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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 966 and 980

[Docket No. FV97–966–1 FR]

Tomatoes Grown in Florida and Imported Tomatoes; Final Rule to Change Minimum Size and Size Designation Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases minimum diameter size requirements for Florida and imported tomatoes. For Florida tomatoes alone, the rule also changes size designations from Medium, Large, and Extra Large to numeric size designations of 6×7, 6×6, and 5×6. Also, the rule slightly increases the diameter size ranges for the designated sizes. The marketing order regulates the handling of tomatoes grown in Florida, and is administered locally by the Florida Tomato Committee (Committee). This final rule will help the Florida tomato industry and importers meet domestic market and industry demands. Also, this rule will help provide handlers more marketing flexibility and increase returns to producers, as well as provide consumers with slightly larger, more mature tomatoes. Application of the size requirement increase to imported tomatoes is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: This final rule becomes effective February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 301 Third Street, NW., Suite 206, Winter Haven, Florida 33881; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 8e of the Act specifies that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements are specified in § 966.323 of the handling regulations issued under the order. These requirements apply during the period October 10 through June 15 each year. The regulated area is the entire State of Florida, except the panhandle. The production area is part of the regulated area. Specialty packed red ripe tomatoes, yellow meated tomatoes, and single and double-layer place-packed tomatoes are exempt from container net weight requirements.

Under § 966.323, all tomatoes, except for pear shaped, paste, cherry, hydroponic, and greenhouse tomatoes, must be inspected as specified in the United States Standards for Grades of Fresh Tomatoes (7 CFR part 51.1855 through 51.1877; standards). Such tomatoes also must be at least $2\frac{8}{32}$ inches in diameter, and sized with proper equipment in one or more of the following ranges of diameters. In the proposal, the reference to the number $2\frac{8}{32}$ was incorrectly published in the **Federal Register** as $^{28}/_{32}$ (62 FR 52047; October 6, 1997; column three; paragraph three; line eight).

Size designation	Inches minimum diameter	Inches maximum diameter
Medium	$2\frac{8}{32}$	$2\frac{17}{32}$
Large	$2\frac{16}{32}$	$2\frac{25}{32}$
Extra Large	$2\frac{24}{32}$	

These size designations and diameter ranges are the same as those specified in § 51.1859 of the standards. All tomatoes in the Medium size designation are required to grade at least a U.S. No. 2, while tomatoes in the larger size

designations are required to grade at least a U.S. No. 3. Section 966.52 of the order provides authority for the establishment and modification of regulations applicable to the handling of particular sizes and size designations of tomatoes.

This rule increases the minimum diameter size requirement for Florida tomatoes from 2 8/32 inches to 2 9/32 inches and makes conforming changes to container marking requirements and the regulation for special packed tomatoes. This rule also changes the size designations Medium, Large, and Extra Large to numeric size designations of 6×7, 6×6, and 5×6 (respectively), and increases the diameter size ranges for the designated sizes. These size ranges are different from those specified in § 51.1859 of the standards. On September 5, 1997, the Committee met and unanimously recommended these changes. At the same meeting, the Committee recommended by a vote of 10 to 2 to eliminate shipments of U.S. No. 3 grade tomatoes from the regulated area. That recommendation is being addressed in a separate rulemaking action.

Based on an analysis of markets and demands of buyers, the Committee believes that the increase in the minimum size will improve the marketing of Florida tomatoes. By increasing the minimum size, the tomatoes will be slightly larger and, thus, more mature when packed. This follows recent industry trends to ship larger and more mature tomatoes. New commercial tomato varieties also have resulted in larger sized tomatoes being shipped in response to a strong consumer demand. Because of this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields.

Also, the Committee recommended the increase in minimum size requirements to improve the uniformity and appearance of tomato packs. The slightly smaller tomatoes in the Medium packs increase the size variability of the pack, and are more likely to be immature and have less taste. The current minimum size of 2 8/32 inches allows these smaller tomatoes to be combined with more mature tomatoes, which lowers the overall quality and, subsequently, the price of the pack. This has resulted in complaints from buyers throughout the market.

In the mid-1980's, Dr. Jeffrey K. Brecht, at the University of Florida, did a study of smaller tomatoes. According to his findings, fully mature green tomatoes begin coloring within a few days of harvesting. Since tomatoes are not easily identified by a surface indicator (color) of full maturity in green fruit, pickers are forced to rely on size rather than maturity when harvesting tomatoes. The result is that tomatoes at the 2 8/32 of an inch minimum diameter may require two weeks or more to begin ripening. Attainment of the full ripe stage requires on average a week to 10 days additional time. Hence, the full ripening process can take as long as four weeks. Tomatoes that take this long to ripen after harvest have been shown to have poor taste. Increasing the minimum size to 2 9/32 inches for Medium tomatoes is expected to help reduce this problem. Also, consumers are demanding a slightly larger tomato. Smaller tomatoes with a less uniform pack have poor consumer acceptance, especially in chain stores.

The increase in the minimum size from 2 8/32 inches to 2 9/32 inches is not expected to significantly affect the total number of containers shipped. During the 1996–1997 season, of the 47,879,084 containers of 25 pound-equivalent-shipments, approximately 15 percent or about 7,023,239 shipments of 25-pound-equivalents from Florida were of the Medium size designation. The Medium size currently covers a range of 2 8/32 to 2 17/32 inches or a range of about 9/32 of an inch. Increasing the minimum size to 2 9/32 inch removes all tomatoes that would have met the 2 8/32 minimum size designation. The Medium size designation currently covers a range of 2 8/32 to 2 17/32 inches or a range of about 9/32 of an inch. Removing 1/32 inch from the 9/32 size range would eliminate about 10 percent of the size range. Thus, if the size increase had been applied during the previous season, about 700,000 25-pound equivalents would have been eliminated. Thus, the size increase is expected to reduce total shipments by about 1.5 percent (700,000 25-pound equivalents divided by 47,879,084 25-pound equivalents). Any of the tomatoes failing to meet the minimum size requirements may be sold within the production area or shipped for processing. In the proposed rule, the references in this paragraph to 25-pound equivalents were incorrectly printed in the **Federal Register** as 25,000 pound equivalents (62 FR 52048; October 6, 1997; column two; paragraph two; lines six and eight).

The Committee also recommended the following new designations and tomato diameter size ranges:

Size designation	Inches minimum diameter	Inches maximum diameter
6 × 7 (Currently Medium)	2 9/32	2 19/32
6 × 6 (Currently Large)	2 17/32	2 27/32
5 × 6 (Currently Extra Large)	2 25/32	.....

Prior to 1991, numeric size designations were used by Florida handlers and marketers from other growing areas, both domestic and foreign. The current standards and nomenclature size designations were implemented in 1991, and were designed to provide a uniform basis for marketing tomatoes. However, numeric size designation terminology has continued to be used by Florida handlers and sellers from other domestic and foreign growing areas in negotiating price and other terms of trade, and buyers in the marketplace still routinely refer to the size of tomatoes in a 25-pound bulk (loose pack) box by using the 6 × 7, 6 × 6, and 5 × 6 size designations, even though the box may be marked Medium, Large, or Extra Large. Florida tomato handlers have found that the difference in terminology has hindered their negotiations with buyers, and adversely affected handler and producer returns. Handlers believe that buyers tend to discount Florida tomatoes because the buyers do not have confidence that the Medium, Large, and Extra Large designations correctly correspond with the size designations of 6 × 7, 6 × 6, and 5 × 6 currently used by other tomato growing areas.

Florida handlers compete directly with tomatoes from Mexico. Mexican packers generally market their smaller sized tomatoes in 3-layer place-packs marked 6 × 6 or 6 × 7 (each box weighs about 30 pounds), and bulk (loose pack) boxes with the same numeric size designations (each box weighs about 25 pounds). The larger sizes of tomatoes from Mexico are generally marketed in 2-layer place-packs marked as 5 × 6, 5 × 5, 4 × 5, or 4 × 4, each weighing between 21 and 24 pounds.

Many buyers in the marketplace purchase tomatoes from both Florida and Mexico, depending on size availability and price, and the preferred language in discussing price and other terms of sale and delivery is numeric size or count, not nomenclature size designations. Reverting back to a previously used numeric system will allow Florida handlers to use numeric size designations that are familiar to both handlers and buyers of Florida tomatoes, facilitate buyer negotiations,

and allow Florida handlers to more effectively market their crop.

In spite of the harmonized marketing goals of 1991, each of the growing areas have continued to market their tomatoes a bit differently. The size designation change will enable the Florida tomato industry to better meet marketplace needs.

This rule also increases the minimum and maximum diameter ranges of the three size designations. The net increase for the maximum diameters for the Medium (6 × 7) and Large (6 X 6) size designations will be 1/32 inch.

This will result in a 2/3×'s overlap in the maximum diameters in these size designations to the next larger size. According to the Committee, this will provide a more even distribution of tomato shipments throughout the three size designations, which will enable handlers to make better decisions on which size of tomatoes to pack. For instance, tomatoes that measure at the very top end of the Medium (6 × 7) size can either be packed with Medium (6 × 7) size tomatoes or as a smaller tomato with Large (6 × 6) size tomatoes. The same increased flexibility will exist for Large (6 × 6) size tomatoes packed with Extra Large (5 × 6) size tomatoes. Such packing decisions could depend on specific buyer or market demands, on general crop size, and on condition of the tomatoes and prices on each day of packing.

Currently, Florida producers are growing tomato varieties which tend to size larger and tend to be oblong. The new diameter size ranges for the three size designations also are intended to accommodate the sizing of these varieties of tomatoes and foster the shipment of larger tomatoes, which the marketplace desires.

Due to strong consumer demand during the 1996–1997 season, approximately 80 percent of the Florida tomatoes sold were in the Extra Large (5 × 6) size designation. This rule will increase the minimum diameter of the Extra Large (5 × 6) size designation to 2–25/32 inches from $2^{24}/_{32}$ inches with no maximum size limit. Increasing the minimum diameter size of this designation by $^{1}/_{32}$ inch for Extra Large (5 × 6) size packs will reduce the number of smaller sized tomatoes packed in that size designation. Hence, this is expected to decrease size variability and improve uniformity of this premium pack. Thus, improvements in this size category are expected to further enhance consumer demand, resulting in increased returns to producers.

Also, a study conducted by Dr. John J. VanSickle at the University of Florida estimates that increases in the minimum diameters for each size category would result in an increase in the overall prices received for Florida tomatoes. The study indicates that if increasing the size minimums shifted 1 percent of the smallest Extra Large (5 × 6) size tomatoes into the smaller size categories, then prices for Extra Large (5 × 6) size would increase by .25 percent, the price of Large (6 × 6) size tomatoes by .15 percent, and the price of Medium (6 × 7) size tomatoes by .07 percent. The increase in price would occur because of the redistribution of larger sized tomatoes into the smaller size designations, which is a response to consumer demand for a more consistent pack and slightly larger tomatoes.

These changes are expected to increase returns to producers by improving size consistency, quality, and maturity; and, thus, encourage repeat purchases from consumers. The new size designations will allow handlers to respond better to market preferences, which is expected to benefit producers and handlers of Florida tomatoes.

This rule also makes conforming changes to two paragraphs in § 966.323. The first change in § 966.323 (a)(2)(iii) concerns container marking requirements. The references to the nomenclature (Medium, Large, and Extra Large) size designations are replaced with the new numeric size designations. The second change is in § 966.323 (d)(3) for special packed tomatoes. The reference to the 2–8/32 inch minimum size is replaced with the new 2–9/32 inch minimum size.

Mexico is the largest exporter of tomatoes into the United States. Small quantities are imported from the Caribbean Basin. On average, Mexico represents over 99 percent of all tomato imports during the period (October 10 through June 15) when Florida and import requirements apply.

Section 8e of the Act requires that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. The current import regulations are specified in 7 CFR 980.212. Similar to the order, the regulations apply during the period October 10 through June 15 when the Florida handling requirements are in effect. Because this rule increases the minimum size for domestic tomato shipments, this increase will be applicable to imported tomatoes beginning with the effective date of this rule.

Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size designations may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Because pack requirements do not apply, different sizes of imported tomatoes may be commingled in the same container.

However, the Florida handling requirements also specify that tomatoes that are designated as Medium (6 X 7) size must meet a U.S. No. 2 grade, while the larger sizes are required to meet a U.S. No. 3 grade. The more stringent grade requirements are applied to the Medium (6 X 7) size designation because of quality problems with smaller tomatoes.

Similarly, current import requirements specify that all lots with a minimum diameter of 2–17/32 inches and larger shall meet at least a U.S. No. 3 grade. All other tomatoes shall meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2–17/32 inches in diameter is required to grade at least U.S. No. 2. This rule will change these requirements to reflect the changes to the Florida handling requirements by requiring that all lots with a minimum diameter of 2–19/32 inches and larger meet at least a U.S. No. 3 grade. All other tomatoes will need to meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2–19/32 inches in diameter will have to grade at least U.S. No. 2.

These changes are expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with better quality, higher maturity, and slightly larger tomatoes. Prior to the issuance of the proposed rule, the Department had contacted a few tomato importers concerning imports. The importers indicated that they are importing larger sizes of tomatoes. The Department believes that the increase in minimum size would not limit the quantity of imported tomatoes or place an undue burden on importers of Mexican tomatoes. The expected increase in customer satisfaction is expected to benefit all tomato importers regardless of the size of their operation or business. The size increase is the only requirement implemented for Florida which applies to imported tomatoes. The exporters and importers of foreign produced tomatoes will be able to continue marketing their tomatoes as they have in all other respects, and in meeting buyer needs.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS)

has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. In addition, at least 170 importers of tomatoes are subject to import regulations and will be affected by this rule. Small agricultural service firms have been defined by the Small Business Administration (SBA)(13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Committee data indicates that approximately 30 percent of the Florida handlers handle over 90 percent of the total volume of Florida fresh tomatoes marketed. Based on this information, shipment information for the 1996–97 season, and the 1996–97 season average price of $7.97 per 25-pound equivalent carton, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes may be classified as small entities. The Department also believes that most importers may be classified as small entities. In the proposed rule, the reference to 25-pound equivalent carton referred to in this paragraph was incorrectly printed in the **Federal Register** as 25,000 pound equivalent carton (62 FR 52049; October 6, 1997; column three; paragraph two; line seven).

Under § 966.52 of the Florida tomato marketing order, the Committee has authority to recommend increases in the minimum size requirement and changes in the size designations for Florida tomatoes grown in the defined production area and handled under the order. This rule, unanimously recommended by the Committee at its September 5, 1997, meeting, will increase the minimum size, change size designations and corresponding diameter size ranges. As provided under section 8e of the Act, the increase in the minimum size diameter requirement applies to imported tomatoes.

Based on analysis of markets and demands of buyers, the Committee recommended increasing the minimum size from 2-8/32 inches to 2-9/32 inches in diameter and the corresponding minimum sizes for the other two size designations. The Committee believes these size increases will improve the marketing of Florida tomatoes. By increasing the minimum sizes, the tomatoes in each size range will be slightly larger and, thus, more mature when packed. This follows recent industry trends to ship larger and more mature tomatoes. Current trends in cultural practices and new commercial tomato varieties also have resulted in larger sized tomatoes being shipped in response to consumer demand for such tomatoes. Because of this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields and total pounds. While yields increase with larger fruit, the labor costs associated with picking these tomatoes remains fairly constant because producers pick relatively the same number of fruit.

The change in the minimum size was recommended because demand for larger tomatoes has increased over the last five years. This in part is due to the fact that size continues to be a major influence on price. According to Dr. John J. VanSickle of the University of Florida, the percent of Extra Large (5×6) size tomatoes shipped from Florida has increased steadily from 43.2 percent of total shipments since 1992–93 to 50 percent of total shipments in 1996–1997 for mature green tomatoes. Mature green tomatoes are green but are fully developed and will continue to ripen fully. Meanwhile, the percent of tomatoes from Florida marketed in the Extra Large (5×6) size for vine ripe tomatoes has increased from 66.6 percent to 79.2 percent of total shipments. Vine ripe tomatoes have started to break in color from green to tannish-yellow, pink, or red.

The increase in the minimum size from 2-8/32 inches to 2-9/32 inches is not expected to affect significantly the total number of Florida shipments. During the 1996–1997 season, of the 47,879,084 shipments of 25-pound equivalents, approximately 15 percent or about 7,023,239 shipments of 25-pound equivalents from Florida were in the minimum size designation of Medium. The Medium size currently covers a range of 2-8/32 to 2-17/32 inches or a range of about 9/32 inch. Increasing the minimum size to 2-9/32 inch removes tomatoes that would have met the 2-8/32 inch minimum size designation. Removing 1/32 inch from the 9/32 inch size range decreases the size range by about 10 percent. If the size increase had applied during the previous season, shipments from that range would have been reduced by about 700,000 25-pound equivalents. Thus, the size increase is expected to reduce total shipments by approximately 1.5 percent (700,000 25-pound equivalents divided by 47,879,084 25-pound equivalents). Because Florida tomatoes are sizing larger than in the past, the increase in size requirements is expected to have a minimal impact on total shipments. Also, any of these smaller tomatoes may be sold within the production area or shipped for processing. In the proposed rule, the references to 25-pound equivalents in this paragraph were incorrectly printed as 25,000 pound equivalents (62 FR 52050; October 6, 1997; column one; paragraph two; lines six and eight).

Also, this rule changes the size designations from Medium, Large, and Extra Large to numeric size designations of 6×7, 6×6, and 5×6. In addition, the rule slightly increases the diameter size ranges for these designated sizes.

The Committee stated that, absent a change in the regulations, an erosion of market confidence could occur from not meeting buyer needs. This could result in reduced shipments and reduced producer income.

Direct costs associated with this rule will be the purchase of new sizing belts. Sizing belts convey and size fruit during the packing process. Depending on the amount of use, sizing belts can last a season or may need to be replaced two to three times a season. Estimated prices associated with these purchases could range from $450.00 for a small handler to $19,000 for very large handlers. While there are short-term costs associated with the new sizing designations, the benefits are expected to outweigh the costs. Moreover, changing sizing belts is a routine action since they have to be regularly replaced depending on use.

A study conducted by Dr. John J. VanSickle at the University of Florida estimates that size increases in the minimum diameters for each size category would result in an increase in the overall prices received for Florida tomatoes and better returns to producers. The study indicates that increasing the size minimums would shift some of the smallest Extra Large (5×6) size tomatoes into the smaller size categories. A shift of 1 percent into the

smaller size categories would increase the prices for Extra Large (5×6) size tomatoes by .25 percent, the price of Large (6×6) size tomatoes by .15 percent, and the price of Medium (6×7) size tomatoes by .07 percent. The increase in price would occur in response to consumer demand for packs with slightly larger tomatoes. The costs to the industry associated with the minimum size and size designation changes would include purchases of new equipment and adjustments to operate under the new requirements. These costs are expected to be minimal relative to the benefits expected, and in relation to normal operating costs and procedures.

The new numeric size designations should not have a negative impact on any handler regardless of size. This is expected to help Florida handlers respond to market and consumer demand for larger sized tomatoes. The Committee believes that these designations are the only practical means available to the Florida industry for identifying its larger sized tomatoes. The standards specify dimensions for each of the nomenclature designations currently used, but they are smaller than the Committee desires. Hence, the nomenclature designations are not as useful to Florida handlers as the new size designations. The new size designations should benefit both small and large businesses in the industry by helping the Florida industry more effectively satisfy buyer needs for larger tomatoes.

This rule may impose some additional costs on handlers, and producers. However, these costs are expected to be minimal, and would be offset by the benefits of the final rule. This rule is expected to impact similarly importers of tomatoes, as far as the slight increase in minimum size is concerned. The Committee believes that these modifications will benefit consumers, producers, handlers, and importers. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including leaving the regulations as currently issued. All Committee members agreed that some change to the size designations was necessary to improve pack appearance and compete in the present market. The amount of change became the main concern, with a portion of the Committee favoring a larger size increase and another portion favoring small incremental moves over a period of time. The Committee recommended a compromise to allow individual packing houses leeway to implement the amount of change through a 2/32 inch overlap in sizes.

The information on imports and shipments contained in the following two paragraphs is from AMS Market New Branch data.

Mexico is the largest exporter of tomatoes to the United States. Over the last 10 years, Mexican exports to the United States averaged 32,527 containers of 25,000-pound equivalents per season (October 5–July 5) and comprised about 99 percent of all imported tomatoes to the United States during that time. Total imports during that period averaged 32,752 containers of 25,000-pound equivalents (October 5–July 5). Some of the imports from Mexico may have been transhipped to Canada.

Domestic shipments for the past 10 years averaged 108,577 containers of 25,000-pound equivalents (October 5–July 5). Florida shipments averaged 52,977 containers of 25,000-pound equivalents or approximately 48 percent of the total shipments for the same period. In the proposed rule, the reference to 25,000 pound equivalents in this paragraph was incorrectly printed as 25 pound equivalents (62 FR 52050; October 6, 1997; column three; paragraph one; line nineteen).

These changes are expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with better quality, higher maturity, and slightly larger tomatoes. Prior to the issuance of the proposed rule, the Department had contacted a few tomato importers concerning imports. The importers indicated that they were importing larger sizes of tomatoes. The Department believes that the size increase would not limit the quantity of imported tomatoes or place an undue burden on importers of Mexican tomatoes. The improvement in customer satisfaction is expected to benefit all tomato importers regardless of size.

This action will not impose any additional reporting or record keeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are reviewed periodically to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's September 5, 1997, meeting was publicized widely throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. The Committee also discussed these issues in May of 1997 and buyers and sellers of Florida tomatoes were in attendance. Like all Committee meetings, the May and September 5, 1997, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. No such comments were received.

The proposed rule regarding this action was published in the Federal Register on October 6, 1997 (62 FR 52047). Interested persons were invited to submit written comments until October 16, 1997. Copies of the proposed rule were faxed and mailed to all known interested parties. Also, the rule was made available through the Internet by the Office of the Federal Register.

A notice reopening the comment period until November 5, 1997, was published in the October 22, 1997, issue of the **Federal Register** (62 FR 54809).

A total of 24 comments were received. Of this total, two comments requested that the original comment period for the proposed rule be reopened.

Seven favorable comments were received. Two of these comments were from a voluntary agricultural cooperative association of Florida tomato producers representing about 90 percent of the total volume of tomatoes produced under the marketing order each year. Individual comments also were received from an agricultural trade organization representing growers and handlers of commercial varieties of tomatoes throughout the State; and an association representing about 220 tomato and other winter vegetable growers and agricultural suppliers in the State of Florida. Two favorable comments were submitted by the Committee. One of the two Committee comments reaffirmed the need for the proposed changes, and pointed out several typographical errors in the supplementary information section of the proposed rule that needed correction. The corrections have been made in the final rule. The second Committee comment, in addition to reaffirming the need for the proposed changes, commented on assertions made by two opponents and a comment requesting more time to comment. In its second comment, the Committee contended that the claims of the opponents and the request for more time to comment did not have merit. A

comment was received from The Commissioner of the Florida Department of Agriculture and Consumer Services which supported the proposed changes and requested that the typographical errors pointed out by the Committee be corrected.

