rights and responsibilities which is provided to applicants, parents, or caretakers when applying for benefits as outlined in § 246.7(i)(10) and (j)(2)(i) through (j)(2)(iii). This alternate language must be approved by FNS before it can be used in the required statement.

(ii) Methods for providing nutrition education to participants, and criteria for deciding who will be offered individual care plans. Nutrition education will include drug abuse information. Participants will include homeless individuals.

* * * * *

(21) * * * The State agency will also describe its policy for approving transportation of participants to and from WIC clinics.

* * * * *

(24) A list of all organizations with which the State agency or its local agencies has executed or intends to execute a written agreement pursuant to § 246.26(h) authorizing the use and disclosure of confidential applicant and participant information for non-WIC purposes.

(25) The State agency's plan to prevent conflicts of interest at the local agency or clinic level. At a minimum, this plan must address situations in which local agency or clinic staff:

(i) are also WIC participants;

(ii) certify relatives or close friends; or

(iii) perform both certification and food instrument issuance functions.

(26) The State agency's plan for collecting and maintaining information on cases of participant and employee fraud and abuse. Such information should include the nature of the fraud detected and the associated dollar losses.

* * * * *

4. In § 246.5:

a. Revise the first sentence of paragraph (c)(1) and remove the last sentence; and

b. Revise paragraph (d)(2).

The revisions read as follows:

§ 246.5 Selection of local agencies.

* * * * *

(c) * * *

(1) The State agency will consider the Affirmative Action Plan (*see* § 246.4(a)(5)) when funding local agencies and expanding existing operations, and may consider how much of the current need is being met at each priority level. * * *

* * * * *

(d) * * *

(2) The State agency will, when seeking new local agencies, publish a notice in the local media (unless it has received an application from a local public or nonprofit private health agency which can provide adequate services). The notice will include a brief explanation of the Program, a description of the local agency priority system (outlined in this paragraph (d)), and a request that potential local agencies notify the State agency of their interest. In addition, the State agency will contact all potential local agencies to make sure they are aware of the opportunity to apply. If no agency submits an application in 30 days, the State agency may then select a local agency in another area. If sufficient funds are available, a State agency will give notice and consider applications outside the local area at the same time.

* * * * *

5. In § 246.7:

a. Revise the heading of paragraph (c) and revise paragraph (c)(1);

b. Redesignate paragraph (c)(2) as paragraph (c)(3) and add new paragraphs (c)(2) and (c)(4);

c. Revise paragraph (d)(2)(iii);

d. Redesignate paragraph (d)(2)(iv)(C) as paragraph (d)(2)(iv)(D) and add a new paragraph (d)(2)(iv)(C);

e. Revise paragraph (e)(1)(vi);

f. Revise paragraph (g)(1);

g. Revise paragraph (h);

h. Revise paragraph (i)(10) introductory text;

i. Revise paragraph (i)(11);

j. Revise paragraph (j)(2) introductory text;

k. Redesignate paragraph (l)(1) as paragraph (l) introductory text, and remove paragraph (l)(2);

l. Redesignate paragraphs (l)(1)(i) through (l)(1)(iv) as (l)(1) through (l)(4), respectively; and

m. Remove paragraph (m), and redesignate paragraphs (n), (o), (p), and

(q) as paragraphs (m), (n), (o), and (p), respectively.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(c) *Eligibility criteria and basic certification procedures.* (1) To qualify for the Program, infants, children, and pregnant, postpartum, and breastfeeding women must:

(i) Reside within the jurisdiction of the State (except for Indian State agencies). Indian State agencies may establish a similar requirement. All State agencies may determine a service area for any local agency, and may require that an applicant reside within the service area. However, the State agency may not use length of residency as an eligibility requirement.

(ii) Meet the income criteria specified in paragraph (d) of this section.

(iii) Meet the nutritional risk criteria specified in paragraph (e) of this section.