Fifteen opposition comments were received. These comments were from a trade association representing over 100 distributors, shippers, brokers and affiliated companies which are directly involved with the receipt, handling, and sale of perishable agricultural commodities grown in Mexico; growers and shippers of Mexican tomatoes; firms involved in the distribution and shipment of Mexican tomatoes; and a customs broker. Other opposition commenters included a grower, handler, and shipper of domestic and imported tomatoes, a national confederation of Mexican vegetable growers, and a law firm representing a confederation of Mexican producers and packers (its members account for the majority of tomatoes imported into the United States from Mexico).

Most of the opposition comments expressed support for the efforts of the Florida Tomato Committee to improve quality in U.S. markets. These commenters indicated that they opposed the proposed rule unless certain modifications were made. While they were opposed to those parts of the proposal concerning size designations, they requested inclusion of a 60-day period from publication of the final rule to its effective date for the changes to the minimum size requirements.

All of the negative comments opposed the use of the proposed new numeric size designations. The commenters indicated that the new size designations are different than size designations used in the industry. Several commenters stated that Mexico generally ships its larger tomatoes in place packs and that the boxes are marked with 5×5, 5×4, 4×4, or 3×4 size designations, while the largest size designation proposed for Florida tomatoes was 5×6 with a minimum diameter of 2 25⁄32 inch and no maximum diameter. The commenters believed this would lead to confusion in the marketplace.

A comment from a grower, handler, and shipper of domestic and imported tomatoes objected to the use of numeric size designations in shipping tomatoes in 25-pound bulk packs. The commenter believed that nomenclature designations (i.e., Medium, Large, and Extra Large), should be used for bulk packages as defined in the current standards. The commenter indicated that numeric designations were more appropriate for place-packed tomatoes.

Several of the opposing commenters explained that handlers and repackers of imported tomatoes use numeric terms like 6×7, 6×6, 5×6, 5×5, 4×5, 4×4, and 3×4 to describe the configuration (rows) of place-packed tomatoes in the boxes used. A box of 6×6 tomatoes includes 36 tomatoes in each layer, while a box of 4× 's includes 16 tomatoes in each layer. There are slight size variations to assure a tight fit.

According to two of the opposing commenters, about 62.4 percent of Mexican place-packed tomatoes shipped this past season were larger than the largest Florida proposed size diameter; i.e., larger than 2 25⁄32 inch minimum diameter. The commenters further contended that if the proposal is implemented, Mexican growers will be forced to label their larger tomato packs with a 5 6 size designation in addition to their own designations; i.e., 3×4, 4×4, 4×5, and 5×5.

The commenters stated that such dual markings would be needed to distinguish Mexico's premium packs from Florida's proposed 5×6 pack. The commenters contended that these markings will confuse customers and will dilute the value Mexican growers receive currently for their largest sizes.

The Department has thoroughly analyzed all of these comments in the context of how tomatoes are marketed in the United States. Most tomatoes from Florida are marketed as mature greens in 25-pound bulk (loose pack) boxes. Florida handlers negotiate price and other terms of sale and delivery using both nomenclature size designations (Medium, Large, and Extra Large) and numeric size designations. Many buyers in the marketplace still routinely refer to the size in a 25-pound bulk (loose pack) box of tomatoes by using 5×6, 6×6, and 6×7 designations. Even when the boxes are marked with the Medium, Large, or Extra Large size designations, buyers frequently use the numeric size information in negotiating the purchase of tomatoes. The proposed numeric size designations will allow the Florida industry to adopt trading terminology that is in general use by handlers and buyers of Florida tomatoes.

Some mature green tomatoes are shipped out of Mexico, but most of the shipments are vine ripe tomatoes. Mexican packers generally market smaller sized tomatoes in 3-layer place-packs marked 6×6 or 6×7 in boxes weighing about 30 pounds. The larger sizes of tomatoes from Mexico generally are marketed in 2-layer place-packs marked as 5×6, 5×5, 4×5, and 4×4, weighing between 21 and 24 pounds. Some Mexican packers use the Medium, Large, and Extra Large size designations in describing the size of the tomatoes in bulk boxes, while others use numeric size designations for both packs. Buyers in the marketplace understand these marketing practices, and use this information in making their purchase decisions.

Many buyers in the marketplace purchase tomatoes from both Florida and Mexico to meet their needs depending on size availability and price. These buyers customarily use numeric size designations in making their purchase decisions.

Thus, the Department believes that the buyers of Florida and Mexican tomatoes understand the differences in tomato size designations between shipments from Florida and Mexico, and that the proposed designations should not result in marketplace confusion or problems with market pricing.

The different tomato growing areas have been marketing their tomatoes in the way they believe helps them best market their product. These differing marketing schemes are not harmonized even within a particular growing area. The proposed numeric size designations are defined in terms of specific minimum and maximum diameter ranges and should not result in marketplace confusion. Further, the new numeric size designations do not have to be adopted by importers of Mexican tomatoes. These importers can continue to use whatever size designation markings they believe are needed to help them more effectively compete in the marketplace. Any such markings should be consistent with applicable laws or regulations including those that apply to accuracy in description of product.

Also, the proposed numeric size designations do not affect packers or repackers of imported tomatoes. Packers and repackers of imported tomatoes are free to market their tomatoes as they may believe appropriate, to segregate their larger-sized tomatoes into as many subsizes as they desire to satisfy their customers, and to differentiate their sizes from Florida packs as they do now. Again, such markings of tomatoes should be consistent with applicable laws and regulations.

Commenters also stated that, if packers in Mexico or packers in wholesale markets wished to place-pack tomatoes according to the traditional place-pack-count designations using the proposed size ranges, the tomatoes would be too large to fit into the boxes currently used. The commenters asserted that as a result, new boxes would need to be designed for place-packed tomatoes if other segments of the

industry wished to harmonize with the new Florida sizes.

This action increases the minimum diameter for each of the size designations by only 1/32 of an inch and continues the 10 percent tolerance for undersize and oversize tomatoes. Given the diameter range of sizes allowable in each specific size designation (i.e., 6×7, 6×6, 5×6), packers and repackers of tomatoes should not have any problems packing tomatoes in the box sizes currently used.

Some commenters also contended that the proposed 2/32 inch overlap between sizes (currently 1/32 inch) will allow Florida handlers to pack smaller-sized tomatoes in the next bigger size designation in search of a better market price. The Committee recommended increases in the minimum and maximum diameters for each of the three recommended size designations. For the 6 X 7 (currently Medium) size, the minimum diameter was increased from 2 8/32 to 2 9/32 inches, and the maximum diameter was increased from 2 17/32 to 2 19/32 inches; for the 6×6 (currently Large) size, the minimum diameter was increased from 2 16/32 to 2 17/32 inches, and the maximum diameter was increased from 2 25/32 to 2 27/32 inches; and for the 5×6 (currently Extra Large) size, the minimum diameter was increased from 2 24/32 to 2 25/32 inches, with no maximum diameter specified. These changes and the 2/32's inch overlap are intended to facilitate the placement of slightly larger tomatoes into the next smaller-size designation, and the placement of slightly larger sizes into the next bigger-size designation.

As indicated earlier, the Committee believes that the 2/32 inch overlap will provide a more even distribution of tomato shipments throughout the three size designations, and that this will enable handlers to make better decisions on which size of tomatoes to pack. For instance, tomatoes at the high end of the Medium (6×7) size can either be packed with Medium (6×7) sized tomatoes or with Large (6×6) sized tomatoes. The same increased flexibility would exist for tomatoes packed at the high end of the Large (6×6) size. Such tomatoes could be packed as Large (6×6) sized or packed as Extra Large (5×6) sized tomatoes. The end result, however, should be slightly larger tomatoes in each of the size categories.

Another commenter contended that a proposed numeric size designation means nothing when tomatoes are ''loose packed;'' i.e., in 25-pound bulk boxes. This is not correct. Under the proposal, minimum and maximum diameters for each numeric size designation are specified and thus, apply to volume filled or ''loose packed'' tomatoes. The diameter ranges provide handlers with flexibility to meet the needs of each of their buyers.

One of the opposing commenters suggested that if Florida wished to use non-standard size designations and size dimensions (i.e., designations and dimensions different than those specified in the U.S. standards) for tomatoes, it should use other descriptive terms like Regular, Jumbo, and Colossal to replace Medium, Large, and Extra Large. While alternative size designations were considered, the Committee's best possible recommendation was to adopt the proposed numeric system. In discussing this issue, the Committee was of the view that this change to the size designations was necessary to improve pack appearance and compete in the present marketplace.

Two opposition commenters complained about the lack of time provided to the Mexican industry to examine the packing and marketing effects of the proposed size increase. They indicated that if the new sizes no longer fit in the boxes used for place packing tomatoes, Mexican growers will be forced to incur very large expenses. These expenses will be both from the loss of existing inventory of boxes and from having to invest in all new boxes. The commenters further stated that, over the past several years, the industry largely has succeeded in standardizing the size of boxes to best fit them on pallets. According to the commenters, increasing the size of the boxes would undermine this effort, resulting in lost space on every pallet and increased transportation costs for every grower. As explained earlier, Mexican packers market a vast array of pack sizes in several different boxes with different net weights. Hence, the 1/32 inch increase in the minimum size requirement is not expected to require new boxes for place packing.

Although the changes to the size designations for Florida tomatoes will not apply to imported tomatoes, the following is intended to clarify how the new requirements might be used by Florida handlers. Under the proposal, each of the minimum diameters for each size designation are increased by only 1/32 inch and the maximum diameters for each size designation are increased by only 2/32 inch. Thus, it appears that there is enough flexibility within each size designation to avoid the need for changing boxes. For example, if a buyer desires a certain number of tomatoes in each 25-pound box, the diameter size ranges within each of the numeric sizes are broad enough so that the handler could meet that buyer's needs. Moreover, the current tolerance of 10 percent for offsize within each size designation will continue in effect and provide handlers additional flexibility in meeting buyer needs, and in avoiding the need for new boxes.

Two commenters objected to the 1/32 inch size increase because Mexican growers and handlers will have to change their sizing belts and incur an unanticipated expense for new belts. Florida growers and handlers also will incur such costs. However, the Florida industry believes that the expected improvement in quality in the marketplace will result in benefits far in excess of the costs for new sizing belts. Moreover, changing sizing belts is a routine action since they have to be replaced on a regular basis depending on the amount of usage. Obviously, the sizing belts last longer with limited use.

Only the minimum size requirement will apply to importers of Mexican tomatoes. Thus, the packers of imported tomatoes only will need to buy enough sizing belts to ensure that their tomatoes meet the minimum size and not the ranges specified in the Florida size designations. The Department understands that, in most cases, this will require only one belt per packing line to be purchased.

One commenter also requested that an additional 60 days be added to the comment period to allow the parties most affected by the rule to comment completely on the impact it will have. A total of 30 days has been provided. The Department believes that there has been sufficient time to comment, especially in view of the positions and views discussed in the comments received, whether in favor or opposed to the proposed rule.

The Committee made its recommendations for change at a meeting held on September 5, 1997. These changes were unanimously recommended. As stated earlier, the proposed size rule appeared in the **Federal Register** on October 6, 1997, with a comment period ending on October 16, 1997. Two comments were received requesting that the original comment period for the proposed rule be reopened. They were of the view that more time was needed to review and analyze the proposed changes and also raised NAFTA concerns. The Department did extend the comment period to November 5, 1997, in accordance with NAFTA and to allow more time for review and evaluation.

Many commenters also requested a 60-day delay in the effective date of the import regulation change to allow

adequate time for all foreign producers and handlers of foreign tomatoes to comply with the minimum size increase. One commenter requested that Mexican growers be given until the beginning of the 1998–99 season to comply if the minimum sizes are changed. The Department has carefully reviewed this issue.

While both Florida tomato handlers and importers will need time to order new sizing belts and adjust their equipment to meet the increased minimum size requirements, we understand that many of the Florida handlers are or will be ready to comply with the increased minimum size requirement. However, we further understand that many of the packers of Mexican tomatoes may need more time to comply with the size requirement. Most of the opposition comments requested an additional 60 days after the publication of the final rule to comply with the minimum size requirement.

The Department has decided to provide sufficient time for the Florida and import tomato industries to comply with the minimum size requirements. While a 60-day period would not be reasonable for the domestic industry especially since the Florida shipping season is already underway, a 30-day effective date from publication of the final rule is reasonable and consistent with the provisions of the Act. A 30-day period will allow both the domestic and imported tomato industries sufficient time to purchase sizing belts and also ship commodity that is already picked and packed.

The Department has contacted the three belt manufacturers to determine belt availability and delivery schedules. Based on this information, the Department has decided to postpone the effective date of this action to give Florida tomato handlers and Mexican tomato packers additional time to obtain sizing belts. The effective date is February 4, 1998.

In view of all the foregoing, the Department has concluded that the changes as proposed will advance the interests of the Florida, other domestic, and foreign tomato industries and should be implemented.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, the comments received, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 966 and 980

Marketing agreements, Reporting and record keeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraphs (a)(1),(a)(2)(i) and the table immediately following it, (a)(2)(iii), and (d)(3) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) *Grade, size, container, and inspection requirements.* (1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes, except that all shipments of 6 × 7 size tomatoes must grade U.S. No. 2 or better. When not more than 15 percent of the tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than 1 percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) All tomatoes packed by a registered handler shall be at least 2 9/32 inches in diameter and shall be sized with proper equipment in one or more of the following ranges of diameters. Tomatoes shipped outside the regulated area shall also be sized with proper equipment in one or more of the following ranges of diameters. Measurements of diameters shall be in accordance with the methods prescribed in § 51.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size designation	Inches minimum diameter	Inches maximum diameter
6 X 7	2 9/32	2 19/32
6 X 6	2 17/32	2 27/32
5 X 6	2 25/32	

* * * * *

(iii) Only 6 × 7, 6 × 6, or 5 × 6, may be used to indicate the above listed size designations or containers of tomatoes.

* * * * *

(d) * * *

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) of this section which are resorted, regraded, and repacked by a handler who has been designated as a ''Certified Tomato Repacker'' by the committee are exempt from:

(i) The tomato grade classifications of paragraph (a)(1) of this section;

(ii) The size classifications of paragraph (a)(2) of this section, except that the tomatoes shall be at least 2–9/32 inches in diameter; and

(iii) The container weight requirements of paragraph (a)(3) of this section.

* * * * *

PART 980—VEGETABLES; IMPORT REGULATIONS

3. Section 980.212 is amended by revising paragraph (b)(1) to read as follows:

§ 980.212 Import regulations; tomatoes.

* * * * *

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2–9/32 inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots with a minimum diameter of 2 19/32 inches and larger shall be at least U.S. No. 3 grade. All other tomatoes shall be at least U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2 19/32 inches in diameter shall grade at least U.S. No. 2.

* * * * *

Dated: December 30, 1997.

Sharon Bomer Lauritsen,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–34231 Filed 12–31–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 96–040F]

RIN 0583–AC29

Use of Binders in ''Ham With Natural Juices'' Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of binders in ''Ham with Natural Juices'' products. FSIS currently permits the use of certain binders in cured pork products labeled ''Ham Water Added'' and ''Ham and Water Product-X% of Weight is Added Ingredients.'' FSIS is taking this action in response to a petition submitted by Hormel Foods Corporation, requesting the Agency to allow modified food starch (or ''food starch, modified'') to be used as a binder in ''Ham with Natural Juices'' products, in an amount not exceeding 2 percent of product formulation, to prevent purging of the brine solution, thereby retaining product moisture and enhancing texture.

EFFECTIVE DATE: March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Post, Director, Labeling and Compounds Review Division, Office of Policy, Program Development, and Evaluation; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1997, FSIS published a proposed rule in the **Federal Register** (62 FR 20130) to permit the use of modified food starch in ''Ham with Natural Juices'' products, in an amount not exceeding 2 percent of product formulation, to prevent purging of the brine solution. As noted in the proposal, FSIS does not permit the use of binders in ''Ham with Natural Juices'' products. FSIS has prohibited their use in ''Ham with Natural Juices'' products to prevent economic adulteration. FSIS believes that consumers consider ham products labeled ''Ham with Natural Juices'' to be premium products because they do not contain ''fillers,'' such as binders, and thus, are typically priced higher than the ''binders and water added'' ham products. Furthermore, in accordance with 9 CFR 319.104, ''Ham with Natural Juices'' products must meet a higher protein fat-free (PFF) value than other cured pork products, such as ''Ham Water Added'' and ''Ham and Water Product-X% of Weight is Added Ingredients,'' which reflects less added substances, including water.

The petitioner has developed a new process for producing its ''Ham with Natural Juices'' product in response to what they view as consumer demand for an improved ham product. The new process includes the use of modified food starch, which is currently prohibited in a ''Ham with Natural Juices'' product. According to the petitioner, its new ''Ham with Natural Juices'' process requires the use of modified food starch in order to enhance the characteristics of texture and, more importantly, moisture retention that consumers associate with the product.

Comments

FSIS received 9 comments during the public comment period that ended June 9, 1997. Six were from food companies and three were from trade associations. Six commenters expressed support for the proposal while three commenters opposed it.

Commenters in favor of the proposal generally stated that they believe it will allow the manufacture of products that meet the needs of consumers and enhance their satisfaction with ''Ham with Natural Juices'' products. They agreed with the petitioner that a ''Ham with Natural Juices'' product which contains a binder can be made to meet the PFF requirements for ''Ham with Natural Juices'' products without significantly changing the nutrient content of the product.

Commenters opposed to the proposal, however, felt strongly that, if implemented, it will compromise the quality of ''Ham with Natural Juices'' products and that the addition of modified food starch into the product will significantly change its expected characteristics. One commenter stated that the modified food starch will artificially retain moisture. As a result, the juices in the product will no longer be ''natural juices.'' The commenter pointed out that the product thus created is altered from the traditional product. Further, because the new brine binding technology as described in the proposal does not indicate whether the product is minimally processed or maintained in a natural state, the product does not meet the criteria for the term ''natural.'' In this commenter's opinion, the new product deviates from the current product identity expectation and does *not*, in fact, meet the consumer's expectations.

Another commenter expressed similar views. This commenter stated that, under natural conditions, a muscle will hold only a certain amount of moisture. The commenter further stated that, if this level is not acceptable to the petitioner and it feels it needs to alter the natural process by adding a binder, then the product should be labeled accordingly; however, the entire category of ''Ham with Natural Juices'' products should not be modified to permit the use of binders.

One commenter felt that the justification supplied for the addition of binders to ''Ham with Natural Juices'' products (to prevent purging of the brine solution) is weak. This commenter stated that properly processed ''Ham with Natural Juices'' products will have little, if any, purge.

The Final Rule

After reviewing the comments received, the Agency has concluded that ''Ham with Natural Juices'' remains an acceptable product identity. FSIS agrees with the petitioners and comments in favor of the proposal that ''Ham with Natural Juices'' products which contain a binder can, and must, meet the PFF requirements for ''Ham with Natural Juices'' products without significantly changing the nutrient content of the product. As indicated in the proposal, the petitioner has submitted technical data and other information demonstrating that the finished product does not fall below the minimum regulated PFF value with an acceptable yield loss, as illustrated by purged value differences over time. Because the product adheres to the minimum PFF value, even with the addition of modified food starch and other permitted binders, consumers will be receiving a ''Ham with Natural Juices'' product with essentially the same protein content and other nutrients as they do with a ''Ham with Natural Juices'' without binders. The concern of the commenters that the product no longer contains ''natural'' juices is diminished because of the adherence to the PFF value and the fact that no solutions are added that result in a cooked product that weighs more than its uncooked, cured green weight.

If a manufacturer decides to make a ''Ham with Natural Juices'' product that includes a binder, but which adheres to the PFF value for a ''Ham with Natural Juices'' product, it will have to be labeled accordingly. Modified food starch and the other permitted binders will have to appear in the ingredients statement to inform consumers of their presence. Because the PFF value for a ''Ham with Natural Juices'' product is

unchanged, FSIS will not require the binder name to appear in the name of the product; its appearance in the ingredients statement should be sufficient to inform consumers of its presence. For these reasons, FSIS is permitting the use of binders in ''Ham with Natural Juices'' products in an amount not exceeding 2 percent of product formulation, to prevent purging of the brine solution.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant and therefore has not been reviewed by OMB under Executive Order 12866.

The Administrator has made an initial determination that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule permits the use of any one of the approved binders listed in 9 CFR 318.7(c)(4) in ''Ham with Natural Juices'' products. Manufacturers opting to use the approved binders in ''Ham with Natural Juices'' products will incur labeling expenses in revising the ingredients statements of their labels to show the presence of the approved binders. Decisions by individual manufacturers whether to use any one of the approved binders in ''Ham with Natural Juices'' products will be based on their conclusion that the benefits outweigh the implementation costs.

Paperwork Requirements

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this final rule in accordance with the Paperwork Reduction Act. This rule requires manufacturers opting to use one of the approved binders in ''Ham with Natural Juices'' products to revise their product labels. The labels will not be submitted to FSIS for approval because they are generically approved in accordance with 9 CFR 317.5. This information collection is approved under OMB number 0583–0094.

List of Subjects in 9 CFR Part 319

Food grades and standards, Food labeling.

For the reasons set out in the preamble, 9 CFR part 319 is amended as follows:

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. The first sentence of paragraph (d) of section 319.104 is revised to read as follows:

§ 319.104 Cured pork products.

* * * * *

(d) The binders provided in § 318.7(c)(4) of this subchapter for use in cured pork products may be used singly in those cured pork products labeled as ''Ham Water Added,'' ''Ham and Water Product-X% of Weight is Added Ingredients,'' and ''Ham with Natural Juices.'' * * *

Done at Washington, DC, on December 22, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 98–064 Filed 1–2–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Prednisolone Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Lloyd, Inc. The supplemental NADA provides for an additional strength prednisolone tablet for dogs for use as an anti-inflammatory agent.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis M. Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1705.

SUPPLEMENTARY INFORMATION: Lloyd, Inc., 604 West Thomas Ave., Shenandoah, IA 51601, is the sponsor of NADA 140–921 that provides for use of prednisolone tablets for dogs as an anti-inflammatory agent. Lloyd, Inc., filed a supplemental NADA that provides for use of a 20 milligram (mg) prednisolone tablet in addition to the currently approved 5 mg tablet. The supplemental NADA is approved as of November 20, 1997, and the regulations are amended in § 520.1880(a) (21 CFR 520.1880(a)) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, the drug's name in § 520.1880(a) is amended to read ''prednisolone.''

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.1880 [Amended]

2. Section 520.1880 *Prednisolone tablets* is amended in paragraph (a) by removing ''5 milligrams prednisolene'' and adding in its place ''5 or 20 milligrams prednisolone.''

Dated: December 17, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–74 Filed 1–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. NHTSA–97–3280]

RIN 2127–AG21

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule announces that the changes that were made in an interim final rule to the agency's National Driver Register regulation to implement the Pilot Records Improvement Act of 1996, will remain in effect. The Pilot Records Improvement Act authorized air carriers to receive information from the National Driver Register (NDR) regarding the motor vehicle driving records of individuals who are seeking employment with an air carrier as a pilot. The interim final rule established the procedures for those pilots to request, and for those air carriers to receive, NDR information. In addition, this final rule further amends the regulation by extending until December 31, 1997, the date until which air carrier file checks can be submitted directly to the NDR for processing.