(2)(i) At certification, the State or local agency must require each applicant to present proof of residency (*i.e.*, location or address where the applicant routinely lives or spends the night) and proof of identity. The State or local agency must also check the identity of participants, or in the case of infants or children, the identity of the parent or guardian, or proxies when issuing food or food instruments. The State agency may authorize the certification of applicants when no proof of residency or identity exists (such as when an applicant or an applicant's parent is a victim of theft, loss, or disaster; a homeless individual; or a migrant farmworker). In these cases, the State or local agency must require the applicant to confirm in writing his/her residency or identity. Further, an individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may establish proof of residency by providing the State agency their mailing address and the name of the remote Indian or Native village.

(ii) The State agency may issue benefits to applicants who claim to be pregnant (assuming that all other eligibility criteria are met) but who do not have documented proof of pregnancy at the time of the certification interview and determination. The State agency should then allow a reasonable period of time, not to exceed 60 days, for the applicant to provide the requested documentation. If such documentation is not provided as requested, the woman can no longer be considered categorically eligible, and the local agency would then be justified in terminating the woman's WIC participation in the middle of a certification period.

* * * * *

(4) The certification procedure shall be performed at no cost to the applicant.

(d) * * *

(2) * * *

(iii) *Use of a State or local health care definition of ''Income''.* If the State agency uses State or local free or reduced-price health care income guidelines, it will ensure that the definitions of income (*see* paragraph (d)(2)(ii) of this section), family (*see* § 246.2) and allowable exclusions from income (*see* paragraph (d)(2)(iv) of this section) are used uniformly to determine an applicant's income eligibility. This ensures that households with a gross income in excess of 185 percent of the Federal income guidelines (*see* paragraph (d)(1) of this section) are not eligible for Program benefits. The exception to this requirement is persons who are also income eligible under other programs (*see* paragraph (d)(2)(vi) of this section).

(iv) * * *

(C) Short term, unsecured loans that are expected to be repaid in a reasonably short period of time, and to which the applicant does not have constant or unlimited access.

* * * * *

(e) * * *

(1) * * *

(vi) *Regression.* A WIC participant who is reapplying for WIC benefits may be considered to be at nutritional risk in the next certification period if the competent professional authority determines that his/her nutritional status will worsen (regress) without supplemental foods. However, such participants may not be considered at nutritional risk for this reason (regression) for more than one certification period immediately following the initial certification. Individuals who are certified based on the possibility of regression should be placed either in the same priority for which they were initially certified, or in Priority VII, if the State agency is using that priority level.

* * * * *

(g) * * *

(1) Program benefits will be based upon certifications established in accordance with the following timeframes:

A/an:	Will be certified:
(i) Pregnant woman	For the duration of her pregnancy, and up to the last day of the month in which the infant becomes six weeks old or the pregnancy ends (for example, if the infant is born June 4, six weeks after birth would be July 16, and certification would end July 31).
(ii) Postpartum woman	Up to the last day of the sixth month after the baby is born or the pregnancy ends (postpartum).
(iii) Breastfeeding woman	Approximately every six months ending with the last day of the month in which the infant turns 1 year old.
(iv) Infant	Approximately every six months. The State agency may permit its local agencies to certify infants under six months of age up to the last day of the month in which the infant turns 1 year old, provided the quality and accessibility of health care services are not diminished.
(v) Child	Approximately every sixth months ending with the last day of the month in which a child reaches his/her fifth birthday.

* * * * *

(h) *Mid-certification period disqualifications.* Participants may be disqualified from the Program during a certification period for:

(1) *Income ineligibility.* If the local agency finds out that an individual's household income level has changed, the local agency will reassess the individual's income eligibility during the current certification period. The local agency will disqualify an individual and any other household members currently receiving WIC benefits determined ineligible based on the new information. However, adjunctively-eligible WIC participants (as defined in paragraphs (d)(2)(vi)(A) or (d)(2)(vi)(B) of this section) may not be disqualified from the WIC Program solely because they, or certain family members, no longer participate in one of

the other specified programs. The State agency will ensure that such persons, and other household members currently receiving WIC benefits, are disqualified during a certification period only after their income eligibility has been reassessed based on the income screening procedures used for applicants who are not adjunctively eligible.

(2) *Other (optional) reasons.* Local agencies may disqualify an individual during a certification period for the following reasons:

(i) Failure to obtain food instruments or supplemental foods for several consecutive months. Proof of such failure includes failure to pick up supplemental foods or food instruments, nonreceipt of food instruments (when mailed instruments are returned), or failure to have an electronic benefit transfer card revalidated for purchase of supplemental foods; or

(ii) If a State agency experiences funding shortages, it may be necessary to discontinue Program benefits to some certified participants. The State agency must explore alternatives (such as elimination of new certifications) before taking such action. Reduction of food benefit quantities for cost reasons is not an acceptable alternative action. In discontinuing benefits, the State agency will affect the least possible number of participants and those whose nutritional and health status would be least impaired by the action. When a State agency elects to discontinue benefits due to insufficient funds, it will not enroll new participants during that period. The State may discontinue benefits by:

(A) Disqualifying a group of participants; and/or

(B) Withholding benefits of a group with the expectation of providing benefits again when funds are available.

(i) * * *

(10) A statement of the rights and obligations under the Program. The statement must contain a signature space, and must be read by or to the applicant, parent, or caretaker. It must contain the following language or alternate language as approved by FNS (see § 246.4(a)(11)(i)), and be signed by the applicant, parent, or caretaker after the statement is read:

* * * * *

(11) If the State agency exercises the authority to use and disclose confidential applicant and participant information for non-WIC purposes pursuant to § 246.26(d)(2), a statement that:

(i) Notifies applicants that the chief State health officer (or the governing authority, in the case of an Indian State agency) may authorize the use and disclosure of information about their participation in the WIC Program for non-WIC purposes;

(ii) Must indicate that such information will be used by State and local WIC agencies and public organizations only in the administration of their programs that serve persons eligible for the WIC Program; and

(iii) Will be added to the statement required under paragraph (i)(10) of this section. This statement must also indicate that such information can be used by the recipient organizations only for the following:

(A) To determine the eligibility of WIC applicants and participants for programs administered by such organizations;

(B) To conduct outreach for such programs;

(C) To enhance the health, education, or well-being of WIC applicants and participants currently enrolled in those programs;

(D) To streamline administrative procedures in order to minimize burdens on participants and staff; and

(E) To assess and evaluate a State's health system in terms of responsiveness to participants' health care needs and health care outcomes.

(j) * * *

(2) At the time of certification, each Program participant, parent or caretaker must read, or have read to him or her, the statement provided in paragraph (i)(10) of this section (or an alternate statement as approved by FNS). In addition, the following sentences (or alternate sentences as approved by FNS) must be read:

* * * * *

6. In § 246.9, revise paragraph (g) to read as follows:

§ 246.9 Fair hearing procedures for participants.

* * * * *

(g) *Continuation of benefits.* Participants who appeal the termination of benefits within the period of time provided under paragraph (e) of this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification period has expired or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, or participants who become categorically ineligible during a certification (or whose certification period expires), may appeal the denial or termination, but must not receive benefits while awaiting the hearing.

* * * * *

§ 246.12 [Amended]

7. In § 246.12:

a. Amend paragraph (f)(2)(iv) by removing the words ''90 days'' wherever they appear and by adding in their place the words ''60 days''; and

b. Amend paragraph (q) by removing the words ''150 days'' and by adding in their place the words ''120 days''.

8. In § 246.14:

a. Add a new sentence at the beginning of paragraph (a)(2);

b. Amend the first sentence of paragraph (c)(7) by removing the word ''rural''; and

c. Revise paragraph (d).