DATES: This final rule becomes effective on January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William Holden, Chief, Driver Register and Traffic Records Division, NTS–32, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366–4800 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, Office of Chief Counsel, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Background

The National Driver Register (NDR) is a central file of information on individuals whose licenses to operate a motor vehicle have been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-related violations, such as racing on the highways or driving while impaired by alcohol or other drugs.

As provided in the NDR Act of 1982, as amended, 49 U.S.C. 30301 *et seq.*, State chief driver licensing officials are authorized to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause in any other State. Because the NDR is a nationwide index, chief driver licensing officials need to submit only a single inquiry to obtain this information.

State chief driver licensing officials are also authorized under the NDR Act to request NDR information on behalf of other authorized NDR users for transportation safety purposes. The NDR Act authorizes the following transportation entities to receive NDR information for limited transportation safety purposes: the National Transportation Safety Board and the Federal Highway Administration for accident investigation purposes; employers and prospective employers of motor vehicle operators; the Federal Aviation Administration (FAA) regarding any individual who has received or applied for an airman's certificate; the Federal Railroad Administration (FRA) and employers or prospective employers of railroad locomotive operators; and the U.S. Coast Guard regarding any individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document. (The Coast Guard has been authorized in recent legislation, section 207 of Pub. L. 104–324, to request and receive NDR information also regarding any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve.) The Act also provides that individuals can learn whether information about themselves is on the NDR file and can receive any such information.

On October 9, 1996, the Pilot Records Improvement Act of 1996, Pub. L. 104–264, was enacted into law. Section 502 of that Act contained an amendment to the NDR Act of 1982, as amended, 49 U.S.C. 30305, authorizing air carriers to receive NDR information regarding individuals who are seeking employment as a pilot with an air carrier.

Interim Final Rule

On May 19, 1997, NHTSA published an interim final rule in the **Federal Register**, 62 FR 27193, amending the regulations that implement the National Driver Register Act. The interim final rule established the procedures for individuals who are seeking employment with an air carrier as a pilot to request, and for those air carriers to receive, NDR information.

In particular, the interim final rule explained that the procedures that air carriers would use to receive NDR information would be similar to those used by the employers of motor vehicle and railroad locomotive operators, the FAA, the FRA, and the U. S. Coast Guard in checking their applicants for employment or certification.

Air carriers may not initiate a request for NDR information. Rather, the individual seeking employment as a pilot must do so. To initiate a request, the individual must either complete, sign and submit a request for an NDR file search, or authorize the air carrier to request the NDR file search by completing and signing a written consent. The request or written consent must state that NDR records are being requested; state specifically who is authorized to receive the records; be dated and signed by the individual (the pilot); and state specifically that the authorization is valid for only one search of the NDR. It must also state specifically that the NDR identifies ''probable'' matches that require further inquiry for verification, that it is recommended (but not required) that the air carrier verify matches with the state of record, and state that individuals have the right to request NDR records regarding themselves to verify the accuracy of any information on the file pertaining to them.

The interim final rule explained that the Pilot Records Improvement Act provides that an individual, about whom a request has been made, is entitled to receive written notice about the request for records and of the individual's right to receive a copy of any records provided to the prospective employer. Accordingly, the request or written consent that the individual completes must also include this notice.

The interim final rule explained that the Pilot Records Improvement Act provides that requests for NDR information are to be submitted through State chief driver licensing officials. Such requests may be submitted through the chief driver licensing official of any State that participates in the NDR's Problem Driver Pointer System (PDPS). The interim rule indicated that, at the time of publication, 49 States (all States, except for the State of Oregon and the District of Columbia) were participating in the NDR PDPS. Since that time, Oregon has completed its transition to the PDPS.

Accordingly, all 50 States are now participating in the new NDR system.

The agency recognized in the interim final rule, however, that even participating States will require some time to develop procedures for processing these air carrier requests and to train their personnel in the new procedures. Accordingly, to provide the States with sufficient preparation time, the agency indicated in the interim final rule that the NDR would accept air carrier requests for NDR information directly for a limited period of time. The interim regulation provided that such requests may be submitted directly to the NDR for processing until September 30, 1997. After that date, the agency stated that air carriers would be required to submit requests through a State chief driver licensing official. The agency expressed in the interim final rule its belief that this period (until September 30, 1997) would provide sufficient planning time for participating States. As explained more fully later in this notice, the agency has since notified air carriers that this deadline was being extended.

The interim regulation provided that requests submitted through State chief driver licensing officials must follow procedures established by the State and requests submitted directly to the NDR must follow NDR procedures. For example, individuals must verify their identity in accordance with State procedures when they submit requests through a State. When individuals submit requests directly to the NDR, their requests must be notarized.

Under the interim regulation, if a request has been submitted directly to the NDR, the response will be provided from the NDR directly to the air carrier. If a request has been submitted through a State chief driver licensing official, the response will be provided from the NDR to the chief driver licensing official, who in turn will provide it to the air carrier.

The NDR response will indicate whether a match (probable identification) was found and, if so, the response will also identify the State in which the full substantive record can be found (the State of record). In the interim final rule, the agency encouraged air carriers that receive matches to obtain the substantive data relating to the match from the State of record to determine whether the person described in the record is in fact the subject individual before taking further action. The agency explained that air carriers would not receive information that was entered in the NDR if the information concerned a licensing action that took place more than five years before the date of the request, unless the information concerned a revocation or suspension still in effect on the date of the request.

The agency also explained in the interim final rule that the Pilot Records Improvement Act of 1996 provided that air carriers that maintain, or request and receive NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

For additional information regarding requests authorized under the Pilot Records Improvement Act of 1996, including sample forms, the agency cited FAA Advisory Circular 120–68.

Finally, the agency explained that part 1327 currently provides that a third party may be used by a person authorized to receive NDR information (an authorized user) to forward requests for NDR file searches (through a chief driver licensing official) to the NDR; however, the third party requester may not receive the NDR response since the third party is not authorized by the NDR Act to receive NDR information. The agency indicated that part 1327 provides that both the authorized user and the individual concerned must sign a written consent authorizing the third party to forward requests for NDR file searches (through a chief driver licensing official) to the NDR, and that this portion of part 1327 has not been changed by this interim final rule.

Request for Comments

NHTSA requested comments from interested persons on the procedures put in place by the interim final rule published in May. Comments were due no later than July 18, 1997. NHTSA stated in the interim final rule that all comments submitted in response to the rule would be considered and that the agency would publish a notice responding to the comments and, if appropriate, further amendments would be made to the provisions of part 1327.

Comments Received

NHTSA received submissions from five commenters in response to the interim final rule. The commenters included the National Air Transportation Association (NATA); the International Brotherhood of Teamsters (IBT), Airline Division; the American Association of Motor Vehicle Administrators (AAMVA), which represents Motor Vehicle Administrators in all the States; and the Division of Motor Vehicles in two individual States—New Jersey and Wisconsin.

The comments raised in these submissions and the agency's response thereto are discussed below:

1. Initiating an NDR File Check

Subparagraph 1327.6(f)(1) of the interim rule provided that, to initiate a file check of the NDR, the individual seeking employment as a pilot with an air carrier shall either complete, sign and submit a request directly to the chief driver licensing official of a participating State (in accordance with procedures established by the State) or authorize the air carrier with whom the individual is seeking employment to request a file check through the State (in accordance with State procedures), by signing a written consent.

In its comments regarding the interim rule, AAMVA asserted that, ''The rule requires individuals submitting a request for an NDR check to verify [their] identity in accordance with State procedures.'' AAMVA expressed concern that such a requirement could require a personal visit to a driver licensing office, and AAMVA recommended that individuals should be permitted instead to submit applications through the mail, perhaps with a notarized signature to permit verification of identity.

The interim regulation provided that NDR file checks must be submitted in accordance with procedures established by the States. It did not prescribe what those procedures must provide. The regulation did not require, for example, that States establish procedures that require individuals to visit a driver licensing office in person. In accordance with the interim NDR procedures, when individuals submitted requests directly to the NDR, these individuals were required to verify their identity using a notarized signature. The interim regulation did not prevent a State from establishing a similar procedure. These portions of the interim regulation have not been changed.

AAMVA recommended also in its comments that NHTSA include in its final rule a model form that individuals and air carriers can use when requesting the NDR check. The purpose of NHTSA's part 1327 regulation is to establish the conditions for States to participate in the NDR and to establish the conditions and procedures for others to use the NDR. As explained in the interim final rule, detailed information regarding the manner in which requests authorized under the Pilot Records Improvement Act of 1996 are to be submitted, was included in Federal Aviation Administration (FAA)

Advisory Circular 120–68. The Circular included sample forms. Individuals or air carriers that are interested in obtaining copies of these forms, are encouraged to contact a State Department of Motor Vehicles or the National Driver Register.

The National Air Transportation Association (NATA) suggested that, since ''NDR searches can be initiated by third parties,'' NHTSA should develop a standard form, similar to the form in FAA Advisory Circular 120–68, to facilitate the submission of third party requests. It is important to note that while third parties may be used by a person authorized to receive NDR information to forward requests for searches of the NDR, the third party requester may not receive the NDR response, since the third party is not itself authorized under the NDR Act to receive NDR information. Accordingly, it has been determined that a separate form need not be developed when requests are submitted by third parties.

2. File Checks Directly to the NDR

Subparagraph 1327.6(f)(2) of the interim rule provided that NDR file checks may be submitted directly to the NDR, rather than through a State chief driver licensing official, until September 30, 1997. After that date, according to the interim final rule, requests would have to be submitted through a participating State.

AAMVA and two individual Motor Vehicle Divisions (from the States of New Jersey and Wisconsin) all urged the agency to extend this deadline beyond September 1997. AAMVA stated that one of its members had indicated that it would not be able to make the necessary modifications until December 1, 1997. The New Jersey Division of Motor Vehicles commented that it would have difficulty making preparations to process these types of requests until January 1, 1998.

The agency recognized, in its interim final rule, that States would require some time to develop procedures for processing air carrier requests and to train their personnel in the new procedures. In September 1997, NHTSA determined that no State was ready yet to process these air carrier complaints. Accordingly, the agency made a determination that an extension of time was warranted and it notified NATA and air carriers that the NDR would continue to process air carrier requests through December 31, 1997. Other interested parties, including AAMVA and State Departments of Motor Vehicles, were also notified.

Although NHTSA encourages States to complete their preparations and to begin processing these requests prior to December 31, 1997, if possible, the regulation has been amended to provide for the submission of requests directly to the NDR until December 31, 1997.

NATA asserted that some air carriers are likely to send requests directly to the NDR after the deadline has passed, and recommended that NHTSA allow a transitional ''grace period'' during which time any request received by the Washington, D.C. offices will still be processed. The agency has decided not to adopt this recommendation. As stated in the interim final rule, the NDR will not process air carrier requests postmarked after the established deadline. Accordingly, any request received directly from an air carrier after December 31, 1997, will be returned to the air carrier for submission through a participating State.

NHTSA agrees, however, with NATA that steps should be taken to provide for a smooth transitional period. During the month of December, the agency reminded State Departments of Motor Vehicles (DMV's), air carriers and their membership organizations (AAMVA, NATA and the AIR Conference), of the changes that were due to take place to the submission procedures after December 31, 1997. The agency plans also to provide periodically to NATA, a list for distribution to air carriers, of the States that have become ready to accept and process air carrier requests.

AAMVA noted in its comments that when the NDR ceases to accept directly-submitted air carrier requests, the requests must all be processed by ''participating States.'' AAMVA asks how requests will be handled for individuals in jurisdictions that are not participating in PDPS and recommends that the rule address this issue.

The agency finds that this issue does not warrant that any adjustments be made to the rule. All 50 States participate in the NDR PDPS. The District of Columbia is the only jurisdiction that is not yet a ''participating State,'' and it is taking steps to complete its conversion process to PDPS. Thirty States are currently ready to process air carrier requests, and the other States are taking steps to become ready. More importantly, however, the interim regulation did not require that requests regarding an individual seeking employment as a pilot with an air carrier be submitted to any particular State chief driver licensing official (such as in the State in which the air carrier is incorporated or does business, or in which the individual resides or is licensed). Requests regarding such individuals can be submitted to a participating State. Accordingly, no changes have been made to the interim final rule as a result of this comment.

3. Request for an NDR File Check or Written Consent

Subparagraph 1327.6(f)(3) of the interim rule listed the information that must be included in requests for NDR file checks and written consent forms.

Section 502 of the Pilot Records Improvement Act of 1996 provides that, if records have been requested and provided about an individual, the individual who is the subject of the records is entitled to receive written notice of the request and of the individual's right to receive a copy of such records. AAMVA asserts in its comments that this requirement appears to be contradictory. Since an air carrier is not authorized to initiate an NDR check without prior authorization from the individual, AAMVA states that it seems a contradiction to say that the individual must be notified about any request made.

NHTSA agrees that the strict application of this statutory requirement to NDR requests would result in redundancy. For this reason, the agency's interim final rule provided (in section 23 CFR 1327.6(f)(3)(vi)) that any request for an NDR file check or written consent for such a check must specifically state that, ''pursuant to Section 502 of the Pilot Records Improvement Act of 1996, the request (or written consent) serves as notice of a request for NDR information concerning the individual's motor vehicle driving record and of the individual's right to receive a copy of such information.'' No additional notice must be provided. This portion of the regulation has not been changed.

4. Air Carriers Must Provide Reasonable Opportunity To Submit Written Comments

Subparagraph 1327.6(f)(4) of the interim rule stated that air carriers that maintain, or request and receive, NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

In its comment, the International Brotherhood of Teamsters (IBT), Airline Division, asked, ''What is reasonable opportunity?'' This term was used, but was not defined, in the Pilot Records Improvement Act of 1996.

Air carriers are reminded that NDR responses will indicate whether there has been ''probable,'' not ''positive''

identifications. The agency encourages air carriers that receive matches to obtain the substantive data relating to the match from the State of record to determine whether the person described in the record is in fact the subject individual before taking further action.

In fact, subparagraph 1327.6(f)(5) of the interim rule specifically stated that in the case of a match, ''the air carrier should obtain the substantive data relating to the record from the State of record and verify that the person named on the probable identification is in fact the individual concerned before using the information as a basis for any action against the individual.''

Providing an individual with a ''reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual'' necessarily would require that the individual has had sufficient time to obtain and review the record received by the air carrier, to determine whether there are any inaccuracies in the record and to prepare written comments should corrections be necessary. The agency does not have sufficient information upon which to establish a precise definition of the term ''reasonable opportunity'' in its regulation. Air carriers will need to determine what is reasonable based on the procedures they choose to put in place.

5. Applicability of Rule

The IBT notes that the interim final rule specifically refers to ''pilots'' only and not to any other aircraft crewmembers and sought confirmation that the interim final rule applies only to pilots.

The IBT is correct. The provisions in the interim final rule providing authority to air carriers to receive NDR information about individuals, apply only to individuals seeking employment as pilots.

6. General Comments

The IBT expressed opposition to the agency's interim final rule for three reasons. First, according to the IBT, there has been no justification provided demonstrating any measurable degree of improved safety for the rule. Second, the IBT believes that, while the rule may be well intended, it may in effect end pilot employment for a measurable number of current and future aviators. Third, the IBT asserts that the rule appears to be an unwarranted invasion of individual privacy. For these reasons, the IBT urges the agency to withdraw the interim final rule. The agency does not share the concerns that the IBT expresses in support of its opposition and, for the reasons cited below, it will not withdraw the rule.

With regard to the IBT's assertion that there has been no justification provided demonstrating a measurable degree of improved safety for the rule, similar objections were raised in 1990 when the FAA issued a final rule, implementing a legislative change that provided access to NDR information to the FAA. 55 FR 31300. In the preamble to that final rule, FAA acknowledged that there was a lack of statistical data to support the expanded access. FAA noted, however, ''that from 1978 to 1987, 6.0 percent of general aviation pilots killed in aviation accidents had a blood alcohol level of 0.04 percent or more. During that same period, 11,213 people died in general aviation accidents. If the rule were to result in the saving of a few lives, the potential benefits of the rule would exceed its potential cost.'' FAA stated further that it ''believes, in fact, that the rule will be significantly more effective than one percent so that potential benefits are likely to significantly exceed costs.''

A recent study (using data from the years 1986–1992) reported that, while the vast majority of airline pilots have never been convicted of a driving while intoxicated (DWI) offense, 1.96 percent have been convicted of such an offense. ''When it comes to air travel there's Safety in Numbers,'' Kathleen L. McFadden, *OR/MS Today,* August 1997, p.30. The study found also that ''the presence of even one DWI conviction was associated with a doubling of the risk of pilot-error accidents. The presence of two or more DWI's almost quadrupled that likelihood.'' The study noted that the cost of verifying DWI information with the NDR is ''quite inexpensive, only about $2.50 per pilot.'' Since the risks associated with having a DWI conviction are so high and the costs of identifying pilots who have been convicted of such an offense is so low, the agency believes the continued use of this information is indeed justified.

Secondly, the IBT asserts that the rule ''in effect may end pilot employment for a measurable number of current and future aviators.'' According to the IBT, some carriers have well planned and lengthy hiring processes that may permit implementation of the interim final rule with little impact. Certain smaller carriers, however, often expand their work force based on current need. The IBT concludes that, as a result of the interim final rule, carriers will hire applicants without any record and ''individuals with any type of driving record'' will be ''permanently bar[red]'' from employment.

The agency disagrees that this will necessarily be the outcome. Congress anticipated this concern and, therefore, required in the legislation that air carriers that receive NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual. Accordingly, it is likely that some carriers will extend their hiring processes, but individual pilots that are incorrectly identified in a probable match should not be barred from employment.

To illustrate its concern about ''ending [or preventing] employment,'' the IBT stated that, for example, an applicant could be turned down for a pilot position when the pilot was ''guilty of immature judgment when young that does not now reflect his mental and psychological state.'' Steps have been taken to prevent such an occurrence, as well. Air carriers will not receive information concerning licensing actions if the actions took place more than five years before the date of a request, unless the information concerned revocations or suspensions still in effect on the date of the request.

Finally, the IBT asserts that the rule will result in an unwarranted invasion of individual privacy. Again, NHTSA does not agree. The agency recognizes that the NDR does contain personal information about individuals, because it identifies individuals who have been convicted of certain serious traffic offenses or who have lost or been denied their driving privileges for cause. Moreover, Congress recognized that the NDR contains sensitive information. Therefore, precautions have been taken, in both the NDR Act and in its implementation by the agency, to protect the rights of individuals.

The NDR Act provides, in subsection 30305(c), that requests for NDR information shall be subject to the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The NDR is a Privacy Act system of records and, as such, is subject to all restrictions and security measures required under that Act. Moreover, additional restrictions and security measures are imposed by the NDR Act.

For example, notwithstanding the provisions of the Privacy Act (which permits access to information in a Privacy Act system of records under certain conditions), the NDR Act provides that NDR information will be relayed only to persons specifically

authorized to receive such information under the Act. These persons include States (for driver licensing, driver improvement and transportation safety purposes), employers of motor vehicle and locomotive operators, certain Federal agencies involved in transportation safety, the individuals about whom the records relate and, now, air carriers regarding individuals who are seeking employment with the air carrier as a pilot.

In addition, any request for NDR information by an employer, a prospective employer or any Federal agency, other than the National Transportation Safety Board or the Federal Highway Administration during the course of an investigation, must be initiated by the individual about whom records are being requested. Further, the NDR has nearly completed its conversion to the Problem Driver Pointer System (PDPS), a system under which the NDR will no longer contain substantive records about traffic offenses, but will instead contain only pointer records. The pointer records include identifying information about individuals that have been the subject of driver licensing actions and the name of the State that took the action. The actual substantive information about these offenses must be requested from the States of record.

Congress has determined, and the agency maintains, that the public interest that is served by using NDR information to promote transportation safety outweighs the privacy concerns that are raised by the limited disclosure that is made of NDR information to the select group of persons authorized to receive such information, under Federal law.

More importantly, the agency is not at liberty simply to withdraw the interim final rule. Federal legislation was enacted by Congress and signed into law by the President, requiring air carriers to check and authorizing them to receive information from the NDR regarding the motor vehicle driving records of individuals who are seeking employment with air carriers as pilots. This agency has an obligation to amend its regulations to implement this amendment to the NDR Act.

Accordingly, the interim final rule has not been withdrawn. The interim final rule, as amended herein, becomes effective upon publication of this final rule in the **Federal Register**.

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. The changes in this final rule merely reflect amendments contained in Public Law 104–264. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this rule is amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through the year 2000 under OMB No. 2127–0001.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1327

Highway safety, Intergovernmental relations, National Driver Register, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of May 19, 1997, 62 FR 27193, amending 23 CFR part 1327, is adopted as final, with the following changes:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for Part 1327 continues to read as follows:

Authority: Pub.L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

§ 1327.6 [Amended]

2. Section 1327.6 is amended by changing the date ''September 30, 1997'' in paragraph (f)(2) to ''December 31, 1997''.

Issued on: December 30, 1997.

John Womack,

Acting Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 97–34228 Filed 12–30–97; 1:56 pm]

BILLING CODE 4910–59–P

POSTAL SERVICE

39 CFR Part 111

Presort Requirements for Periodicals Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth revised Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement a sectional center facility (SCF) level of sack for Periodicals automation and nonautomation mailings of nonletter-size pieces. An SCF level of package will not be added. Only 5-digit and 3-digit packages will be permitted in the SCF sack. SCF sacks will be prepared after 5-digit and 3-digit sacks, and prior to preparing ADC sacks.

EFFECTIVE DATES: Optional preparation effective January 5, 1998. Preparation of

the SCF level of sack will become required with implementation of the R–97 rate case.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, (202) 268–6351.

SUPPLEMENTARY INFORMATION: As part of the streamlining of presort requirements under Classification Reform, the Postal Service eliminated SCF packages and sacks on July 1, 1996. Some Periodicals mailers have indicated that they believe the inability to sack mail to the SCF level has affected the service of their publications. Many mailers of Periodicals publications prepare 5-digit and 3-digit packages that contain fewer than six pieces, and 5-digit and 3-digit sacks that contain fewer than the required 24 pieces, to ensure good levels of service. This results in increased sack usage by mailers and increased sack handlings by the Postal Service. Re-instituting SCF sacks would allow Periodicals mailers to consolidate 5-digit and 3-digit packages, including ''skin'' packages containing fewer than six pieces, to the applicable processing plant for service reasons without having to prepare ''skin'' 3-digit sacks. Preparing SCF sacks also will provide the opportunity for the Postal Service to receive many 5-digit and 3-digit packages sorted to a finer level than an area distribution center (ADC) sack.

On September 15, 1997, the Postal Service published for public comment in the **Federal Register** (62 FR 48191–48192) a proposed rule to re-institute an SCF level of sack for Periodicals automation and nonautomation mailings of nonletter-size pieces. The proposed rule did not provide for preparing SCF packages. The rule proposed that preparing the SCF sack would be optional for the period beginning on the date the final rule was published and ending on the effective date of the preparation rules that will be placed into effect as a result of the Docket No. R97–1 rate case proceedings, and that when the preparation rules resulting from the rate case proceedings are implemented, preparing the SCF sack would become mandatory.

Comments were received from eight commenters, including three mailer associations. Three commenters supported the proposal to prepare only SCF sacks.

Four commenters requested that Periodicals mailers be permitted to prepare SCF packages as well as SCF sacks. Allowing an SCF package would add another level of piece distribution for many of the larger Postal Service plants. Mail processing plants can sort the pieces prepared in 3-digit packages to 5-digit ZIP Codes in one handling. Mail received in an SCF package would in most cases require two handlings to sort the mail to the 5-digit ZIP Code level. This extra handling equates to higher costs and possible delay in delivery of the pieces in these packages. The Postal Service believes that the SCF sack by itself should help improve service for Periodicals publications, since it will capture volumes from ADC sacks that currently are not being prepared in 3-digit ''skin'' sacks. Also, the SCF sack should help to reduce some of the workload for mailers that are preparing 3-digit ''skin'' sacks since they will be able to prepare a single SCF sack instead of multiple 3-digit sacks for those SCFs that process mail for more than one 3-digit ZIP Code area. Accordingly, the Postal Service has determined to implement only an SCF sack at this time, and not an SCF package. The Postal Service will monitor the effects of the SCF sack on service to determine if it will give future consideration to implementing an SCF package.

Two commenters stated that preparing the SCF sack should remain optional and not become a required level of presort with implementation of the rules for the Docket No. R97–1 rate case proceedings. One of these commenters did not provide a reason for this comment. The other commenter erroneously believed that the Postal Service planned to require preparing SCF sacks whenever there were 24 pieces for the SCF area, rather than whenever there were 24 pieces prepared in 5-digit and 3-digit packages remaining for the SCF area after preparing 5-digit and 3-digit sacks. This commenter was concerned that such a revised 24-piece rule would have required mailers to prepare 5-digit and 3-digit packages containing fewer than six pieces (''skin'' packages) in certain instances for inclusion in SCF sacks, which would have had an adverse affect on some bindery operations. The Postal Service is not revising the current process for preparing packages and sacks for Periodicals mail. Accordingly, mailers will still have the option of preparing 5-digit and 3-digit packages of fewer than six pieces for service reasons under the provisions of revised DMM M200.1.5 and M820.1.7 in this final rule, but will not be required to prepare such packages. The Postal Service believes a required SCF sack level will result in many 5-digit and 3-digit packages being prepared to the SCF level, rather than being placed in ADC sacks, which should improve service. Accordingly, the Postal Service has determined to make an SCF sack a required level of sack preparation on the effective date of the preparation rules that will be placed into effect as a result of the Docket No. R97–1 rate case proceedings, and to make the SCF sack optional prior to that time.

One commenter requested that, for consistency, an SCF level of sack also be added to Standard Mail (A) preparation requirements. The SCF level of sack is being added to Periodicals mail preparation standards to improve service for Periodicals mail and to mitigate some of the need for mailers to prepare skin sacks. Standard Mail (A) mailers are not permitted to prepare sacks that contain less than the minimum sacking quantity of 125 pieces or 15 pounds of mail. The Postal Service therefore has determined not to add an SCF level of sack to the preparation standards for Standard Mail (A) at this time.

Accordingly, the Postal Service has determined to reinstitute, for only nonletter-size Periodicals publications, an SCF sack that would be prepared after all required 5-digit and 3-digit sacks, and prior to preparing required ADC sacks. Effective immediately, preparing SCF sacks will be optional. Beginning on the effective date of the preparation rules that are placed in effect as a result of the Docket No. R97–1 rate case proceedings, preparing SCF sacks will become mandatory.

During the period in which preparation of the SCF sack is optional, mail in SCF sacks in nonautomation rate mailings will be eligible for the basic per-piece rates. For mail in SCF sacks in automation rate mailings, 5-digit and unique 3-digit packages of six or more pieces will qualify for the 3/5 automation rate, and nonunique 3-digit packages as well as 5-digit and 3-digit packages of fewer than six pieces will qualify for the basic automation per-piece rates.

For the interim period when preparing SCF sacks is optional, mailers who choose to prepare SCF sacks must prepare them for each SCF in the mailing for which there are 24 or more pieces of mail prepared in 5-digit and/or 3-digit packages remaining after preparing 5-digit and 3-digit sacks. At the mailer's option, SCF sacks also may be prepared that contain fewer pieces (a minimum of one package).

The standard to prepare required origin/optional entry 3-digit sacks will not apply to Periodicals publications for which SCF sacks are prepared. Instead, mailers opting to prepare SCF sacks must prepare required origin/optional entry SCF sacks. At the time SCF sacks become a required level of sortation, the standard to prepare required origin/

optional entry 3-digit sacks will be deleted and preparation of required origin/optional entry SCF sacks will become the new standard.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 Terms and Conditions

* * * * *

1.2 Presort Levels

[Redesignate current 1.2j through 1.2m as 1.2k through 1.2n respectively; insert new 1.2j to read as follows:]

j. Origin/optional entry SCF: the separation includes packages for one or more 3-digit areas served by the same sectional center facility (SCF) (see L002, Column C or L005) in whose service area the mail is verified/entered. Subject to standard, this separation is required regardless of the volume of mail.

* * * * *

1.3 Preparation Instructions

[Redesignate current 1.3j through 1.3p as 1.3k through 1.3q respectively; insert new 1.3j to read as follows:]

j. An origin/optional entry SCF sack contains all 5-digit and 3-digit packages (regardless of quantity) for the SCF in whose service area the mail is verified. At the mailer's option, such a sack may be prepared for the SCF area of each entry post office. This presort level applies only to nonletter-size Periodicals prepared in sacks.

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M030 Containers

* * * * *

M032 Barcoded Labels

1.0 Basic Standards—Tray and Sack Labels

* * * * *

1.3 Content Line (Line 2)

[Amend Exhibit 1.3a by inserting the following between 3-digit sacks and ADC sacks for PER Flats—Automation to read as follows:]

Class and mailing	Human readable	
	CIN	Content line
* * *	*	*
PER Flats—Automation		
* * *	*	*
SCF sacks	377	PER FLTS SCF BC
* * *	*	*

[Amend Exhibit 1.3a by inserting the following between 3-digit sacks and ADC sacks for PER Flats—3/5 and Basic to read as follows:]

PER Flats—3/5 and Basic

Class and mailing	Human readable	
	CIN	Content line
* * *	*	*
SCF sacks	384	PER FLTS SCF NON BC
* * *	*	*

[Amend Exhibit 1.3a by inserting the following between 3-digit sacks and ADC sacks for NEWS Flats—Automation to read as follows:]

Class and mailing	Human readable	
	CIN	Content line
EWS Flats—Automation		
* * *	*	*
SCF sacks	477	NEWS FLTS SCF BC
* * *	*	*

[Amend Exhibit 1.3a by inserting the following between 3-digit sacks and ADC sacks for NEWS Flats—3/5 and Basic to read as follows:]

NEWS Flats—3/5 and Basic

Class and mailing	Human readable	
	CIN	Content line
* * *	*	*
SCF sacks	484	NEWS FLTS SCF NON BC
* * *	*	*

M200 Periodicals (Nonautomation)

1.0 BASIC STANDARDS

* * * * *

1.5 Low-Volume Packages and Sacks

[Amend 1.5 to read as follows:] size Periodicals may be prepared in packages containing fewer than six pieces, and in sacks containing as few as one such package, when the publisher determines that such preparation improves service. These low-volume packages may be placed on 5-digit, 3-digit, and SCF pallets under M045.

[Add new 1.6 to read as follows:]

1.6 Optional SCF Sack

Mailers of nonletter-size Periodicals have the option to prepare an SCF sack level. If mailers choose to prepare SCF sacks, they must prepare them for all SCF destinations in the mailing for which there are 24 or more pieces prepared in 5-digit or 3-digit packages, under 3.1. When SCF sacks are prepared, required origin/optional entry 3-digit sacks must not be prepared and required origin/optional entry SCF sacks must be prepared.

* * * * *

3.0 Sack Preparation (Flat-Size Pieces and Irregular Parcels)

3.1 Sack Preparation

[Redesignate current 3.1e and 3.1f as 3.1f and 3.1g respectively; insert new 3.1e to read as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

e. Optional SCF: required at 24 pieces (no minimum for required origin/optional entry SCF), optional with one six-piece package minimum except under 1.5; for Line 1, use L002, Column C.

* * * * *

M820 Flat-Size Mail

1.0 Basic Standards

* * * * *

1.7 Exception—Periodicals

[Amend 1.7 to read as follows:]

As a general exception to 3.1a, 3.1b, and 3.2a through 3.2c, Periodicals may be prepared in packages containing fewer than six pieces, and in sacks containing as few as one such package, when the publisher determines that such preparation improves service. These low-volume packages may be placed on 5-digit, 3-digit, and SCF pallets under M045.

[Add new 1.8 to read as follows:]

1.8 Optional SCF Sack—Periodicals

Mailers of Periodicals have the option to prepare an SCF sack level. If mailers choose to prepare SCF sacks, they must prepare them for all SCF destinations in the mailing for which there are 24 or

more pieces prepared in 5-digit or 3-digit packages, under 3.2. When SCF sacks are prepared, required origin/optional entry 3-digit sacks must not be prepared and required origin/optional entry SCF sacks must be prepared.

* * * * *

3.0 Periodicals

* * * * *

3.2 Sack Preparation

[Redesignate current 3.2c and 3.2d as 3.2d and 3.2e respectively; add new 3.2c to read as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

c. Optional SCF: required at 24 pieces (no minimum for required origin/optional entry SCF), optional with one six-piece package minimum except under 1.7; for Line 1, use L002, Column C.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Neva R. Watson,

Alternative Liaison.

[FR Doc. 98–8 Filed 1–2–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300596; FRL–5762–4]

RIN 2070–AB78

Dicloran; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of dicloran, 2,6-dichloro-4-nitroaniline in or on peanuts. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on peanuts. This regulation establishes a maximum permissible level for residues of dicloran in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1999.

DATES: This regulation is effective January 5, 1998. Objections and requests for hearings must be received by EPA on or before March 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300596], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300596], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300596]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9359, e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide, dicloran, 2,6-dichloro-4-nitroaniline, in or on peanuts at 3 part per million (ppm) for peanuts and 6 ppm for peanut oil. This tolerance will expire and is revoked on October 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under

an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for dicloran on peanuts and FFDCA Tolerances

The Oklahoma Department of Agriculture requested a specific exemption for the use of dicloran on peanuts due to the high rainfall and corresponding high fungal disease incidence in Oklahoma this year. After having reviewed the submission, EPA has authorized under FIFRA section 18 the use of dicloran on peanuts for control of *Sclerotinia* blight in Oklahoma.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of dicloran in or on peanuts. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on October 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on peanuts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether dicloran meets EPA's registration requirements for use on peanuts or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of dicloran by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Oklahoma to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for dicloran, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and

will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants less than 1 year old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of dicloran and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of 2,6-dichloro-4-nitroaniline on peanuts at 3 ppm for peanuts and 6 ppm for peanut oil. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dicloran are discussed below.

1. *Acute toxicity*. No acute dietary toxicity (risk) endpoints have been identified at this time for Dicloran (dichloronitroaniline; DCNA). Therefore, this assessment is not required.

2. *Short - and intermediate - term toxicity.* No short- or intermediate-term toxicity end points were found to be appropriate by the Agency's Ad Hoc Toxcity Endpoint Selection Committee (AHTESC).

3. *Chronic toxicity*. For dietary risk, EPA has established the Reference dose (RfD) for dicloran at 0.025 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 2–year feeding study in dogs with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. The lowest observed effect level (LOEL) is based on increased liver weights and histological changes at 75.0 mg/kg/day. The Agency also determined that a chronic toxicity endpoint and risk assessment for dicloran is not required since the use of dicloran on a short-term basis for this emergency exemption does not present a chronic occupational exposure scenario.

4. *Carcinogenicity*. Dicloran has not been classified by the Cancer Peer Review Committee. However, no cancer risks have been identified in either the mouse or the rat study by the Agency's Ad Hoc Toxicity Endpoint Selection Committee.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.200) for the residues of 2,6-dichloro-4-nitroaniline, in or on a variety of raw agricultural commodities at levels ranging from 0.1 ppm in cottonseed to 20 ppm in several fruits. Risk assessments were conducted by EPA to assess dietary exposures and risks from dicloran as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. After reviewing data available on the acute toxicity of dicloran, the Agency concluded that no such toxicological endpoint of concern was demonstrated. The Agency further concluded that a risk assessment for this endpoint was not necessary.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, the Agency has made

conservative assumptions -- 100% of the peanuts treated. For most other commodities having Dicloran tolerances, anticipated residues from monitoring data were utilized. For several crops where it appears that no registrations exist, tolerance levels were used even though zero may have been more appropriate. Even though monitoring data were used for a number of commodities, the risk assessment still results in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, the Agency is taking into account this conservative exposure assessment.

The existing Dicloran tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

Subgroups	Percentage of RFD
U.S. Population (48 States)	2.6
Nursing Infants (< 1 year old)	7.1
Non-Nursing Infants (< 1 year old)	11.3
Children (1–6 years old)	5.6
Children (7–12 years old)	3.7

2. *From drinking water.* Based on information in the Agency's files, Dicloran is persistent and somewhat mobile. There are no established Maximum Contaminant Levels for residues of Dicloran in drinking water. No health advisory levels for Dicloran in drinking water have been established.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfDs or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all well below the level that would cause Dicloran to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with Dicloran in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Dicloran currently has no registered uses on residential non-food sites. Therefore, there is no residential non-food exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

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

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The Agency's Ad Hoc Toxicity Selection Committee (TESC) did not identify an acute dietary end point for dicloran and determined that this risk assessment is not appropriate.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to dicloran from food will utilize 2.6% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants which is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dicloran in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to dicloran residues.

3. *Short- and intermediate-term risk.* The ad hoc TESC determined that there are no short term or intermediate term toxicological endpoints. Additionally, the ad hoc TESC has determined that there are no non-dietary, non-occupational, i.e. residential uses registered for Dicloran. Therefore no short term or intermediate term aggregate exposure assessments were conducted.

D. Aggregate Cancer Risk for U.S. Population

The Cancer Peer Review Committee has not reviewed or classified Dicloran

as to its cancer potential. However, no carcinogenicity potential has been identified in either the long term mouse or rat studies.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of dicloran, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOEL was 100 mg/kg/day, based on CNS depression at the LOEL of 200 mg/kg/day. The developmental (fetal) NOEL was 100 mg/kg/day, based on decreased body weight, skeletal variations and visceral variations at the LOEL of 200 mg/kg/day. In the developmental (feeding) toxicity study in rabbits, the maternal (systemic) NOEL was 1,000 ppm which was equivalent to 30 mg/kg/day, the highest dose tested. The developmental (pup) NOEL was 30 mg/kg/day. The reproductive (pup) NOEL was 30 mg/kg/day, the highest dose tested.

iii. *Reproductive toxicity study.* In the 3 generation (single dose) reproductive toxicity study in rats, the maternal (systemic) NOEL was 100 ppm which was equivalent to 5.0 mg/kg/day. The developmental (pup) NOEL was 5.0 mg/kg/day. The reproductive (pup) NOEL was 5.0 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for DCNA is not complete with respect to the current data requirements. However, there are no pre- or post-natal toxicity concerns for infants and children, based on the results of the available rat and rabbit developmental toxicity studies and the three generation rat reproductive study. The NOEL for maternal and developmental toxicity are at the same dose level in rat and rabbit. This indicates no extra pre-natal sensitivity for infants and children. The request for a rabbit gavage study to replace the dietary developmental study does not suggest any extra pre-natal sensitivity is present in the current study but is required to fulfill current guideline requirements. The current three generation rat reproduction study demonstrated no additional pre- or post-natal extra sensitivity for infants and children since the maternal reproductive and developmental NOELs occurred at the same dose levels. The replacement study is being requested to fulfill current guideline requirements (e.g. for the reproduction study, a study testing two generations and three doses is being conducted). Based on the developmental and reproductive studies discussed above for DCNA there does not appear to be an extra sensitivity for pre- and post-natal effects.

v. *Conclusion.* Based on the above EPA concludes that the available data support use of the standard hundredfold margin of exposure/uncertainty factor and that an additional factor/margin of safety is not needed to protect infants and children.

2. *Acute risk.* The ad hoc TESC did not identify an acute dietary end point for DCNA and determined that this risk assessment is not required. Therefore no aggregate acute risk assessment was performed.

The Agency acknowledges the potential for exposure to Dicloran in drinking water, but does not expect that exposure would result in aggregate MOEs (food plus water) that would exceed the Agency's level of concern for acute dietary exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to dicloran from food will utilize from 11.3% for non-nursing infants less than 1 year old, to 5.6% for children 1–6 years old of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dicloran in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dicloran residues.

4. *Short- or intermediate-term risk.* The Agency's ad hoc TESC determined that there are no short term or intermediate term toxicological endpoints. Additionally, the ad hoc TESC has determined that there are no non-dietary, non-occupational, i.e. residential, uses registered for Dicloran. Therefore no short term or intermediate term aggregate exposure assessments were conducted.

V. Other Considerations

A. Metabolism In Plants and Animals

For this section 18 request only, the nature of the residue in plants is adequately understood. The residue of concern is the parent compound 2,6-dichloro-4-nitroanaline as specified in 40 CFR 180.200.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available in PAM II to enforce the tolerance expression.

C. Magnitude of Residues

Residues of Dicloran are not expected to exceed 3.0 ppm in/on peanuts or 6.0 ppm in its processed byproducts peanuts, oil as a result of this section 18 use. A time-limited tolerance should be established at this level. Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

D. International Residue Limits

There are no CODEX, Canadian or Mexican limits for Dicloran on peanuts.

E. Rotational Crop Restrictions.

The planting of spinach is restricted as a follow-up crop to onions, garlic and shallots, and the planting of tomatoes is restricted as a follow-up crop to sweet potatoes.

VI. Conclusion

Therefore, the tolerance is established for residues of 2,6-dichloro-4-

nitroaniline in peanuts at 3 ppm for peanuts and 6 ppm for peanut oil.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300596] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This action finalizes a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 17, 1997.

James Jones

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.200, by revising the section heading, designating the existing text as paragraph (a), adding a paragraph heading, designating the text following the heading as paragraph (a)(1),

designating the text following the table as paragraph (a)(2), and by adding paragraph (b), and by adding and reserving paragraphs (c) and (d) with headings to read as follows:

§ 180.200 Dicloran; tolerances for residues.

(a) *General.* (1) * * *

(2) * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the fungicide, dicloran, 2,6-dichloro-4-nitroaniline in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Peanut, oil	6.0	10/31/99
Peanuts ...	3.0	10/31/99

(c) *Tolerances with regional registrations.* Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–73 Filed 1–2–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[FCC 97–419]

Procedure for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Rules of agency procedure and practice.

SUMMARY: This action establishes the procedures the Commission will use in implementing Public Law 105–125 (enacted December 1, 1997), which added subsection (e)(6) to section 214(e) of the Communications Act of 1934, as amended (the Act). New section 214(e)(6) provides for the designation of eligible telecommunications carriers by the Federal Communications Commission (Commission) in certain limited circumstances for common carriers that are not subject to the jurisdiction of a state commission.

DATES: Effective January 5, 1998.

ADDRESSES: One original and five copies of all petitions and comments must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies also should be sent to Sheryl Todd, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, 2100 M Street, N.W., 8th Floor, Washington, D.C. 20554. One copy must be sent to the Commission's contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20037, (202) 857–3800. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554. See the **SUPPLEMENTARY INFORMATION** section for electronic filing addresses.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418–1500, or Cheryl Leanza, Common Carrier Bureau, (202) 418–7400. For additional information concerning the information collections contained in this Public Notice contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This information collection has been approved by OMB 3060–0810, expiration date of May 31, 1998. This Public Notice establishes the procedures the Commission will use in implementing Public Law 105–125 (enacted December 1, 1997), which added subsection (e)(6) to section 214(e) of the Communications Act of 1934, as amended (the Act). Public Law 105–125, 111 Stat. 2540 (1997). Section 214(e)(1) of the Act provides that common carriers designated as ''eligible telecommunications carriers'' are eligible to receive universal service support in accordance with section 254 of the Act. 47 U.S.C. secs. 214(e)(1) and 254; *see* Federal-State Joint Board on Universal Service, CC Docket No. 96–45, *Report and Order,* 62 FR 32862, June 17, 1997 (*Universal Service Order*). Section 214(e)(2) of the Act provides that state commissions shall designate eligible telecommunications carriers. *See* 47 U.S.C. sec. 214(e)(2). For purposes of the designation requirement, ''state commission'' is defined in section 3(47) of the Act as a ''commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.'' 47 U.S.C. sec. 3(47). Until its recent amendment, section 214(e) did not address how common carriers not subject to the jurisdiction of a state commission would be designated. New section 214(e)(6) provides for the designation of eligible telecommunications carriers by the Federal Communications Commission (Commission) in certain limited circumstances for common carriers that are not subject to the jurisdiction of a state commission. *See* 143 Cong. Rec. S12,568 (daily ed. Nov. 13, 1997) (stating that the amendment was intended to correct an ''oversight'' in the statute regarding certain carriers, such as tribally owned common carriers, that may fall outside the jurisdiction of a state commission and that the amendment ''does nothing to alter the existing jurisdiction that state commissions have over local exchange carriers or providers of commercial mobile radio services.''). We set forth herein the procedures that carriers must use in requesting such designation from the Commission. Any carrier that is able to be or has already been designated as an eligible telecommunications carrier by a state commission is not required to receive such designation from the Commission. We delegate to the Chief, Common Carrier Bureau, the authority to designate carriers as eligible telecommunications carriers, pursuant to section 214(e)(6).

Carriers seeking designation from the Commission pursuant to section 214(e)(6) must demonstrate that they fulfill the requirements of section 214(e)(1). Accordingly, carriers seeking designation from the Commission are instructed to file a petition that sets forth the following information:

1. A certification and brief statement of supporting facts demonstrating that the petitioner is ''not subject to the jurisdiction of a state commission''.

2. A certification that the petitioner provides all services designated for support by the Commission pursuant to section 254(c). To meet the requirements of section 214(e)(1) of the Act, a carrier must offer all of the services designated for support by the Commission pursuant to section 254(c). 47 U.S.C. sec. 214(e)(1)(A). The Commission has designated the following services for support: single-party service; voice grade access to the public switched network; Dual Tone Multifrequency (DTMF) signalling or its functional equivalent; access to emergency services including, in some circumstances, access to 911 and Enhanced 911 (E911); access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers. *See Universal Service Order,* 62 FR 32862, June 17, 1997.

a. If the petitioner seeks an extension of time in order to implement the Commission's requirements to offer single-party service, access to E911, or toll-limitation services for

Lifeline consumers, the petitioner must demonstrate that it has met the criteria set forth by the Commission to receive such an extension of time. *See Universal Service Order,* 62 FR 32862, June 17, 1997.

b. If the petitioner seeks a waiver of the prohibition against disconnecting Lifeline service for non-payment of toll charges, the petitioner must demonstrate that it meets the requirements of § 54.401(b)(1) of the Commission's rules; Section 54.401(b)(1) of the Commission's rules provides that a carrier may receive a waiver of the no-disconnect rule if it demonstrates that: (1) it would incur substantial costs in complying with this requirement; (2) it offers toll limitation to its qualifying low-income consumers without charge; and (3) telephone subscribership among low-income consumers in the carrier's service area is greater than or equal to the national subscribership rate for low-income consumers. 47 CFR 54.401(b)(i)–(iii).