The addition and revision read as follows:

§ 246.14 Program costs.

(a) * * *

(2) Program funds may not be used to pay for retroactive benefits. * * *

* * * * *

(d) *Costs allowable with approval.* The costs of capital expenditures exceeding the dollar threshold established in Agency policy and guidance are allowable only with the approval of FNS prior to the capital investment. These expenditures include the costs of facilities, equipment (including medical equipment), automated data processing (ADP) projects, other capital assets, and any repairs that materially increase the value or useful life of such assets.

* * * * *

9. In § 246.15, revise the first sentence of paragraph (b) to read as follows:

§ 246.15 Program income other than grants.

* * * * *

(b) *Other Program income.* The State agency may use current program income (applied in accordance with the addition method described in § 3016.25(g)(2) of this title) for costs incurred in the current fiscal year and, with the approval of FNS, for costs incurred in previous years or subsequent fiscal years. * * *

§ 246.17 [Amended]

10. In § 246.17, remove the words ''150 days'' in paragraph (b)(2), and add in their place the words ''120 days''.

11. In § 246.20:

a. Revise paragraph (b)(1); and

b. Remove paragraph (b)(2), and redesignate paragraph (b)(3) as paragraph (b)(2).

The revision reads as follows:

§ 246.20 Audits.

* * * * *

(b) * * * (1) State agencies must obtain annual audits in accordance with part 3052 of this title. In addition, States must require local agencies under their jurisdiction to obtain audits in accordance with part 3052 of this title.

* * * * *

12. In § 246.25, revise paragraphs (a)(4), (b) and (c) to read as follows:

§ 246.25 Records and reports.

(a) * * *

(4) All records shall be available during normal business hours for representatives of the Department and the Comptroller General of the United States to inspect, audit, and copy. Any reports or other documents resulting from the examination of such records that are publicly released may not include confidential applicant or participant information.

(b) *Financial and participation reports.*

(1) *Monthly reports.* (i) State agencies must submit financial and program performance data on a monthly basis, as specified by FNS, to support program management and funding decisions. Such information must include, but may not be limited to:

(A) Actual and projected participation;

(B) Actual and projected food funds expenditures;

(C) A listing by source year of food and NSA funds available for expenditure; and

(D) NSA expenditures.

(ii) State agencies must require local agencies to report such financial and participation information as is necessary for the efficient management of food and NSA funds expenditures. When considered necessary and feasible by FNS, State agencies may be required to:

(A) Show in the ''Remarks'' section of the WIC Financial Management and Participation Report the amount of cash allowances exceeding three days' need being held by their local agencies or contractors; and

(B) Provide short narrative explanations of actions taken by the State agency to reduce such excess balances.

(2) *Annual reports.* (i) Every year, State agencies must report to FNS the average number of migrant farmworker household members participating in the Program during a 12-month period of time specified by FNS.

(ii) State agencies must submit itemized NSA expenditure reports annually as an addendum to their WIC Program closeout reports, as required by § 246.17(b)(2).

(3) *Biennial reports.* (i) *Participant characteristics report.* State and local agencies must provide such information as may be required by FNS to provide a biennial participant characteristics report to Congress. This includes, at a minimum, information on income and nutritional risk characteristics of participants, information on breastfeeding incidence and duration, and participation in the Program by category (*i.e.*, pregnant, breastfeeding and postpartum women, infants and children) within each priority level (as established in § 246.7(e)(4)) and by migrant farmworker households.

(ii) *Civil rights report.* Racial and ethnic participation data contained in the participant characteristics report that is submitted biennially to Congress will also be used to fulfill civil rights reporting requirements.

(c) *Other reports.* State agencies must submit reports to reflect additions and deletions of local agencies administering the WIC Program and local agency address changes as these events occur.

* * * * *

13. In § 246.26, revise paragraphs (d) and (g) and add new paragraphs (h) and (i) to read as follows:

§ 246.26 Other provisions.

* * * * *

(d) *Confidentiality of applicant and participant information.*

(1) *WIC purposes.* Confidential applicant and participant information is any information about an applicant or participant (whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation) that individually identifies those individuals and/or a family member(s). Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determines have a need to know the information for WIC Program purposes. These persons may include personnel from its local agencies and other WIC State and local agencies, persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State or local law.

(2) *Non-WIC purposes.* (i) *Use by WIC State and local agencies.* Any WIC State or local agency may use confidential applicant and participant information in the administration of its other programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(ii) *Disclosure to public organizations.* The State agency and its local agencies may disclose confidential applicant and participant information to public organizations for use in the administration of their programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(3) *Child abuse and neglect reporting.* Staff of the State agency and its local agencies who are required by State law to report known or suspected child abuse or neglect may disclose confidential applicant and participant information to the extent necessary to comply with such law.

(4) *Release forms.* Except in the case of subpoenas or search warrants (see paragraph (i) of this section), the State agency and its local agencies may disclose confidential applicant and participant information to individuals or entities not listed in this section only if the affected applicant or participant signs a release form authorizing the disclosure and specifying the parties to which the information may be disclosed. The State or local agency must permit applicants and participants to refuse to sign the release form and must notify the applicants and participants that signing the form is not a condition of eligibility and refusing to sign the form will not affect the applicant's or participant's application or participation in the WIC Program. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the WIC application or certification process. All other requests for applicants or participants to sign voluntary release forms must occur after the application and certification process is completed.

(5) *Access to information by applicants and participants.* The State or local agency must provide applicants and participants access to all information they have provided to the WIC Program. In the case of an applicant or participant who is an infant or child, the access may be provided to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. However, the State or local agency need not provide the applicant or participant (or the parent or guardian of an infant or child) access to any other information in the file or record such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the

information supports a State or local agency decision being appealed pursuant to § 246.9.

* * * * *

(g) *USDA and the Comptroller General.* The State agency must provide the Department and the Comptroller General of the United States access to all WIC Program records, including confidential vendor, applicant and participant information, pursuant to § 246.25(a)(4).

(h) *Requirements for use and disclosure of confidential applicant and participant information for non-WIC purposes.* The State or local agency must take the following steps before using or disclosing confidential applicant or participant information for non-WIC purposes pursuant to paragraph (d)(2) of this section.

(1) *Designation by chief State health officer.* The chief State health officer (or, in the case of an Indian State agency, the governing authority) must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

(2) *Notice to applicants and participants.* The applicant or participant must be notified either at the time of application (in accordance with § 246.7(i)(11)) or through a subsequent notice that the chief State health officer (or, in the case of an Indian State agency, the governing authority) may authorize the use and disclosure of information about their participation in the WIC Program for non-WIC purposes. This statement must also indicate that such information will be used by State and local WIC agencies and public organizations only in the administration of their programs that serve persons eligible for the WIC Program.

(3) *Written agreement and State plan.* The State or local agency disclosing the information must enter into a written agreement with the other public organization or, in the case of a non-WIC use by a State or local WIC agency, the unit of the State or local agency that will be using the information. The State agency must also include in its State plan, as specified in § 246.4(a)(24), a list of all organizations (including units of the State agency or local agencies) with which the State agency or its local agencies has executed or intends to execute a written agreement. The written agreement must:

(i) Specify that the receiving organization may use the confidential applicant and participant information only for:

(A) Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;

(B) Conducting outreach to WIC applicants and participants for such programs;

(C) Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by State law;

(D) Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC Program; and/or

(E) Assessing and evaluating the responsiveness of a State's health system to participants' health care needs and health care outcomes; and

(ii) Contain the receiving organization's assurance that it will not use the information for any other purpose or disclose the information to a third party.