3. A certification that the petitioner offers the supported services ''either using its own facilities or a combination of its own facilities and resale of another carrier's services''. 47 U.S.C. sec. 214(e)(1)(A).

4. A description of how the petitioner ''advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution''; 47 U.S.C. sec. 214(e)(1)(B).

5. If the petitioner meets the definition of a ''rural telephone company'' pursuant to section 3(37) of the Act, the petitioner must identify its study area. *See* 47 U.S.C. sec. 214(e)(5) (defining the service area of rural telephone companies as ''such company's 'study area' . . . ''); 47 U.S.C. sec. 153(37). If the petitioner is not a rural telephone company, the petitioner must include a detailed description of the geographic service area that it requests the Commission designate.

In addition, in order to be eligible for any new, modified or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, all petitioners must certify that neither the petitioner nor any party to the application is subject to a denial of federal benefits, including Commission benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 47 CFR 1.2002(a); 21 U.S.C. sec. 862. We note that this provision does not apply to, *inter alia*, ''Federal, State, or local governmental entities or subdivisions thereof.'' 47 CFR 1.2002(c). This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules. Section 1.2002(b) provides that a certification pursuant to that section shall include: ''(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5 percent or more of the outstanding stock or shares (voting and/or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5 percent or more interest in the partnership.'' 47 CFR 1.2002(b).

Pursuant to section 254(e), after the date on which the Commission's regulations implementing section 254 take effect, ''only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.'' The Commission's regulations implementing section 254 will take effect January 1, 1998. Accordingly, starting January 1, 1998, carriers must be designated as eligible telecommunications carriers to receive support under federal universal service support mechanisms. Under certain circumstances, a petitioner that is designated as an eligible telecommunications carrier by the Commission after January 1, 1998, may seek universal service support retroactive to January 1, 1998. Such a petitioner must: (1) Include a request for retroactive support in its petition; (2) demonstrate that, as of January 1, 1998, it met the requirements set forth in section 214(e)(1); and (3) set forth the steps it has taken to receive designation as an eligible telecommunications carrier in a timely manner. Carriers that do not seek retroactive support, or do not qualify for retroactive support under the criteria set forth in this paragraph, shall be eligible to receive compensation after the date of designation by the Commission.

These procedures will be effective upon publication in the **Federal Register**. We conclude that compliance with the notice and public comment provisions of the Administrative Procedure Act (APA) is not required with respect to the procedures adopted in this Public Notice because this Public Notice establishes rules of agency procedure and practice. 5 U.S.C. sec. 553(b)(3)(A) (stating that notice and comment requirements are inapplicable to rules for ''agency organization, procedure, or practice''). To the extent that these rules may be deemed to be substantive rather than procedural, we find that good cause exists to adopt these requirements without notice and comment because compliance with the notice and public comment would be impracticable and contrary to the public interest. 5 U.S.C. sec. 553(b)(3)(B) (stating that notice and comment requirements are inapplicable ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest''). As noted above, section 214(e)(6) became law on December 1, 1997, only one month before our rules implementing section 254 take effect. Our prompt action establishing these procedures is designed to ensure that eligible telecommunications carriers receive universal service support without interruption (or with minimal interruption). *See* 47 U.S.C. sec. 254(e). This is consistent with Congress' desire to correct the ''oversight'' in section 214(e) and to provide universal service support for those carriers not subject to the jurisdiction of a state commission. This good cause finding also supports making these rules effective upon publication in the **Federal Register**. 5 U.S.C. sec. 553(d).

Pleading Cycle. Upon receipt of a petition filed pursuant to section 214(e)(6), the Commission will issue a public notice establishing a pleading cycle and assigning a Bureau file number to the petition. Oppositions or comments regarding the petition will be due approximately 10 days after the Commission releases the public notice. Reply comments will be due approximately 7 days after comments are due.

Filing Requirements. All filings should reference: Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act, FCC 97–419. Comments and reply comments should reference the name of the petitioner filing a petition for designation and the Bureau file number of the petition. All interested parties should include the name of the filing party and the date of the filing on each page of their petitions and comments. Parties should include a table of contents in all documents regardless of length and should indicate whether they are filing an electronic copy of a submission via the Internet or via diskette. Pleadings must comply with Commission rules. *See, e.g.,* 47 CFR 1.49, 1.415, 1.419.

Parties may also file informal comments or an exact copy of a petition or formal comments electronically via the Internet at: <http://gullfoss.fcc.gov/cgi-bin/websql/cgi-bin/comment/comment.hts>. Only one copy of an electronic submission must be submitted. A party must note whether an electronic submission is an exact copy of a petition or formal comments on the subject line and should note in its paper submission that an electronic copy of its comments is being submitted via the Internet. A commenter also must include its full name and Postal Service mailing address in its submission. Parties not submitting an exact copy of their formal comments via the Internet

are also asked to submit their petitions and comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd of the Universal Service Branch, 2100 M Street, N.W., Room 8606, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (petition or comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. Electronic submissions are in addition to and not a substitute for the formal filing requirements addressed above.

Ex parte contact. For the purposes of ex parte contact, each petition submitted pursuant to section 214(e)(6) will be treated as initiating a permit-but-disclose proceeding under the Commission's rules. *See* 47 CFR 1.1206.

Paperwork Reduction Act Requirement. In the Report and Order on Universal Service (released May 8, 1997), the Commission adopted rules that are designed to implement the universal service provision of section 254 of the Act. In accord with the Paperwork Reduction Act, we previously received OMB approval for the information collections that carriers must comply with in order to apply to their state commissions for designation as carriers eligible to receive universal support pursuant to section 254. Section 214(e) directs the Commission to designate telecommunications carriers that meet specified requirements as eligible in situations where the telecommunications carrier is not subject to the jurisdiction of a state commission. To implement this new statute, we will require telecommunications carriers that seek to be classified as eligible by the Commission and are not subject to the jurisdiction of a state commission to send to the Commission information demonstrating that they meet the eligibility criteria set forth in the Telecommunications Act of 1996 and described in the Commission's rules. This information must be submitted according to the procedural requirements described above. These reporting requirements are necessary to verify that particular carriers are eligible to receive universal service support.

We have estimated that each response to this collection of information will take, on average, 58 hours for respondants filing petitions and 20 hours for respondents filing written comments. Our estimate includes the time to comply with the statutory requirements, read this Public Notice, review existing records, gather and maintain required data, and complete and review the response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD–PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060–0793). We will also accept your comments on the burden estimate via the Internet if you send them to jboley@fcc.gov. Please Do Not Send petitions requesting Commission designation as an eligible telecommunications carrier to this e-mail address.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0810, which expires on May 31, 1998.

This notice is required by the Privacy Act of 1974, Public Law 93–579, December 31, 1974, 5 U.S.C. section 552a(e)(3) and the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–138 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–197; RM–9154]

Radio Broadcasting Services; Goldsmith, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wild West Broadcasting Company, Inc., allots Channel 234A to Goldsmith, TX, as the community's first local aural transmission service. *See* 62 FR 47786, August 11, 1997. Channel 234A can be allotted to Goldsmith in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) southwest. The coordinates for Channel 234A at Goldsmith are 31–54–26 NL and 102–42–14 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 2, 1998. A filing window for Channel 234A at Goldsmith, TX, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No.97–197, adopted December 10, 1997, and released December 19, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Goldsmith, Channel 234A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–37 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–173; RM–9134]

Radio Broadcasting Services; Lexington, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: This action dismisses a petition for rule making filed by Lee County Broadcasters requesting the allotment of Channel 286A to Lexington, TX. *See* 62 FR 43302, August 13, 1997. Petitioner requested withdrawal of its petition for rule making. It is Commission policy to refrain from allotting a channel absent an expression of interest.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–173, adopted December 10, 1997 and released December 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–36 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–22; RM–8953, RM–9075]

Radio Broadcasting Services; Waelder and Yorktown, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies the petition for rule making filed by Waelder Broadcasting Company proposing the allotment of Channel 242A to Waelder, Texas, as the community's first local FM service. *See* 62 FR 04228, January 29, 1997. In response to a counterproposal filed by Gonzales Communications, the Commission allots Channel 242A to Yorktown, Texas (RM–9075). Channel 242A can be allotted to Yorktown in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.4 miles) northeast in order to avoid short-spacing conflicts with the licensed operation of Station KSJL–FM, Channel 241C1, San Antonio, TX, and with the construction permit for Station KHMC–FM, Channel 240C3, Goliad, Texas. The coordinates for Channel 242A at Yorktown are 29–02–30 NL and 97–26–30 WL. Since Yorktown is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 2, 1998. A filing window for Channel 242A at Yorktown, TX, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–22, adopted December 10, 1997, and released December 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Yorktown, Channel 242A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–035 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–120; RM–9054]

Radio Broadcasting Services; Gideon, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 280A to Gideon, Missouri, as that community's first local service in response to a petition filed by Gideon Radio Company. *See* 62–FR 22901, April 28, 1997. The coordinates for Channel 280A at Gideon are 36–32–10 and 89–49–18. There is a site restriction 12.9 kilometers (8 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 280A at Gideon, Missouri, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATE: Effective January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No.97–120, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Gideon, Channel 280A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–140 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 63, No. 2
Monday, January 5, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–69]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Pratt & Whitney JT9D series turbofan engines, that would have required initial and repetitive eddy current inspections (ECI) of 14th and 15th stage high pressure compressor (HPC) disks for cracks, and removal of cracked disks and replacement with serviceable parts. That proposal was prompted by reports of disk bore cracks found during shop inspections on both the 14th and 15th stage HPC disks. This action revises the proposed rule by extending the repetitive inspection interval and changing the definition of a shop visit. The actions specified by this proposed AD are intended to prevent 14th and 15th stage HPC disk rupture, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by March 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–69, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130; 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 95–ANE–69.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–69, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Pratt & Whitney (PW) Model JT9D–59A, –70A, –7Q, –7Q3, and JT9D–7R4 series turbofan engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 6, 1996 (61 FR 20192). That NPRM would have required initial and repetitive eddy current inspections (ECI) of 14th and 15th high pressure compressor (HPC) disks for cracks in accordance with Non-Destructive Inspection Procedure No. 858 (NDIP–858), dated November 7, 1995, attached to PW Alert Service Bulletin (ASB) No. JT9D–7R4–A72–524, dated December 13, 1995, and ASB No. A6232, Revision 1, dated January 11, 1996. That action also proposed to require the removal of cracked disks and replacement with serviceable parts. That NPRM was prompted by reports of disk bore cracks found during shop inspections on both the 14th and 15th stage HPC disks. That condition, if not corrected, could result in 14th and 15th stage HPC disk rupture, which could result in an uncontained engine failure and damage to the aircraft.

Since the issuance of that NPRM, the FAA received several comments that required changing the compliance section.

Several commenters state that the proposed rule's definition for shop visit (separation of ''N'' flange) would cause hardship, since operators have no records for tracking ''N'' flange separation. The commenters propose to change the definition of shop visit to occur when the low pressure turbine (LPT) is inspected as a module. One of the commenters further states that this inspection is done whenever the LPT module is separated from the engine at the ''N'' flange. The FAA concurs with this change, since the proposed definition facilitates the FAA's intent. Therefore, the ''Shop Visit'' definition

in this final rule has been changed accordingly.

Another commenter disagrees with the FAA's statement that the required action would take place during regularly scheduled maintenance. The FAA agrees with the commenter that this inspection may not always coincide with scheduled maintenance activity, since the shop visit rates can vary between operators. However, the FAA's intent is to facilitate this required inspection during a shop visit to the extent possible, while maintaining the required level of safety.

The same commenter proposes that the inspections be required at next shop visit, instead of using cycles since last shop visit. The FAA disagrees. Shop visit intervals vary among different operators and may exceed the inspection intervals established to maintain an acceptable level of safety.

Another commenter states that the cyclic drawdown should be extended from 1,000 cycles to 1,500 cycles in order to prevent possible premature engine removals. The commenter does not provide any additional data/actions that would assure an equivalent level of safety. The FAA disagrees, since the proposed additional cycles of operation without inspections would result in a reduced level of safety. Therefore, the 1,000 cycle in service (CIS) inspection interval remains as proposed.

The FAA conducted an additional review of the proposed inspection intervals and concluded that the inspection requirements of paragraph (c)(1)(iv) as published are unnecessarily restrictive. Therefore, the inspection interval of 3,000 cycles since new is extended to 5,000 cycles since new, in order to make it consistent with the inspection requirement of the preceding paragraph.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 1,100 engines of the affected design in the worldwide fleet. The FAA estimates that 170 engines would be affected by this proposed AD. The FAA anticipates that the majority of the required initial and repetitive eddy current inspections would take place during regularly scheduled maintenance visits, but it would take 3 work hours per engine per inspection, and the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD per engine is estimated to be $30,600. Based on these estimates, the total cost of the proposed AD would be $5,202,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 95–ANE–69.

Applicability: Pratt & Whitney (PW) Model JT9D–59A, –70A, –7Q, –7Q3, and JT9D–7R4 series turbofan engines, with the following 14th and 15th stage high pressure compressor (HPC) disks installed: Part Numbers (P/N's) 5000814–01, 790014, 789914, 790114, 5000815–01, 5000815–021, 704315, 704315–001, 786215, 786215–001, 704314, 789814, and 790214. These engines are installed on but not limited to Airbus A300 and A310 series aircraft, Boeing 747 and 767 series aircraft, and McDonnell Douglas DC–10 series aircraft.

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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent 14th and 15th stage HPC disk rupture, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Inspect 14th stage HPC disks, P/N 5000814–01, in accordance with Non-Destructive Inspection Procedure No. 858 (NDIP–858), dated November 7, 1995, attached to PW Alert Service Bulletin (ASB) No. JT9D–7R4–A72–524, dated December 13, 1995, as follows:

(1) Perform an initial eddy current inspection (ECI) for cracks as follows:

(i) For disks with 7,000 or more cycles since new (CSN), and 3,000 or more cycles in service (CIS) since last shop visit, on the effective date of this AD, inspect within the next 1,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(ii) For disks with 7,000 or more CSN, and less than 3,000 CIS since last shop visit, on the effective date of this AD, inspect within 4,000 CIS since the last shop visit, or at the next shop visit, whichever occurs first.

(iii) For disks with less than 7,000 CSN on the effective date of this AD, inspect at the next shop visit after the effective date of this AD, but before exceeding 4,000 CIS since last shop visit, or 8,000 CSN, whichever occurs later.

(iv) For uninstalled disks on or after the effective date of this AD, inspect prior to installation.

(2) Thereafter, perform ECI for cracks at intervals not to exceed 4,000 CIS since last ECI.

(3) Prior to further flight, remove cracked disks and replace with serviceable parts.

(b) Inspect 14th stage HPC disks, P/N's 790014, 789914, 790114, and 15th stage HPC disks, P/N's 5000815–01, 5000815–021, 704315, 704315–001, 786215, and 786215–001, in accordance with NDIP–858, dated November 7, 1995, attached to PW ASB No. JT9D–7R4–A72–524, dated December 13, 1995, or PW ASB No. A6232, Revision 1, dated January 11, 1996, as applicable, as follows:

(1) Perform an initial ECI for cracks as follows:

(i) For disks with 6,500 or more CSN, and 3,000 or more CIS since last shop visit, on the effective date of this AD, inspect within the next 1,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(ii) For disks with 6,500 or more CSN, and less than 3,000 CIS since last shop visit, on the effective date of this AD, inspect within 4,000 CIS since the last shop visit, or at the next shop visit, whichever occurs first.

(iii) For disks with less than 6,500 CSN on the effective date of this AD, inspect at the next shop visit after the effective date of this AD, but before exceeding 4,000 CIS since last shop visit, or 7,500 CSN, whichever occurs later.

(iv) For uninstalled disks on or after the effective date of this AD, inspect prior to installation.

(2) Thereafter, perform ECI for cracks at intervals not to exceed 4,000 CIS since last ECI.

(3) Prior to further flight, remove cracked disks and replace with serviceable parts.

(c) Inspect 14th stage HPC disks, P/N's 704314, 789814, and 790214, in accordance with NDIP–858, dated November 7, 1995, attached to PW ASB No. A6232, Revision 1, dated January 11, 1996, as follows:

(1) Perform an initial ECI for cracks as follows:

(i) For disks with 2,000 or more CSN, and 2,000 or more CIS since last shop visit, on the effective date of this AD, inspect within the next 1,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(ii) For disks with 2,000 or more CSN, and less than 2,000 CIS since last shop visit, on the effective date of this AD, inspect within 3,000 CIS since the last shop visit, or at the next shop visit, whichever occurs first.

(iii) For disks with 2,000 or more CSN, and no previous shop visits, inspect within 3,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(iv) For disks with less than 2,000 CSN on the effective date of this AD, inspect at the next shop visit after the effective date of this AD, but before exceeding 5,000 CSN.

(iv) For uninstalled disks on or after the effective date of this AD, inspect prior to installation.

(2) Thereafter, perform ECI for cracks at intervals not to exceed 3,000 CIS since last ECI.

(3) Prior to further flight, remove cracked disks and replace with serviceable parts.

(d) Within 30 days of inspection, report inspection results on the form labeled ''14th and 15th Stage HPC Disk Inspection Report,'' to Pratt & Whitney Customer Technical Support. The fax number is listed on that form which is attached to PW ASB No. JT9D–7R4–A72–524, dated December 13, 1995. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(e) For the purpose of this AD, a shop visit is defined as a low pressure turbine module removal from an uninstalled engine.

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

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 23, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–69 Filed 1–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes Equipped With Pratt & Whitney Engines and Used in Extended Range Twin-Engine Operations (ETOPS)

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 777 series airplanes equipped with Pratt & Whitney engines. This proposal would require replacement of the integrated drive generator (IDG) and the backup generator with a new IDG and a new backup generator. This proposal is prompted by reports of IDG shaft failure resulting from design problems in the hydraulic and mechanical systems of the generator, and by reports of backup generator failure resulting from the failure of the oil pressure switch. The actions specified by the proposed AD are intended to prevent continued degradation of the power system, which could result in loss of electrical power.

DATES: Comments must be received by February 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office; 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–NM–78–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, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has been monitoring the reliability of the electrical power system

of the Boeing Model 777 series airplane since its introduction into service. Design modifications that have improved the reliability of the electrical power system have been incorporated on Model 777 series airplanes equipped with Rolls-Royce and General Electric engines; these modifications are proposed to be incorporated on Model 777 series airplanes equipped with Pratt & Whitney engines and used in extended range twin-engine operations (ETOPS) to bring systems reliability within acceptable levels.

The FAA has received reports indicating that the backup generator and the shaft of the integrated drive generator (IDG) failed on certain Boeing Model 777 series airplanes. Specifically, the FAA received five reports of IDG shaft failures. Investigation revealed problems with the generator's hydraulic and mechanical systems.

Further, numerous failures of the backup generator have been reported by operators. Investigation revealed that the pressure relief valve in the backup generator may cause excessive fluctuation of the oil-in pressure. This fluctuation may result in failure of the low oil pressure switch, and consequent failure of the backup generator.

These conditions, if not corrected, could result in continued degradation of the power system and consequent loss of electrical power.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 777–24–0012, dated August 1, 1996, which describes procedures for replacing the IDG with a unit having a different part number. Replacement of the existing IDG with an IDG of improved design will reduce torque on the IDG shaft and wear on the IDG fixed blocks.

The FAA also has reviewed and approved Boeing Service Bulletin 777–24–0017, Revision 1, dated April 10, 1997, which describes procedures for replacing the backup generator with a new backup generator.

Accomplishment of the actions specified in the 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 replacement of the IDG and the backup generator with a new IDG and a new backup generator. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 38 Boeing Model 777 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $50,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,123,760, or $51,080 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–78–AD.

Applicability: Model 777 series airplanes equipped with Pratt & Whitney engines and used in Extended Range Twin-Engine Operations (ETOPS); as listed in Boeing Service Bulletins 777–24–0017, Revision 1, dated April 10, 1997, and 777–24–0012, dated August 1, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the integrated drive generator (IDG) shaft and the backup generator, which could result in continued degradation of the power system and consequent loss of electrical power, accomplish the following:

(a) Within 8 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) For airplanes identified in Boeing Service Bulletin 777–24–0012, dated August 1, 1996: Replace the IDG with a new IDG in accordance with Figure 1 or Figure 2 of the service bulletin, as applicable.

(2) For airplanes identified in Boeing Service Bulletin 777–24–0017, Revision 1, dated April 10, 1997: Replace the backup generator and its engine wiring harness with new components in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). 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.

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

Issued in Renton, Washington, on December 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–118 Filed 1–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere Falcon 900 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 Dassault Aviation Model Mystere Falcon 900 series airplanes. This proposal would require replacement of the water heater control relays with improved relays having high-power contactors; the addition of a testing and monitoring circuit for each contactor; and installation of improved electrical bonding of the potable water tank. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent overheating of the water heaters for the galley or the washbasin, which could result in damage to the water heater and nearby electrical wiring, and consequent smoke in the cabin.

DATES: Comments must be received by February 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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 97–NM–193–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. 97–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Aviation Model Mystere Falcon 900 series airplanes. The DGAC advises that three occurrences have been reported in which the ground crew detected a burning smell coming from the washbasin in the rear toilet. The water heater was found to be very hot and the electrical wires beside the water heater were smoldering. Investigation revealed that the power contacts of the control relay to the water heater for the galley or the washbasin can remain closed, which can allow the water to overheat. This condition, if not corrected, could result in damage to the water heater and nearby electrical wiring, and consequent smoke in the cabin.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F900–181 (F900–38–12), dated December 4, 1996, which describes procedures for replacement of the water heater control relays with improved relays having high-power contactors; the addition of a testing and monitoring circuit for each contactor; and installation of improved electrical bonding of the potable water tank.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–279–018(B), dated December 4, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane 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.

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 bulletin described previously.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,300 per airplane. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $7,740.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 97–NM–193–AD

Applicability: Model Mystere Falcon 900 airplanes; equipped with l'HOTELLIER water system gauges having part number (P/N) 5250, 5251, 5250–1 or 5251–1; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the water heaters for the galley or the washbasin, which could result in damage to the water heater and nearby electrical wiring, and consequent smoke in the cabin, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first: Replace the water heater control relays with improved relays; add a testing and monitoring circuit for each contactor; and install improved electrical bonding of the potable water tank; in accordance with Dassault Service Bulletin F900–181 (F900–38–12), dated December 4, 1996.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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 French airworthiness directive 96–279–018(B), dated December 4, 1996.

Issued in Renton, Washington, on December 29, 1997.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–117 Filed 1–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100 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 de Havilland Model DHC–8–100 series airplanes. This proposal would require a one-time visual inspection to determine the presence of block seals on the upper portions of the cabin/baggage compartment bulkheads, and installation of a new or serviceable block seal for any missing block seal. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent smoke contamination of the passenger and crew cabins, in the event of fire or smoke in the baggage compartment, due to a direct smoke path between the baggage compartment and the cabins.

DATES: Comments must be received by February 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard,

Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Anthony Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; Telephone (516) 256–7510; 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 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 97–NM–269–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–103, Attention: Rules Docket No. 97–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 series airplanes. TCA advises that it received a report indicating that block seals on the upper portions of the cabin/baggage compartment bulkheads had not been installed during manufacture. The absence of such block seals would create a direct smoke path between the baggage compartment and the passenger and crew cabins. In the event of fire or smoke in the baggage compartment, such a direct smoke path, if not corrected, could result in smoke contamination of the passenger and crew cabins.

Explanation of Relevant Service Information

De Havilland has issued Service Bulletin S.B. 8–25–80, Revision 'A,' dated July 5, 1993, which describes procedures for a one-time visual inspection for the presence of block seals on the upper portions of the right- and left-hand cabin/baggage compartment bulkheads, and installation of a new or serviceable block seal for any missing block seal. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–92–16, dated June 26, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada 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, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, 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 bulletin described previously.

Cost Impact

The FAA estimates that 20 de Havilland Model DHC–8–100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $60 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Inc.: Docket 97-NM–269-AD.

Applicability: Model DHC–8–100 series airplanes; serial numbers 191, and 225 through 307 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke contamination in the passenger and crew cabins, in the event of fire or smoke in the baggage compartment, due to a direct smoke path between the baggage compartment and the cabins, accomplish the following:

(a) Within 4 months after the effective date of this AD, perform a one-time visual inspection to determine the presence of block seals on the upper portions of the right-and left-hand cabin/baggage compartment bulkheads; and, prior to further flight, for any missing block seal, install a new or serviceable block seal; in accordance with de Havilland Service Bulletin S.B. 8–25–80, Revision 'A,' dated July 5, 1993.

(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, Engine and Propeller Directorate. 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.

(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–92–16, dated June 26, 1992.

Issued in Renton, Washington, on December 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–116 Filed 1–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 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 McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that currently requires an inspection to detect chafing on the FIREX pipe assembly of the number one engine; and either repair of chafed pipe assemblies or replacement of the chafed pipe assemblies with new pipe assemblies; and modification of the FIREX and the pneumatic sense pipe assembly clamp marriage. That AD was prompted by reports of incidents in which the pneumatic sense pipe chafed against the FIREX supply pipe of the number one engine. This action would revise the applicability of the existing AD to include additional airplanes and remove others. The actions specified by the proposed AD are intended to prevent chafing of the FIREX supply pipe, which could result in a hole in the pipe and consequently prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire.

DATES: Comments must be received by February 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–105–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. 97–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 9, 1995, the FAA issued AD 95–12–25, amendment 39–9278 (60 FR 32579, June 23, 1995), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, to require an inspection to detect chafing on the FIREX pipe assembly of the number one engine; and either repair of chafed pipe assemblies or replacement of the chafed pipe assemblies with new pipe assemblies; and modification of the FIREX and the pneumatic sense pipe assembly clamp marriage. That action was prompted by reports of incidents in which the pneumatic sense pipe chafed against the FIREX supply pipe of the number one engine. The requirements of that AD are intended to prevent chafing of the FIREX supply pipe, which could result in a hole in the pipe and consequently prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 26–25, dated May 25, 1994; McDonnell Douglas Service Bulletin DC9–26–025, Revision 03, dated July 25, 1996; and McDonnell Douglas Service Bulletin DC9–26–025, Revision 04, dated April 30, 1997. The inspection procedures described in the original version, Revision 03, and Revision 04 are identical to those described in Revision 1 and Revision 2 of the service bulletin (which were referenced in AD 95–12–25 as the appropriate sources of service information). Revision 04 of the service bulletin expands the effectivity listing to include additional airplanes that are subject to the addressed unsafe condition and removes other airplanes from the effectivity listing.

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 95–12–25 to continue to require an inspection to detect chafing on the FIREX pipe assembly of the number one engine; and either repair of chafed pipe assemblies or replacement of the chafed pipe assemblies with new pipe assemblies; and modification of the FIREX and the pneumatic sense pipe assembly clamp marriage. The proposed AD would revise the applicability of the existing AD to include additional airplanes and remove others. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 1,691 McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 834 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95–12–25, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $50,040, or $60 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9278 (60 FR 32579, June 23, 1995), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 97–NM–105–AD. Supersedes AD 95–12–25, Amendment 39–9278.

Applicability: Model DC–9–30, -40, and -50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas Service Bulletin DC9–26–025, Revision 04, dated April 30, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the FIREX supply pipe, which could result in a hole in the pipe and consequently prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire, accomplish the following:

(a) Within 8 months after the effective date of this AD, perform an inspection to detect chafing of the FIREX pipe assembly of the number one engine, in accordance with McDonnell Douglas DC–9 Service Bulletin 26–25, dated May 25, 1994; McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 1, dated September 30, 1994; McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 2, dated April 18, 1995; McDonnell Douglas Service Bulletin DC9–26–025, Revision 03, dated July 25, 1996; or McDonnell Douglas Service Bulletin DC9–26–025, Revision 04, dated April 30, 1997.

(1) If any chafing is detected, prior to further flight, accomplish paragraphs (a)(1)(i)

and (a)(1)(ii) of this AD in accordance with the service bulletin. Where there are differences between the requirements of this AD and the procedures specified in the service bulletin, the AD prevails.

(i) Either repair chafed pipe assemblies or replace chafed pipe assemblies with new or serviceable pipe assemblies. And

(ii) Modify the FIREX and the pneumatic sense pipe assembly clamp marriage.

(2) If no chafing is detected, prior to further flight, modify the FIREX and the pneumatic sense pipe assembly clamp marriage in accordance with the service bulletin.

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

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

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

Issued in Renton, Washington, on December 29, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–124 Filed 1–2–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N–0056]

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to add certain labeling requirements concerning aluminum in large volume parenterals (LVP's) and small volume parenterals (SVP's) used in total parenteral nutrition (TPN). FDA is also proposing to specify an upper limit of aluminum permitted in LVP's and to require applicants to develop and to submit to FDA for approval validated assay methods for determining aluminum content in parenteral drug products. The agency is proposing these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially premature infants and patients with impaired kidney function.

DATES: Submit written comments by April 6, 1998. Submit written comments on the information collection requirements by February 4, 1998.

ADDRESSES: Submit written comments on this proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

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

SUPPLEMENTARY INFORMATION:

I. Background

Aluminum in ionic form is naturally present in all plant and animal tissues and in natural bodies of water, although it has no known biological function. Human exposure to aluminum also occurs through aluminum-containing medications, aluminum cans and cooking utensils, drinking water, baking powder, and deodorants (Ref. 1). Aluminum is found in public water supplies treated with various clarifiers and in food and drink, including infant formulas (Refs. 2, 3, and 4).

Aluminum is commonly found in dye lakes (coloring agents) and sometimes found as an excipient in certain drug products. It is usually found in parenteral drugs as a contaminant in the protein source, calcium and phosphate salts, albumin, and heparin (Refs. 5 and 6). Aluminum also leaches from glass containers and closures during autoclaving and storage.

Changes in the processing and screening of raw materials may reduce aluminum contamination of drug products. Aluminum toxicity in adults has been reduced by replacing casein hydrolysate with crystalline amino acids in TPN solutions (Ref. 7). In addition, the use of deionized water in dialysis and the substitution of calcium for aluminum-containing oral phosphate binders have reduced dialysis osteomalacia and encephalopathy.

FDA has become increasingly concerned about the aluminum content in parenteral drug products, which could result in a toxic accumulation of aluminum in the tissues of individuals receiving TPN therapy. Research indicates that neonates and patient populations with impaired kidney function may be at high risk of exposure to unsafe amounts of aluminum (Refs. 2, 5, 6, and 8 through 13). Studies show that aluminum may accumulate in the bone, urine, and plasma of infants receiving TPN (Refs. 5, 8, and 9). Many drug products used routinely in parenteral therapy may contain levels of aluminum sufficiently high to cause clinical manifestations. Generally, when medication and nutrition are administered orally, the gastrointestinal tract acts as an efficient barrier to the absorption of aluminum, and relatively little ingested aluminum actually reaches body tissues. However, parenterally administered drug products containing aluminum bypass the protective mechanism of the gastrointestinal tract and aluminum circulates and is deposited in human tissues (Refs. 1, 3, 14, and 15).

Aluminum toxicity is difficult to identify in infants because few reliable techniques are available to evaluate bone metabolism in premature infants. Techniques used to evaluate the effects of aluminum on bone in adults cannot be used in premature infants. Although aluminum toxicity is not commonly detected clinically, it can be serious in selected patient populations, such as neonates, and may be more common than is recognized. One study indicated that premature infants who received parenteral therapy had higher than normal plasma and urinary aluminum concentrations. The study also indicated that aluminum concentration in bone marrow was 10 times higher in infants who had received at least 3 weeks of parenteral therapy than in those who had received limited parenteral therapy: 20.16±13.4 milligrams (mg) versus 1.98±1.44 mg per kilogram (kg) of dry weight ($p < 0.0001$) (Ref. 2). Furthermore, there has been at least one credible report of measurable aluminum in the brain of a premature infant (Ref. 16).

Classic manifestations of aluminum intoxication in patients with impaired kidney function include fracturing osteomalacia, encephalopathy, and microcytic hypochromic anemia. Aluminum may prevent calcium absorption in premature infants receiving TPN therapy (Ref. 9). In addition, aluminum loading may be a

factor in the bone disease of very ill neonates with reduced kidney function who have received long-term parenteral therapy with aluminum-contaminated fluids (Ref. 2).

FDA has held several meetings to discuss the risks posed by aluminum in parenteral drug products. On March 3, 1986, the agency's Advisory Committee on Endocrinologic and Metabolic Drug Products met to discuss the problems posed by aluminum in parenteral drug products (Ref. 22). The committee recommended that parenteral drug products intended for repeated use or given in large volumes over a short period of time be tested for aluminum levels. The committee also recommended that the agency establish an aluminum-contamination limit. On November 6, 1986, the agency held a public workshop to discuss aluminum toxicity in clinical medicine, existing aluminum monitoring, clinical effects of aluminum loading, and methodology for quantitative aluminum determination in parenteral products (Ref. 23). On June 25 and 26, 1987, the Allergenic Products Advisory Committee of FDA's Center for Biologics Evaluation and Research met to discuss the safety of the aluminum component of alum-precipitated allergenic extracts (Ref. 24).

As a result of the comments received at these meetings and because of the overall concern about the risks posed by aluminum content in parenteral drug products, FDA published a notice of intent in the **Federal Register** of May 21, 1990 (55 FR 20799). The notice announced the regulatory options the agency is considering and requested comments and data on the following issues: (l) Safe and unsafe levels of aluminum in LVP's, SVP's, and pharmacy bulk packages; (2) assay methodology; (3) units of measurement; (4) which drug products should be included in any aluminum content disclosure requirement; (5) suggestions for any warning statement required on parenteral drug product labeling; and (6) information concerning the economic effects of these regulatory options. The comments received on the notice of intent are discussed in section III of this document.

II. Description of the Proposed Rule

FDA is proposing to: (1) Establish a maximum permissible level of aluminum in LVP's used in TPN therapy; (2) require that the maximum level of aluminum permitted in LVP's used in TPN therapy be stated on the package insert of all LVP's used in TPN therapy; (3) require that the maximum level of aluminum at expiry be stated on the immediate container label of SVP's and pharmacy bulk packages used in the preparation of TPN solutions; (4) require that the package insert of all LVP's and SVP's, including pharmacy bulk packages, contain a warning statement about aluminum toxicity in patients with impaired kidneys and neonates receiving TPN therapy; and (5) require that applicants and manufacturers develop validated assay methods for determining the aluminum content in parenteral drug products and that applicants submit the validated assay methods to FDA for approval.

Proposed § 201.323(a) would limit the aluminum content for all LVP's used in TPN therapy to 25 micrograms per liter (µg/L) for liquids. This requirement would apply to all LVP's used in TPN therapy, including, but not limited to, parenteral amino acid solutions, highly concentrated dextrose solutions, parenteral lipid emulsions, saline and electrolyte solutions, and sterile water for injection.[1]

Proposed § 201.323(b) would require that the package insert for all LVP's used in TPN therapy state that the drug product contains no more than 25 µg/L. This statement would be included in the ''Precautions'' section of the labeling.

For SVP's and pharmacy bulk packages used in the preparation of TPN solutions, proposed § 201.323(c) would require that the product's maximum level of aluminum at expiry be stated on the immediate container label of the SVP's and pharmacy bulk packages. FDA is proposing that the statement on the immediate container label read as follows: ''Contains no more than __ µg/L.'' For those SVP's and pharmacy bulk packages that are lyophilized powders used in the preparation of TPN solutions, the maximum level of aluminum at expiry must be printed on the immediate container label as follows: ''When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than __ µg/L.'' The maximum level of aluminum may be expressed as the highest of: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches, or (3) the maximum historical level, but only until completion of production of the first five batches after the rule takes effect. The labeling requirement would apply to all SVP's used in the preparation of TPN solutions, including, but not limited to: Parenteral electrolyte solutions, such as calcium chloride, calcium gluceptate, calcium gluconate, magnesium sulfate, potassium acetate, potassium chloride, potassium phosphate, sodium acetate, sodium lactate, and sodium phosphate; multiple electrolyte additive solutions; parenteral multivitamin solutions; single-entity parenteral vitamin solutions, such as vitamin K injection, folic acid, cyanocobalamin, and thiamine; and trace mineral solutions, such as chromium, copper, iron, manganese, selenium, and zinc.

Proposed § 201.323(d) would require that the package insert for all LVP's and SVP's, including pharmacy bulk packages, contain a warning statement about aluminum toxicity in patients with impaired kidney function and in neonates receiving TPN therapy. The warning statement would be included in the warning section of the labeling and would contain the following language:

WARNING: This product contains aluminum that may be toxic. Aluminum may reach toxic levels with prolonged parenteral administration if kidney function is impaired. Premature neonates are particularly at risk because their kidneys are immature, and they require large amounts of calcium and phosphate solutions, which contain aluminum.

FDA is also concerned about the daily amount of aluminum received by patients with impaired kidney function. One study found that patients should not receive more than 4 to 5 µg/kg/day of aluminum (Ref. 20). FDA is considering whether to include in the previous warning a statement regarding the maximum daily aluminum intake recommended for patients. FDA believes such a recommendation would assist health care professionals in determining whether patients are receiving toxic levels of aluminum. For example, a health care professional administering per day 150 mL of an LVP solution containing 25 µg/L of aluminum to a patient also receiving 20 mL of drug A containing 2 µg/L of aluminum, 2 mL of drug B containing 100 µg/L of aluminum, and 10 mL of drug C containing 400 µg/L of aluminum, would be able to determine that the patient was receiving a total of 7.99 µg/day of aluminum (calculated (0.150 x 25) + (0.020 x 2) + (0.002 x 100) + (0.010 x 400)). The health care professional could then calculate the patient's intake level based on the patient's weight. If the patient weighed 2 kg, the patient would be receiving

[1] The agency has determined that most currently marketed LVP drug products contain less than 25 µg/L of aluminum (Ref. 17). Although aluminum content varied widely among different components and the same chemicals could have a different aluminum content depending on the manufacturer, lot to lot similarity for a specific chemical from a given supplier was found. LVP and SVP products from several manufacturers were tested. All LVP's tested, except one product, were less than 25 µg/L. FDA also bases this level on a considerable amount of stability data submitted to the agency over several years for LVP drug products.

approximately 4 μg/kg/day of aluminum (calculated 7.99 μg/2 kg).

FDA is specifically seeking comment on whether adding the language ''Patients should receive no more thatn 4 to 5 μg/kg/day of aluminum'' to the warning statement is appropriate. In addition, FDA is seeking comment on whether a 4 to 5 μg/kg/day level is reasonable and whether the proposed level is adequate to protect the public health.

Proposed § 201.323(e) would require that applicants and manufacturers develop validated assay methods to determine the aluminum content in parenteral drug products. The assay methods would be required to comply with current good manufacturing practice (CGMP) regulations under part 211 (21 CFR part 211) (see § 211.194(a)). Holders of approved applications for LVP's used in TPN therapy and SVP's used as additives in TPN solutions would be required to submit a supplement to FDA under § 314.70(c) (21 CFR 314.70(c)) describing the assay method used for determining the aluminum content. Under the proposed rule, applicants would submit the validation method used and the release data for several batches. Manufacturers of parenteral drug products not subject to an approved application would be expected to make assay methodology available to FDA during inspections.

Proposed § 201.323 would apply to all human drug LVP's, SVP's, and pharmacy bulk packages used in TPN. Licensed biological products are not covered by the proposal.

FDA is also considering codifying the language now proposed for § 201.323(a) and (e); however, when this language becomes final it may be in subpart E of part 310. These sections would limit the aluminum content for all LVP's used in TPN therapy to 25 μg/L for liquids and would require that applicants and manufacturers develop validated assay methods to determine the aluminum content in parenteral drug products.

III. Comments on the Notice of Intent

FDA received 11 comments on the notice of intent from professional associations, prescription drug manufacturers, a hospital, and a university. Most comments supported the proposed limit for aluminum content in LVP's and the labeling requirement for SVP's and pharmacy bulk packages. Four comments suggested changes to the proposed warning statement. A summary of the comments received and the agency's response follows.

A. Drug Products Susceptible to Aluminum Contamination

1. The notice of intent applied to all human drug LVP's and SVP's and pharmacy bulk packages used in TPN therapy. One comment contended that nutritional LVP's and nutritional LVP pharmacy bulk packages should be considered separate from SVP's and SVP pharmacy bulk packages. The comment stated that manufacturers of nutritional LVP products, which include amino acids, dextrose concentrations, and lipid emulsions, have already taken steps to contain aluminum levels through manufacturing processes and testing. Another comment suggested that any proposed regulation should apply only to nutritional parenterals and not other drug products.

The agency has concluded that, based on the available data and information concerning toxicity resulting from the presence of aluminum in parenteral drug products, it is necessary to regulate nutritional LVP's and LVP pharmacy bulk packages as well as nutritional SVP's and SVP pharmacy bulk packages. The proposal would establish a 25 μg/L limit for LVP's used in TPN therapy, and would require that the 25 μg/L limit be stated in the package insert of all LVP's used in TPN therapy. The proposal would also require that the maximum level of aluminum at expiry be stated on the immediate container label of SVP's and pharmacy bulk packages used in the preparation of TPN solutions.

The agency agrees that aluminum toxicity is a concern only for parenterals used in TPN therapy, and advises that the proposed limit for LVP's and the labeling requirement for LVP's, SVP's, and pharmacy bulk packages would only apply to LVP's used in TPN therapy and SVP's and pharmacy bulk packages used in the preparation of TPN solutions. The proposed rule would not apply to LVP's, SVP's, or pharmacy bulk packages not used in TPN therapy.

B. Patient Populations at Risk

In the notice of intent, the agency stated that it was especially concerned about three groups of patients at risk for aluminum toxicity: (1) Patients with kidney failure on chronic hemodialysis or continuous ambulatory peritoneal dialysis; (2) patients of any age receiving long-term TPN therapy, especially those with compromised kidney function; and (3) premature and full-term neonates who require TPN therapy.

2. One comment agreed with FDA's selection of the three groups most at risk, while another comment preferred to limit the regulation to premature infants and uremic patients receiving parenteral nutrition. Another comment suggested that the agency should first conduct indepth studies on aluminum toxicity in TPN patients, as well as studies of other populations at risk, such as the elderly, before proposing which groups to regulate.

The agency has considered these comments and the literature concerning the patient populations at risk and proposes to apply the regulation to products used for patients on TPN therapy who have impaired kidney function. Aluminum may accumulate to toxic levels after prolonged administration if kidney function is impaired, particularly if patients are exposed to other sources of aluminum, such as antacids, or if there is a greater than usual requirement for certain parenteral nutrition solutions that have a relatively high aluminum content, such as calcium and phosphate solutions. This includes patients with impaired kidney function receiving long-term parenteral nutrition and neonates receiving total parenteral nutrition. Premature neonates would be included because of their immature kidneys, their higher intake of fluids per unit body weight, and their greater need for calcium and phosphate solutions, which may be heavily contaminated with aluminum.

3. One comment stated that only long-term therapy with TPN solutions containing a high level of aluminum has led to clinically significant toxicity. Another comment stated that aluminum in TPN solutions is a problem for premature infants but not for patients receiving continuous ambulatory peritoneal dialysis, except from aluminum-containing phosphate gels. The comment added that patients with kidney disease who are not undergoing dialysis, but who are receiving TPN therapy, accumulate aluminum even when using crystalline amino acids. Another comment stated that 5-year followup studies of infants on TPN therapy revealed no aluminum loading, and short-term therapy had no long-term effects.

The agency disagrees that the only patients at risk are those on long-term therapy with TPN solutions that contain high levels of aluminum. The agency advises that the available research has shown that all patients with impaired kidney function on short-term or long-term TPN therapy are at risk. The agency also disagrees that 5-year studies have revealed no aluminum loading in infants. Again, the available literature provides sufficient evidence of toxic aluminum loading in infants who

receive TPN therapy (Refs. 2, 5, 6, and 8 through 13).

C. Sources of Aluminum Contamination

In the notice of intent, the agency stated that aluminum is usually found in parenteral drug products as a contaminant and is not added deliberately to the drug product. The notice also stated that although the drug substance is the main source of aluminum contamination in parenteral drug products, it is also leached from glass containers and closures during autoclaving and storage. The notice stated that additives are the major contributor of aluminum in TPN solutions, and that requiring the disclosure of aluminum levels in commonly used additives would permit the preparation of parenteral solutions lower in aluminum for high-risk patients.

4. One comment agreed that the sources of aluminum in parenteral drug products include raw materials and the glass final container. The comment stated that appropriate changes in specifications of raw materials would alleviate the problem.

Another comment stated that aluminum contamination results from three main sources: (l) Pharmaceutical ingredients (phosphates, gluceptates, gluconates, and some amino acids); (2) the container/closure system (aluminum content leached from glass container and rubber closures increases with shelf life); and (3) the manufacturing process (autoclave sterilization and membranes). The comment stated that technology does not exist to lessen the presence of aluminum.

The agency advises that changes in processing and screening of raw materials would significantly reduce aluminum contamination of parenteral drug products. The agency is proposing to require that the aluminum content be stated on the immediate container label of SVP's and pharmacy bulk packages so that the health professional preparing the TPN solution would be able to determine the aluminum content of the final solution. In addition, under the proposed rule, the package insert for all LVP's used in TPN therapy would state that the drug product contains no more than 25 µg/L. This would assist the practitioner when calculating the total amount of aluminum being administered to a patient with impaired kidney function receiving TPN therapy.

5. One comment suggested that FDA designate orphan drug status for parenterals used in infants to account for costs by manufacturers in complying with the aluminum content limits discussed in the notice of intent.

The Orphan Drug Act requires that Orphan Drug Designation be requested for individual drugs; therefore, the law would not permit designation of an entire class of drugs. However, new products intended for parenteral use in infants may fit the eligibility criteria for Orphan Designation and individual manufactures would be encouraged to apply. The Office of Orphan Products Development has a long history of encouraging manufacturers to apply for pediatric indications and would welcome applications for neonatal indications.

6. One comment suggested that FDA require parenterals to be packaged in plastic containers in order to lessen the aluminum leaching associated with glass containers.