(i) *Subpoenas and search warrants.* (1) *General.* The State agency may disclose confidential applicant, participant, or vendor information pursuant to a valid subpoena or search warrant only if it has been reviewed in accordance with this paragraph (i).

(2) *Subpoena procedures.* In determining how to respond to a subpoena duces tecum (*i.e.*, a subpoena for documents) or other subpoena for confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the subpoena, immediately notify its State agency;

(ii) Consult with legal counsel for the State or local agency and determine whether the information requested is in fact confidential and prohibited by this section from being used or disclosed as stated in the subpoena;

(iii) If the State or local agency determines that the information is confidential and prohibited from being used or disclosed as stated in the subpoena, attempt to quash the subpoena unless the State or local agency determines that disclosing the confidential information is in the best interest of the Program. The determination to disclose confidential information without attempting to quash the subpoena should be made only infrequently; and

(iv) If the State or local agency seeks to quash the subpoena or decides that disclosing the confidential information is in the best interest of the Program, inform the court or the receiving party that this information is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the subpoena and no other information; and

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

(3) *Search warrant procedures.* In responding to a search warrant for confidential information, the State or local agency must use the following procedures:

(i) Upon receiving the search warrant, immediately notify its State agency;

(ii) Immediately notify legal counsel for the State or local agency;

(iii) Comply with the search warrant; and

(iv) Inform the individual(s) serving the search warrant that the information being sought is confidential and seek to limit the disclosure by:

(A) Providing only the specific information requested in the search warrant and no other information; and

(B) Limiting to the greatest extent possible the public access to the confidential information disclosed.

14. In § 246.27, paragraph (c) is revised to read as follows:

§ 246.27 Program information.

* * * * *

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., Room 8T36, Atlanta, Georgia 30303.

* * * * *

Dated: November 22, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–30223 Filed 11–29–02; 8:45 am]

BILLING CODE 3410–30–P

Federal Register

Monday,
December 2, 2002

Part VI

The President

Memorandum of November 27, 2002—Determination Under the Interstate Commerce Commission Termination Act of 1995

Federal Register
Vol. 67, No. 231
Monday, December 2, 2002

Presidential Documents

Title 3—

The President

Memorandum of November 27, 2002

Determination Under the Interstate Commerce Commission Termination Act of 1995

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982, Public Law 97–261, 96 Stat. 1103, imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country and authorized the President to modify the moratorium. The Interstate Commerce Commission Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803, maintained these restrictions, subject to modifications made prior to the enactment of the ICCTA, and empowered the President to make further modifications to the moratorium.

Pursuant to 49 U.S.C. 13902(c)(3), I modified the moratorium on June 5, 2001, to allow motor carriers domiciled in the United States that are owned or controlled by persons of Mexico to obtain operating authority to transport international cargo by truck between points in the United States and to provide bus services between points in the United States.

The North American Free Trade Agreement (NAFTA) established a schedule for liberalizing certain restrictions on the provision of bus and truck services by Mexican-domiciled motor carriers in the United States. Pursuant to 49 U.S.C. 13902(c)(3), I hereby determine that the following modifications to the moratorium are consistent with obligations of the United States under NAFTA and with our national transportation policy and that the moratorium shall be modified accordingly.

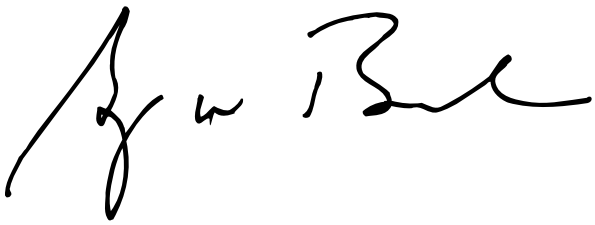
First, qualified motor carriers domiciled in Mexico will be allowed to obtain operating authority to transport passengers in cross-border scheduled bus services. Second, qualified motor carriers domiciled in Mexico will be allowed to obtain operating authority to provide cross-border truck services. The moratorium on the issuance of certificates or permits to Mexican-domiciled motor carriers for the provision of truck or bus services between points in the United States will remain in place. These modifications shall be effective on the date of this memorandum.