The agency has decided not to require parenterals to be packaged only in plastic because not all products used for TPN therapy are available in plastic. Under the proposed regulation, health care professionals may choose an additive available in a plastic container for patients on TPN therapy. It is beyond the intent of this proposed rule to require that all drug products used in TPN therapy be packaged in plastic containers.

7. Three comments stated that deionized water has reduced the incidence of aluminum in parenteral solutions. One comment stated that following the U.S. Pharmacopeia proposed monograph for sterile water for dilution of hemodialysis concentrate would minimize aluminum toxicity problems. Aluminum toxicity would occur only in those patients where the aluminum loading exceeded dialysis capacity.

The agency advises that aluminum toxicity is not limited to patients undergoing dialysis treatment. Furthermore, although deionized water may reduce incidence of aluminum toxicity, the use of deionized water does not eliminate other sources of aluminum in TPN solutions.

8. Five comments argued that long-term TPN therapy using products containing crystalline amino acids, rather than casein hydrolysates, lessens toxic aluminum accumulation.

Although the agency agrees that replacement of casein hydrolysates with crystalline amino acids has reduced the levels of aluminum in LVP's, the agency believes that establishing a maximum level of aluminum in LVP's used for TPN therapy will contribute to decreasing the total amount of aluminum in these solutions. In addition, the proposed labeling requirement will permit calculation of total daily aluminum intake from all sources.

D. Units of Measure of Aluminum Content

In the notice of intent, the agency stated that a standard unit of measurement (i.e., parts per billion (ppb), parts per million, milligrams, or micrograms) should be specified to avoid confusion and errors, and that the same unit of measure be used to specify the drug being administered, the amount of aluminum present, and the maximum exposure permitted each day. The agency recommended that both mass and molar concentrations be stated in the labeling.

9. Three of the eight comments addressing this issue supported the µg/L unit, and two suggested either micro moles per liter (µM/L) or ppb. Two comments recommended that the unit of measurement be expressed as ppb. Other suggestions included: ''ppb (µg/L),'' ''µM/L (µg/L),'' and ''(g/mL)'' (grams per milliliter). One comment specifically recommended ''µmoles/L'' as a primary unit and ''µg/L'' in parentheses.

The agency has considered these comments and is proposing µg/L as the unit of measure. The agency believes that a standard unit of measurement will allow health care professionals to tailor the parenteral solution to the needs of certain patients. In addition, the agency has chosen a unit of measurement by which the levels of aluminum administered to patients can be easily calculated.

E. Levels of Aluminum Content in LVP's

The agency stated in the notice of intent that it was considering setting an upper limit of 25 µg/L or 25 ppb for LVP's used in TPN therapy. This limit is based primarily on a calculation that an intake of 3 liters per day would result in a total exposure of under 100 µg per day, which was recommended at the 1986 FDA workshop as a safe daily burden for healthy individuals. This limit is also based on a study in which patients were treated with long-term TPN solutions (Ref. 18). In addition, information provided to the agency indicates that most currently marketed LVP drug products will meet this specification (Ref. 17). The notice solicited comments regarding acceptable levels for parenteral drug products that are not required to meet this specification, including continuous ambulatory peritoneal dialysis drug products, hemodialysis drug products, antibiotics, and other drug products marketed as LVP's. The notice also sought additional data and information

regarding both safe levels and unsafe levels of aluminum in LVP's.

10. Four comments supported this limit. One comment recommended using the following definitions of safe, unsafe, and toxic:

''Safe''—the amount of aluminum which when administered parenterally that will result in neither body or tissue loading nor tissue disease or dysfunction; ''unsafe''—the amount of aluminum which when administered parenterally will result in tissue loading but which cannot be definitively determined to produce tissue disease or dysfunction; and ''toxic''—the amount of aluminum which when administered parenterally will result in tissue loading and that can be directly associated with tissue disease or dysfunction.

The comment recommended that these terms be made known to physicians and pharmacists who prescribe or prepare TPN solutions to better estimate the risk of aluminum toxicity to the patient.

Proposed § 201.323(a) would place an upper limit of 25 µg/L for liquid LVP's used in TPN therapy. The agency is also proposing that the package insert for all LVP's used in TPN therapy state that the drug product contains no more than 25 µg/L. The agency has determined that it is unnecessary for the proposed regulation to prescribe levels that are ''safe,'' ''unsafe,'' and ''toxic.'' The agency believes that the proposed limit on aluminum content for LVP's, the package insert requirement for LVP's, and the immediate container label statement for SVP's and pharmacy bulk packages would enable the health care professional to determine which drug products are safe for each patient.

11. One comment stated that proposing a limit for only LVP's disregards the fact that SVP's and pharmacy bulk packages contribute a large amount of aluminum to TPN solutions. Another comment objected to the agency's proposal to require a 25 ppb limit on LVP's but only a label statement for SVP's because LVP's provide less than 100 ppb of aluminum whereas SVP's can provide over 100,000 ppb of aluminum.

The agency recognizes that SVP's and pharmacy bulk package additives, such as phosphate and calcium solutions, are a major source of aluminum toxicity in TPN therapy. However, although the risks associated with aluminum toxicity in patients receiving TPN therapy are known, an acceptable level of aluminum in SVP's and pharmacy bulk package additives has not yet been established.

FDA is proposing the labeling requirement for SVP's and pharmacy bulk packages to permit the health care professional administering the drug to calculate the total aluminum exposure the patient receives from multiple parenteral sources. This calculation is especially important because additives appear to be the major contributor of aluminum to TPN solutions. Requiring the disclosure of the maximum level of aluminum present at expiry in SVP's and pharmacy bulk packages would also allow the user to make appropriate substitutions to prepare ''low aluminum'' parenteral solutions for use in patients who are in high-risk groups. The user would be unable to make accurate calculations of total aluminum exposure if the labeling of SVP's stated only a safe upper limit for aluminum rather than stating the exact or maximum amount of aluminum actually present.

12. One comment stated that proper methodology and test procedures should be established before an upper limit for the level of aluminum in LVP's can be set. Several comments stated that the proposed limit was not feasible for the following reasons: (1) It would be very difficult to get accuracy and reproducibility at such a low level; (2) suppliers of raw materials cannot readily reduce the level of aluminum in raw materials and no simple analytical method or technology for aluminum determination exists that could be performed outside of a research laboratory at detection levels below 100 ppb; (3) aluminum is a universal ingredient in essentially all materials, including those compounds where there is no practical technique to remove the aluminum; (4) some ingredients may leach significant amounts of aluminum from the glass containers and/or stoppers used for packaging, processing, and storage; (5) technology does not currently exist to prevent parenterals with electrolytes or a high pH from accumulating a higher aluminum level after autoclaving or to prevent filter membranes from introducing aluminum into a parenteral solution; (6) the limit appears too low for currently available methodology to measure with a consistent result in a manufacturing quality controlled environment; and (7) environmental contamination, such as dust particles that may contain over 2,000 ppb of aluminum, low levels of aluminum in the purest laboratory reagents, and leaching from laboratory supplies, can be a significant source of test variation.

Two comments recommended that FDA should alternatively require a limit of 100 ppb or 100 µg/L. One comment stated that there is essentially no practical risk of adverse health effects at 100 ppb. The comment suggested that, as an alternative to a proposed limit, LVP's used for nutritional support should include a labeling statement as follows: ''Use of this product typically provides not more than 100 ppb (µg/L) of aluminum. Use of this product, and any other additives, should be carefully undertaken if aluminum levels are of concern with the patient.''

One comment stated that because LVP's usually contain less than 100 ppb at expiration, FDA should not require release testing of every lot or establish an upper limit.

One comment stated that the 25 ppb limit would severely restrict availability of products in the LVP market, on which critically ill patients depend and for which no other acceptable nutritional alternative exists.

The agency disagrees with these comments. Technology exists to detect aluminum levels below 100 ppb and there is a risk of adverse health effects with aluminum levels at 100 ppb. The agency has determined that a specification of 100 µg/L could unnecessarily increase the aluminum content of TPN solutions. Increased levels of aluminum contamination may result in toxic accumulation of aluminum in human tissues. Aluminum intoxication may lead to fracturing osteomalacia, encephalopathy, microcytic hypochromic anemia, bone disease, and other serious illnesses (Ref. 8). The agency believes that the proposed limit of 25 µg/L is feasible and is necessary for the safe and effective use of LVP's in TPN therapy (Refs. 18 and 19). The agency emphasizes that the proposed limit is only applicable to LVP's involved in TPN therapy.

Although the proposed limit of 25 µg/L applies to all LVP's used in TPN therapy, the agency is identifying the following LVP's that are commonly used for prolonged TPN therapy, as those where high concentrations of aluminum toxicity are most likely to occur: Parenteral amino acid solutions, concentrated dextrose solutions, parenteral lipid emulsions, saline and electrolyte solutions, and sterile water for injection.

F. Aluminum Content Labeling for SVP's and Pharmacy Bulk Packages

In the notice of intent, FDA stated that it was considering requiring the immediate container labels for each lot of certain SVP's and pharmacy bulk packages to state the exact amount of aluminum present at the time of release, or alternately, the maximum amount of aluminum present. The notice stated that this labeling requirement would only apply to solutions intended for use and identified by the agency as being commonly used in the preparation of TPN solutions, and to all regularly used additives (e.g., vitamins, minerals, and

trace elements), regardless of aluminum levels detected. The notice stated that the agency is considering this approach for SVP's and pharmacy bulk packages to permit the person administering the drug to calculate the total aluminum exposure the patient receives from multiple parenteral sources.

13. Several comments supported a limit on the aluminum content of SVP's. One comment recommended that the agency should establish upper limits of allowable aluminum content in the near future on the basis of lowest aluminum concentrations measured in recently published literature. The comment suggested that such limits should reduce overall aluminum intake and should be achievable. In addition, the comment claimed that the regulation should encourage manufacturers to reduce the aluminum content of this class of products even further than a proposed upper limit and encourage hospital pharmacists to use additives lowest in aluminum concentration.

The agency has considered the comments and has decided not to propose a limit for the aluminum content of SVP's because, among other reasons, an acceptable level of aluminum in SVP and pharmacy bulk package additives has not yet been established. The proposed rule would require that the maximum level of aluminum present at expiry be stated on the immediate container label of all SVP's and pharmacy bulk packages used in the preparation of TPN solutions. This maximum level of aluminum must be expressed as: (1) The highest level for the batches produced during the last 3 years; (2) the highest level for the latest five batches; or (3) the maximum historical level, but only until completion of production of the first five batches after the rule takes effect. Although techniques for the analysis of aluminum at the 25 μg/L level exist, the proposed rule would not require that a specification for SVP's or pharmacy bulk packages be set at this time.

14. One comment noted that if no alternatives are available, it may be necessary to keep certain SVP's on the market even if they exceed the proposed limit. Another comment suggested that manufacturers of SVP's should have the opportunity to survey the aluminum content of their products before the agency determines the amount of aluminum in SVP's and the economic impact of this requirement.

The agency is not proposing a limit for SVP's in this rulemaking. Therefore, it will not be necessary to remove any SVP's from the market due to this proposed rule, nor will it be necessary for manufacturers of SVP's to survey the aluminum content of their products.

15. Several comments suggested that a list of drug products or components that are commonly used in the preparation of TPN solutions should include the salts of calcium, phosphate, and magnesium; trace element solutions; multivitamin preparations; and heparin solutions. One comment suggested that the products involved include parenteral trace minerals, parenteral multivitamins, and parenteral electrolyte supplements.

Another comment stated that the agency should determine what products would require aluminum content labeling from the product's use. The comment stated that many publications specify the aluminum level in products used for TPN therapy and for administration to the patient populations at risk cited by the agency.

Based on these comments, the agency has decided to broaden the labeling requirement stated in the notice of intent to apply to all SVP's used in TPN therapy. In an effort to assist manufacturers, the agency is identifying the following SVP's as those commonly used in the preparation of TPN solutions (this list may not be inclusive): Parenteral electrolyte solutions such as calcium chloride, calcium gluceptate, calcium gluconate, magnesium sulfate, potassium acetate, potassium chloride, potassium phosphate, sodium acetate, sodium lactate, and sodium phosphate; multiple electrolyte additive solutions; parenteral multivitamin solutions; single-entity parenteral vitamin solutions such as vitamin K injection, folic acid, cyanocobalamin, and thiamine; and trace mineral solutions such as chromium, copper, iron, manganese, selenium, and zinc.

16. Five comments agreed with the statement in the notice of intent that the immediate container labels of each lot of certain SVP's and pharmacy bulk packages must state the exact amount of aluminum present at the time of release. One comment stated that the requirement should apply to each of the SVP's listed in the response to comment 16 and in all additive solutions that may contribute to the total aluminum content of large volume solutions.

One comment, which opposed the labeling requirement for SVP's, stated that the requirement would not reduce aluminum toxicity and that compliance would be difficult. The comment asserted that stating the aluminum content at release does not accurately measure aluminum intake by the patient because some additives scavenge additional aluminum from glass packaging during shelf life. The comment also stated that the required labels could not be printed until the product is manufactured and testing is completed, and that this would be inconsistent with the agency's encouragement of straight-line filling and labeling of injectable products to prevent label mixups. The comment stated that the analytical technology is not practical for routine release testing in the laboratory because stringent control of aluminum contamination would be necessary, which would require well-trained, experienced personnel in a research setting. As an alternative, the comment suggested that the package insert state the potential for aluminum toxicity in certain patient populations and provide a range of aluminum content in the product that would allow the pharmacist or the physician to calculate patient risk based on approximate aluminum content in TPN solutions.

Although it is true that some additives scavenge additional aluminum from glass packaging during shelf life, the amount scavenged from various sources is generally very small compared with the aluminum contamination present in SVP's. In addition, many SVP's are available in plastic containers, for which scavenging is nominal. In regard to labeling, the agency is not suggesting a change from straight-line filling. The proposed rule would not require any change to the procedures now employed, since applicants and manufacturers may use historical levels of aluminum in their labeling. The use of historical data precludes the need for routine release testing. It is true that conducting the analytical test will require trained, experienced analysts, since all reagents, solvents, and apparatus need to be free of aluminum contamination. However, the technology exists and has been adapted by a number of manufacturers from which FDA has received data for LVP's over the years. Small manufacturers without the facility, equipment, or personnel can contract the testing out.

Accordingly, the agency has determined that proposed § 201.323(c) should require that the immediate container label of all marketed SVP's used as additives in TPN therapy state the maximum level of aluminum at expiry, rather than a range.

G. Aluminum Content/Assay Methods and Validation

In the notice of intent, the agency asked for comments on whether applicants should develop their own validated assay methods and submit them to FDA for approval. The notice

stated that the criteria to be considered in the selection of an aluminum release assay method would include accuracy, sensitivity, specificity, and reproducibility when applied to each of the tested drug products. In addition, the notice stated that an aluminum assay method should be validated by normal scientific procedures. For parenteral drugs that are the subject of an approved application, supplements must be submitted to provide the assay methodology to FDA for approval. The notice also recommended consultation of the agency's ''Guideline for Submitting Samples and Analytical Data for Methods Validation'' for assistance.

17. Two comments suggested that FDA provide the appropriate methodology to measure aluminum content. One comment stated that assay methodology only has a precision of about ±10 percent. One comment was concerned with the accuracy in measurement if 25 ppb is the upper limit, and suggested that FDA wait for methodology to be established before setting a limit. Another comment stated that the method of analysis should not be specified in the regulation, but that each applicant or manufacturer demonstrate under CGMP's that the method employed is precise and accurate. The comment noted that equipment essential for compliance with an assay methodology for periodic analytical testing would be feasible within a research laboratory but could not be operated within a manufacturing quality assurance laboratory.

Two comments recommended an assay methodology consisting of flameless or electrothermal atomic absorption spectroscopy or inductively coupled plasma emission spectroscopy. Manufacturers would establish either an in-house method or would contract with a laboratory. The comments also recommended that FDA issue specific procedures to ensure that manufacturers use appropriate control procedures.

FDA has considered the comments and has concluded that, under proposed § 201.323(e), applicants would have the discretion and flexibility to develop their own validated assay methods, but would be required to submit them to FDA for approval. As required under 21 CFR 314.50(e)(2)(i), the method of analysis must include a description of each sample; the proposed regulatory specifications for the drug; a detailed description of the methods of analysis; supporting validation data for accuracy, specificity, precision, and ruggedness; and complete results of the applicant's tests on each sample. Manufacturers must maintain records for examination by FDA during inspections.

Approved application holders for LVP's and SVP's used in TPN therapy must submit a supplement under § 314.70(c) that describes the method used for determining aluminum content. Validation methods, release data, and historical data at expiry for several batches should be submitted. For SVP's not subject to approved applications, manufacturers are expected to maintain records for examination by FDA during inspections.

18. One comment recommended that the graphite furnace atomic absorption method that is used for a quantitative determination of aluminum in parenteral products should be adopted by FDA as an industry standard assay method. Another comment recommended graphite furnace atomic absorption spectrophotometry with Zeeman background correction as an industry standard.

The agency declines to accept the comments' suggestions. As stated, the choice is left to applicants and manufacturers to select and properly validate an appropriate methodology.

19. One comment recommended in determining a limit for aluminum in parenteral drugs that the analytical methodology should be capable of determining aluminum content in complex matrices, that adherence to CGMP's and appropriate documentation should be sufficient for compliance, and that routine batch testing should not be required.

The agency disagrees. Strict adherence to CGMP's, instead of routine batch testing, will not fully address the issue of aluminum contamination. Routine batch testing is important under the proposed rule because the applicants and manufacturers of SVP's and pharmacy bulk packages will be expected to assay sufficient lots of products to establish the maximum historical level of aluminum present at the expiry. The applicant or manufacturer would be expected to monitor the aluminum level of their product at the time of release and through the expiry of their product.

20. Another comment stated that an engineering study for an assessment of 40 to 60 raw material aluminum analyses would cost approximately $150,000 and require 700 man-hours for each plant, and a second study for sampling and testing of 25 to 30 unit operations for all 24 individual amino acid processes would require a $1.5 million commitment. The comment stated further that the cost of implementation of aluminum control measures could easily exceed $20 million, and continuing costs of analyses and process control could be $1 million per year.

FDA disagrees with the comment's cost estimates. FDA estimates that the annualized cost to amino acid suppliers would be $1,416,622. This figure includes the first year or one-time costs that the comment estimates at $20 million. In addition, FDA notes that the cost of compliance represents a small percentage of amino acid revenue. Amino acid sales were $1.6 billion in 1996 and are projected to grow at an annual rate of 9 percent. ''Commercial Amino Acids,'' *Chemical Business Newsbase* (May 23, 1997). The annualized cost of compliance for amino acid suppliers represents just .09 percent of the 1996 annual amino acid sales. FDA considers this an acceptable cost.

H. Warning Statement for LVP's and SVP's

In the notice of intent, FDA stated that it is considering requiring the package insert for LVP's to contain a warning statement about the potential aluminum toxicity of TPN mixtures.

21. One comment suggested that LVP products bear a warning statement as follows: ''Use of this product typically provides not more than 100 ppb (μg/L) of aluminum. Use of this product, and any other additives, should be carefully undertaken if aluminum levels are of concern with the patient * * *.'' Another comment recommended that the package insert for LVP's used in TPN state: ''Typically may contain up to 100 ppb (mcg/L) of aluminum.'' In addition, the comment stated that the package insert for SVP's should state that the potential for aluminum toxicity exists in certain patient populations, and that a range of aluminum content should be provided.

Another comment recommended that the package insert of LVP's and SVP's state that the product:

> ''contains aluminum of a given quantity which, when given in conjunction with other additives as part of a parenteral nutrition solution, may result in accumulation of aluminum in bone and other tissues and may contribute to the pathogenesis of bone disease.''

The comment also suggested that a special warning be given to uremic patients receiving these additives. The warning would state: ''The cumulative amount of aluminum administered from this and other intravenous additives may cause encephalopathy as well as bone disease. Safe amounts of aluminum intake have not been established for uremic patients.''

FDA has determined that, under proposed § 201.323(d), the package

insert for LVP's and SVP's must contain the following warning statement about aluminum toxicity in patients receiving TPN therapy:

WARNING: This product contains aluminum that may be toxic. Aluminum may reach toxic levels with prolonged parenteral administration if kidney function is impaired. Premature neonates are particularly at risk because their kidneys are immature, and they require large amounts of calcium and phosphate solutions, which contain aluminum.

The agency has considered the data submitted in response to the notice of intent and other available data, and has concluded that a specification of 100 µg/L is unnecessarily high for LVP's. In addition, the agency believes that indicating a range for aluminum content of SVP's would not provide health care professionals with enough information to calculate the aluminum content of the final TPN solution.

In response to the comment that the proposed rule should include a warning statement to uremic patients receiving additives in TPN solutions, the agency advises that it examined aluminum toxicity in different patient populations and has concluded that the warning statement should apply not only to uremic patients but also to all patients with impaired kidney function and neonates receiving TPN therapy.

22. One comment suggested that the effects of aluminum on individuals should be examined in terms of aluminum intake per kg of body weight rather than absolute aluminum intake since an adult and infant receiving identical quantities of aluminum would have a vastly different body burden of aluminum.

The agency has considered the option of examining the effects of aluminum on individuals in terms of aluminum intake per kg of body weight, but has tentatively concluded that setting a limit for LVP's and requiring the labeling statement for SVP's would be the best method to measure aluminum intake. However, as discussed previously, FDA is seeking comment on including language in the warning statement concerning maximum aluminum intake per kg of body weight.

IV. Legal Authority

FDA's proposal to regulate the aluminum content of certain parenteral drug products and to require aluminum content to be stated in the labeling of certain drug products is authorized by the Federal Food, Drug, and Cosmetic Act (the act). Section 502(a) of the act (21 U.S.C. 352(a)) prohibits false or misleading labeling of drugs, including, under section 201(n) of the act (21 U.S.C. 321(n)), failure to reveal material facts relating to potential consequences under customary conditions of use. Section 502(f) of the act requires drug labeling to have adequate directions for use, adequate warnings against use by patients where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administration, as necessary to protect users. In addition, section 502(j) of the act prohibits the use of drugs that are dangerous to health when used in the manner suggested in their labeling. Drug products that do not meet the requirements of section 502 of the act are deemed to be misbranded.

In addition to the misbranding provisions, the premarket approval provisions of the act authorize FDA to require that prescription drug labeling provide the practitioner with adequate information to permit safe and effective use of the drug product. Under section 505 of the act (21 U.S.C. 355), FDA will approve a new drug application (NDA) only if the drug is shown to be both safe and effective for its intended use under the conditions set forth in the drug's labeling. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act.

Under part 201 (21 CFR part 201) in § 201.100(d) of FDA's labeling regulations, prescription drug products must bear labeling that contains adequate information under which licensed practitioners can use the drugs safely and for their intended purposes. Section 201.57 describes specific categories of information, including information for drug use in selected subgroups of the general population and warnings on adverse reactions and potential safety hazards that must be present to meet the requirements of § 201.100. In addition, under 21 CFR 314.125, an NDA will not be approved unless there is adequate safety and effectiveness information for the labeled uses and the product complies with the requirements of part 201.

If the proposed rule is finalized, any drug product not in compliance with § 201.323 would be considered to be misbranded under section 502 of the act and an unapproved new drug under section 505 of the act.