Furthermore, pursuant to 49 U.S.C. 13902(c)(5), I hereby determine that expeditious action is required to implement this modification to the moratorium. Effective on the date of this memorandum, the Department of Transportation is authorized to act on applications, submitted by motor carriers domiciled in Mexico, to obtain operating authority to provide cross-border scheduled bus services and cross-border truck services. In reviewing such applications, the Department shall continue to work closely with the Department of Justice, the Office of Homeland Security, and other relevant Federal departments, agencies, and offices in order to help ensure the security of the border and to prevent potential threats to national security.

Motor carriers domiciled in Mexico operating in the United States will be subject to the same Federal and State laws, regulations, and procedures that apply to carriers domiciled in the United States. These include safety regulations, such as drug and alcohol testing requirements; insurance requirements; taxes and fees; and other applicable laws and regulations, including those administered by the United States Customs Service, the Immigration

and Naturalization Service, the Department of Labor, and Federal and State environmental agencies.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 27, 2002.

[FR Doc. 02–30745
Filed 11–29–02; 12:06 pm]
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CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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/nara005.html*. Some laws may not yet be available.

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H.R. 4878/P.L. 107–300
Improper Payments Information Act of 2002 (Nov. 26, 2002; 116 Stat. 2350)

H.R. 5349/P.L. 107–301
To facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interests retained by the United States in 1955 when the land was conveyed to the State of Missouri. (Nov. 26, 2002; 116 Stat. 2352)

S. 3044/P.L. 107–302

Court Services and Offender Supervision Agency Interstate Supervision Act of 2002 (Nov. 26, 2002; 116 Stat. 2353)

Last List November 27, 2002

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
5 Parts:			
1–699	(869–048–00004–6)	57.00	Jan. 1, 2002
700–1199	(869–048–00005–4)	47.00	Jan. 1, 2002
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–048–00030–5)	30.00	Jan. 1, 2002
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
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13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
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15 Parts:			
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1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
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200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–048–00051–8)	59.00	Apr. 1, 2002
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
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400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
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21 Parts:			
1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
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170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
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§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
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§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
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§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
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30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
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600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
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200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
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1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
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200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
*63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
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790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
*430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
*1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
*1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
*41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
*500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
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70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
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1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
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2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
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100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 2002

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Dec 2	Dec 17	Jan 2	Jan 16	Jan 31	March 3
Dec 3	Dec 18	Jan 2	Jan 17	Feb 3	March 3
Dec 4	Dec 19	Jan 3	Jan 21	Feb 3	March 4
Dec 5	Dec 20	Jan 6	Jan 21	Feb 3	March 5
Dec 6	Dec 23	Jan 6	Jan 21	Feb 4	March 6
Dec 9	Dec 24	Jan 8	Jan 23	Feb 7	March 10
Dec 10	Dec 26	Jan 9	Jan 24	Feb 10	March 10
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Dec 18	Jan 2	Jan 17	Feb 3	Feb 18	March 18
Dec 19	Jan 3	Jan 21	Feb 3	Feb 18	March 19
Dec 20	Jan 6	Jan 21	Feb 3	Feb 18	March 20
Dec 23	Jan 7	Jan 22	Feb 6	Feb 21	March 24
Dec 24	Jan 8	Jan 23	Feb 7	Feb 24	March 24
Dec 26	Jan 10	Jan 27	Feb 10	Feb 24	March 26
Dec 27	Jan 13	Jan 27	Feb 10	Feb 25	March 27
Dec 30	Jan 14	Jan 29	Feb 13	Feb 28	March 31
Dec 31	Jan 15	Jan 30	Feb 14	March 3	March 31