V. Proposed Implementation Plan

FDA proposes that any final rule that may issue based on this proposal become effective 1 year after its date of publication in the **Federal Register**. After that date, NDA's submitted under § 314.50 and abbreviated new drug applications (ANDA's) submitted under 21 CFR 314.94 would have to comply with the labeling requirements under proposed § 201.323. Holders of approved NDA's or ANDA's would meet the requirements of proposed § 201.323 by submitting supplements under § 314.70 or § 314.97 (21 CFR 314.97). Applicants for LVP's used in TPN therapy and SVP's used as additives in TPN solutions would also be required to submit a supplement under § 314.70(c) that describes the assay method for determining the aluminum content. Applicants must submit both validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications would submit an amendment under 21 CFR 314.60 or 314.96.

VI. Request for Comments

Interested persons may, on or before April 6, 1998, submit to the Dockets Management Branch written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA is specifically seeking comments on whether adding the language ''Patients should receive no more than 4 to 5 µg/kg/day of aluminum'' to the warning statement is appropriate, and whether a 4 to 5 µg/kg/day level is reasonable and adequate to protect the public health.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order.

Based on a study conducted for the agency by the Eastern Research Group (ERG), a private consulting firm, FDA has determined the annual costs of the proposed regulation to the affected industries. FDA estimates total annualized compliance costs at $20.1

million. This estimate is composed of one-time costs annualized to $9.8 million at a 7 percent discount rate and recurring annual costs of $10.3 million. Over 50 percent of the total costs are due to actions undertaken to manufacture LVP solutions and their inputs that comply with the aluminum requirements. One alternative that would have required SVP's to be labeled with the actual aluminum content of each batch would have raised these costs (Ref. 21).

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The ERG report presents estimated compliance costs by type of establishment. The report demonstrates that the largest compliance costs will be incurred by amino acid suppliers at about $1.4 million per establishment, followed by manufacturers of LVP's at about $320,000 per establishment, and other suppliers to TPN manufacturers at $134,000 per establishment. The data used in this analysis further show, however, that very few of the companies involved in these manufacturing activities are considered small by the standards of the Small Business Administration. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and, under the Regulatory Flexibility Act, no further analysis is required.

VIII. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, in accordance with 44 U.S.C. 3506(c)(2)(B) and 5 CFR part 1320, FDA is providing the following title, description, and respondent description of the information collection contained in this proposal, along with an estimate of the resulting annual collection of information burden. This estimate includes the time needed for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for 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.

Title: Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

Description: FDA is proposing to amend its regulations to add certain labeling requirements concerning aluminum in LVP's and SVP's used in TPN. FDA is also proposing to specify an upper limit of aluminum permitted in LVP's and to require applicants and manufacturers to develop and to submit to FDA for approval validated assay methods for determining aluminum content in parenteral drug products.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.323(b),(c),(d)	200	1	200	14	2,800
201.323(e)	65	1	65	14	910
Total					3,710

There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency has submitted a copy of the proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, OMB (address above).

IX. References

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

1. Alfrey, A. C., ''Aluminum,'' *Advances in Clinical Chemistry*, 23:69–91, 1983.

2. Kerr, D. N. S. et al., ''Aluminum-induced Dialysis Osteodystrophy: The Demise of 'Newcastle Bone Disease'?'' *Kidney International*, 29 (Suppl. 18):S–58–64, 1986.

3. Sedman, A. B. et al., ''Evidence of Aluminum Loading in Infants Receiving Intravenous Therapy,'' *The New England Journal of Medicine*, 312:1337–1343, 1985.

4. Koo, W. W. K. et al., ''Aluminum Contamination of Infant Formulas,'' *Journal of Parenteral and Enteral Nutrition*, 12:170–173, 1988.

5. Sedman, A. B. et al., ''Encephalopathy in Childhood Secondary to Aluminum Toxicity,'' *The Journal of Pediatrics*, 105:836–838, 1984.

6. American Academy of Pediatrics Committee on Nutrition, ''Aluminum Toxicity in Infants and Children,'' *Pediatrics*, 78:1150–1154, 1986.

7. Vargas, J. H. et al., ''Metabolic Bone Disease of Total Parenteral Nutrition: Course after Changing from Casein Amino Acids in Parenteral Solutions with Reduced Aluminum Content,'' *American Journal of Clinical Nutrition*, 48:1070–1078, 1988.

8. Klein, G., ''Aluminum in Parenteral Products: Medical Perspective on Large and Small Volume Parenterals,'' *Journal of Parenteral Science and Technology*, 43:120–124, 1989.

9. ASCN/ASPEN Working Group on Standards for Aluminum Content of Parenteral Nutrition Solutions, ''Parenteral Drug Products Containing Aluminum as an Ingredient or a Contaminant: Response to FDA Notice of Intent and Request for Information,'' *American Journal of Clinical Nutrition*, 53:399–402, 1991.

10. Andreoli, S. P., J. A. Smith, and J. M. Bergstein, ''Aluminum Bone Disease in Children: Radiographic Features from Diagnosis to Resolution,'' *Radiology*, 156:663–667, 1985.

11. McGraw, M. et al., ''Aluminum Content of Milk Formulae and Intravenous Fluids Used in Infants,'' *The Lancet*, 1:157, 1986.

12. Puntis, J. W. L., K. Hall, and I. W. Booth, ''Plasma Aluminum and Prolonged Parenteral Nutrition in Infancy,'' *The Lancet*, 2:1332–1333, 1986.

13. Koo, W. W. K. et al., ''Response to Aluminum in Parenteral Nutrition During Infancy,'' *Journal of Pediatrics*, 109:877–883, 1986.

14. Greger, J. L., and M. J. Baier, ''Excretion and Retention of Low or Moderate Levels of Aluminum by Human Subjects,'' *Food and Chemical Toxicology*, 21:473–477, 1983.

15. Gorsky, J. E. et al., ''Metabolic Balance of Aluminum Studied in Six Men,'' *Clinical Chemistry*, 25:1739–1743, 1979.

16. Bishop, N. J. et al., ''Increased Concentration of Aluminum in the Brain of an Infant,'' *Archives of Disease in Childhood*, 64:1316–1317, 1989.

17. Koo, W. W. K. et al.,''Aluminum in Parenteral Nutrition Solution—Sources and Possible Alternatives,'' *Journal of Parental and Enteral Nutrition*, 10:591–595, 1986.

18. Heyman, M. B. et al., ''Aluminum Does Not Accumulate in Teenagers and Adults on Prolonged Parenteral Nutrition Containing Free Amino Acids,'' *Journal of Parenteral and Enteral Nutrition*, 10:86–87, 1986.

19. Klein, G. L., ''Unusual Sources of Aluminum,'' in *Aluminum and Renal Failure*, edited by M. E. Debroe and J. W. Coburn, Kluwer, Boston, 1989.

20. Bishop, N. J. et al., ''Aluminum Neurotoxicity in Preterm Infants Receiving Intravenous Feeding Solutions,'' *New England Journal of Medicine*, 336:1557–1561, 1997.

21. Eastern Research Group, *Compliance Cost Analysis of a Regulation for Parenteral Drug Products Containing Aluminum*, March 11, 1996.

22. March 3, 1986, Meeting Minutes for the Advisory Committee on Endocrinologic and Metabolic Drug Products.

23. November 6, 1986, Meeting Minutes for Public Workshop on aluminum toxicity in clinical medicine, existing aluminum monitoring, clinical effects of aluminum loading, and methodology for quantitative aluminum determination in parenteral products.

24. June 25 and 26, 1987, Meeting Minutes of the Allergenic Products Advisory Committee—available in Docket No. 84N–0387.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. New § 201.323 is added to subpart G to read as follows:

§ 201.323 Aluminum in large and small volume parenterals used in total parenteral nutrition.

(a) The aluminum content of all large volume parenteral (LVP) drug products used in total parenteral nutrition (TPN) therapy shall not exceed 25 micrograms per liter (μg/L).

(b) The package insert of all LVP's used in TPN therapy shall state that the drug product contains no more than 25 μg/L. This information shall be contained in the ''Precautions'' section of the labeling of all LVP's used in TPN therapy.

(c) The maximum level of aluminum present at expiry shall be stated on the immediate container label of all small volume parenteral (SVP) drug products and pharmacy bulk packages used in the preparation of TPN solutions. The aluminum content shall be stated as follows: ''Contains no more than _____ μg/L.'' The immediate container label of all SVP drug products and pharmacy bulk packages that are lyophilized powders used in the preparation of TPN solutions shall contain the following statement: ''When reconstituted in accordance with the package insert instructions, the concentration of aluminum will be no more than _____ μg/L.'' This maximum level of aluminum shall be stated as the highest of:

(1) The highest level for the batches produced during the last 3 years;

(2) The highest level for the latest five batches; or

(3) The maximum historical level, but only until completion of production of the first five batches after this rule takes effect.

(d) The package insert for all LVP's, SVP's, and pharmacy bulk packages shall contain the following warning statement, intended for patients with impaired kidney function and for neonates receiving TPN therapy. This information shall be contained in the ''Warnings'' section of the labeling of all SVP's and LVP's as follows:

WARNING: This product contains aluminum that may be toxic. Aluminum may reach toxic levels with prolonged parenteral administration if kidney function is impaired. Premature neonates are particularly at risk because their kidneys are immature, and they require large amounts of calcium and phosphate solutions, which contain aluminum.

(e) Applicants and manufacturers shall develop validated assay methods to determine the aluminum content in parenteral drug products. The assay methods shall comply with current good manufacturing practice requirements. Applicants shall submit to the Food and Drug Administration (FDA) both validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application shall make assay methodology available to FDA during inspections. Holders of pending applications shall submit an amendment under § 314.60 or § 314.96 of this chapter.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–76 Filed 1-2-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Workshops on The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of workshop.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, is implementing the requirements of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The purpose of this notice is to inform the public of a public workshop session on assessing for chronic erroneous reporting.

DATES: The workshop will be held on Tuesday, January 27, 1998, from 2 p.m. until 4 p.m., Mountain time.

ADDRESSES: The workshop will be held at the Embassy Suites Denver Southeast, 7525 East Hampden Avenue, Denver, Colorado 80231, telephone (303) 696–6644. Mail comments to: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier delivery to building 85, Denver Federal Center, Denver, Colorado 80225; or e-mail David__Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432; Fax (303) 231–3385; e-mail: David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: President Clinton signed the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) on August 13, 1996, to improve the management of royalties from Federal oil and gas leases. This is the first major legislation affecting royalty management since the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) was passed in January 1983.

In our **Federal Register** Notice dated October 30, 1996 (61 FR 55941), MMS listed key issues involved in implementing RSFA. This workshop will focus on assessing for chronic erroneous reporting and will follow and

be held at the same location as the appeals workshop.

In order to accomplish a broad based fact finding on how the requirements of RSFA affect our customers and stakeholders, comments from the public are encouraged. In addition to attendance at this meeting, comments can be made in writing and sent directly to MMS using instructions in the **ADDRESSES** part of this notice.

Dated: December 29, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–121 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–MR–P

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207–AA45

Tolls for Use of Canal; Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking; request for comments; notice of hearing.

SUMMARY: The Panama Canal Commission (Commission) proposes to set a fixed, minimum toll rate for certain small vessels transiting the Panama Canal. The Commission has determined an efficient use of existing Canal capacity and resources requires a change in the method of calculating tolls used to meet the transit needs of certain small vessels. A minimum toll for small vessels will ensure the Commission can recover at least part of the resources it expends on this type of transits.

The proposed increase complies with the statutory requirement tolls be set at rates which produce revenues sufficient to cover Canal costs of operation and maintenance, including capital for plant replacement, expansion and improvements, and working capital.

This notice of proposed rulemaking also announces the availability from the Commission of an analysis showing the basis and justification for the proposed change, solicits written data, views or arguments from interested parties, and sets the time and place for a public hearing.

DATES: The agency must receive written comments and requests to present oral testimony on or before February 6, 1998. A public hearing will be held at 9 a.m., February 13, 1998, in the Republic of Panama.

ADDRESSES: Mail comments and requests to testify at the hearing to: John A. Mills, Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402; or Department of Financial Management, Panama Canal Commission, Balboa, Ancon, Republic of Panama.

The hearing location is at the Miraflores Visitors Pavilion Theater, Building 6–A, Miraflores Locks, Republic of Panama (accessible from Gaillard Highway).

FOR FURTHER INFORMATION CONTACT: John A. Mills, Telephone: (202) 634–6441, Facsimile: (202) 634–6439, E-mail: pancanalwo@aol.com; or Department of Financial Management, Telephone: 011 (507) 272–3137, Facsimile: 011 (507) 272–3040, E-mail: fmfp@pancanal.com.

SUPPLEMENTARY INFORMATION: Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes procedures for proposing toll rate increases and changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR part 70, which also provides interested parties with instructions for participating in the process governing changes in toll rates and measurement rules. The Commission strongly encourages all interested parties to present in writing, or orally at the hearing, pertinent data, views or arguments, along with other relevant information. Oral presentations should be limited to 20 minutes. Further information governing the content of the notice of appearance or intention to present supplementary data at the hearing appear at 35 CFR 70.8 and 70.10.

Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires Canal tolls be prescribed at rates calculated to produce revenues to cover as nearly as practicable all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto. In analyzing the issue of tolls for certain small vessels, it is recognized the primary purpose of the Commission is to provide a safe and efficient transit service to the oceangoing vessels of the world, primarily those engaged in commerce. The waterway, however, also attracts a considerable number of small vessels, such as yachts, fishing craft, and tugboats. Such small vessel transits are incidental to the primary mission of the Canal. They also consume a disproportionately large share of available Canal capacity and resources, creating costly inefficiencies in Canal operations. In addition, and perhaps more importantly, small vessels (especially yachts), impose administrative costs and logistical problems which currently are not offset by the tolls they pay. Consequently, last November, Congress amended section 1602(a) of the Panama Canal Act of 1979, 22 U.S.C. 3792(a) by Pub. L. 105–85 to allow the Commission to set tolls for yachts and other small vessels transiting the Canal based on other than net vessel tons of earning capacity.

The Commission is attempting to reduce the administrative costs and logistical requirements of small vessel transits. It is also trying to improve the scheduling options available for these vessels with the goal of minimizing the negative impact on the Commission's resources and capacity, and, wherever possible, reduce the expenses associated with the transit of these small vessels. All of these steps are taken in order to maintain the transit service offered to these vessels. Even with these measures, however, the Commission's analysis of small vessel transits indicates the cost of providing the service far exceeds the toll charged for the service. To address this issue, the Commission's Board of Directors approved a recommendation to set a fixed, minimum toll for certain small vessels to recover these expenses in a proportionate manner.

The Commission will consider all submissions before publishing the final rule in the **Federal Register**. The final rule, as approved and published by the Commission, will be effective no earlier than 30 days after the date of its publication as final in the **Federal Register**.

The Commission is exempt from Executive Order 12866. Accordingly, provisions of that directive do not apply to this rule. Even if the Order were applicable, this change would not constitute a ''rule'' as that term is defined in the Regulatory Flexibility Act [5 U.S.C. 601(2)] because it concerns ''rates'' and ''practices relating'' thereto.

Furthermore, the Commission has determined implementation of this rule will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The Secretary of the Commission certifies these proposed regulatory changes meet the applicable standards of sections 3(a) and 3(b)(2) of Executive Order No. 12988 of February 7, 1996.

List of Subjects

35 CFR Part 133

Navigation, Panama Canal, Tolls, Vessels.

35 CFR Part 135

Measurement, Vessels.

For the reasons stated in the preamble, the Panama Canal Commission proposes to amend 35 CFR parts 133 and 135 as follows:

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 is revised to read as follows:

Authority: 22 U.S.C. 3791–3792.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On vessels over 38.10 meters (125.00 feet) in length overall:

(1) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo (laden), $2.57 per PC/UMS Net Ton—that is, the Net Tonnage determined in accordance with part 135 of this chapter.

(2) On vessels in ballast without passengers or cargo, $2.04 per PC/UMS Net Ton.

(3) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.43 per ton of displacement.

(4) All vessels whose PC/UMS Net Tonnage (laden or ballast) or displacement tonnage would result in a toll of less than $1,500 shall pay the fixed, minimum toll provided in paragraph (b) of this section.

(b) On vessels less than or equal to 38.10 meters (125.00 feet) in length overall:

(1) Vessels with or without passengers or cargo shall pay a fixed, minimum toll of $1,500.

(2) Vessels whose constructional features are such as to render the application of this provision unreasonable or impractical, as determined by the Panama Canal Commission, shall have a PC/UMS Net or displacement tonnage determined and shall have the toll assessed in accordance with paragraph (a) of this section; however, in no case shall the toll be less than $1,500.

PART 135—RULES FOR MEASUREMENT OF VESSELS

1. The authority citation for part 135 is revised to read as follows:

Authority: 22 U.S.C. 3791–3792.

1. Section 135.1 is amended by adding at the end thereof two new sentences to read as follows:

§ 135.1 Scope.

* * * Vessels less than or equal to 38.10 meters (125.00 feet) in length overall are not required to be measured, except as provided for in § 133.1(b)(2) of this chapter. Vessels greater than 38.10 meters (125.00 feet) in length overall may not be assigned a PC/UMS Net Tonnage if it is determined by the Panama Canal Commission the fixed, minimum toll provided for in § 133.1(b)(1) will apply.

Dated: December 29, 1997.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 98–099 Filed 1–2–98; 8:45 am]

BILLING CODE 3640–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Negotiated Rulemaking Committee on the Shared Risk Exception; Meetings

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Meeting of Negotiated Rulemaking Committee.

SUMMARY: This document announces the revised dates for the seventh set of meetings of the Negotiated Rulemaking Committee on the Shared Risk Exception. The purpose of this Committee is to negotiate the development of an interim final rule addressing the shared risk exception to the Federal health care programs' anti-kickback provisions, as statutorily-mandated by section 216 of the Health Insurance Portability and Accountability Act of 1996.

DATES: The next series of meetings will be held on January 21 and 22, 1998 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The January sessions will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024, as previously announced.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding these sessions should be addressed to Joel Schaer, OIG Regulations Officer, Office of Counsel to the Inspector General, Room 5518, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201; or call (202) 619–0089.

SUPPLEMENTARY INFORMATION: The dates for the next series of meetings for the Negotiated Rulemaking Committee on the Shared Risk Exception, originally scheduled for January 20 through 22, 1998 (62 FR 63689, December 2, 1997), have been revised. The Committee will now plan to meet only on January 21 and 22, 1998.

The Negotiated Rulemaking Committee on the Shared Risk Exception been established to provide advice and make recommendations to the Secretary of Health and Human Services with respect to the text or content of an interim final rule that will establish standards relating to the exception to the anti-kickback statute for risk-sharing arrangements. set forth in section 1128B(b)(3)(F) of the Social Security Act. The exception was enacted by section 216 of Public Law 104–191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 216 of HIPAA provides that the Secretary will promulgate regulations that establish standards for the exception using an expedited negotiated rulemaking process. In the January meeting, the Committee will conclude discussion of issues relating to the development of the interim final rule and the options for resolving those issues.

Both the January 21 and 22, 1998 meetings will be open to the public without advanced registration. A summary of all proceedings of these meetings and relevant matters and other material will also be available for public inspection at the address listed above from the hours of 8:30 a.m. to 5:00 p.m., or can be accessed through the OIG web site located at http://www.dhhs.gov/progorg/oig. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated December 19, 1997.

D. McCarty Thornton,

Chief Counsel to the Inspector General.

[FR Doc. 98–30 Filed 1–2–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, and 304

RIN 0970–AB69

Child Support Enforcement Program; State Plan Requirements, Standards for Program Operations, and Federal Financial Participation

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking

SUMMARY: This proposed rule would implement part of the paternity establishment provisions contained in section 331 of the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996 (PRWORA) and amended by section 5539 of Pub. L. 105–33, which impose new statutory requirements for a State's voluntary paternity acknowledgement process and require the Secretary to promulgate regulations governing voluntary paternity establishment services and identifying the types of entities other than hospitals and birth record agencies that may be allowed to offer voluntary paternity establishment services. States will be required to adopt laws and procedures that are in accordance with the statutory and regulatory provisions. These proposed regulations will address these procedures and related provisions.

DATES: Consideration will be given to written comments received by March 6, 1998.

ADDRESSES: Comments should be submitted in writing to the Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director of Policy and Planning Division, Mail Stop: OCSE/DPP. Comments may also be submitted by sending electronic mail (e-mail) to ''jrothstein@acf.dhhs.gov.'', or by telefaxing to 202–401–3444. This is not a toll-free number. Comments sent electronically must be in ASCII format. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Jan Rothstein, OCSE Division of Policy and Planning, (202) 401–5073. Hearing impaired individuals may call the Federal Dual Party Relay Service at 800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Section 466(a)(5)(C) of the Social Security Act (the Act) as added by section 331 of Pub. L. 104–193 and amended by section 5539 of Pub. L. 105–33 contains a requirement that information be disclosed to a third party. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Section 466(a)(5)(C) of the Act as added by section 331 of Pub. L. 104–193 and amended by section 5539 of Pub. L. 105–33 requires States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and putative father can sign a voluntary acknowledgement of paternity, the mother and putative father must be given notice, orally or through the use of video or audio equipment and in writing of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity. To comply with this requirement States must disclose information about these rights in written and oral formats or through the use of video or audio equipment to mothers and putative fathers. We estimate the time needed to disclose the information to mothers and putative fathers to be approximately 10 minutes. In order to ensure effective disclosure of this information, States will need to provide training to other State employees and the employees of local governments, non-profits and for profit businesses. We estimate this training will take an additional 1,600 hours yearly for all entities. We have added these hours to the time estimated to be necessary for the third party disclosure in order to establish the total estimated burden hours for this requirement.

Likely respondents to the third party disclosure include hospitals, TANF agencies, Food Stamp agencies, WIC centers, Maternal and Child Health centers, doctors, lawyers, and secondary schools. While the total number of potential respondents is approximately 2,000,000, we expect the actual number of respondents will be closer to 100,000. We estimate that 448,600 paternities will be voluntarily established in 1998 and of that number half will be established in hospitals. The total burden hours estimated for the third party disclosure are 76,059.

To ensure that public comments have maximum effect in developing the final regulations, ACF urges that persons wishing to comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

ACF will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington DC 20503, Attn: Ms. Wendy Taylor.

Statutory Authority

These proposed regulations are published under the authority of section 466(a)(5)(C) of the Act, as amended by section 331 of Pub.L. 104–193. Section 466(a)(5)(C)(iii) of the Act requires the Secretary to promulgate regulations governing voluntary paternity establishment services and identifying the types of entities other than hospitals and birth record agencies that may be allowed to offer voluntary paternity establishment services. States will be required to adopt laws and procedures that are in accordance with the statutory and regulatory provisions.

Background

Paternity establishment is a necessary first step for obtaining child support in cases where a child is born out-of-wedlock. In addition to child support, there are other potential financial benefits to establishing paternity, including establishing a child's rights to the father's Social Security benefits, veterans' benefits, pension benefits, and other rights of inheritance. Paternity establishment could also be the first step in developing a psychological and social bond between the father and child, in giving the child social and psychological advantages and a sense of family heritage, and in providing access to important medical history information.

Congress and the Federal government have long recognized the importance of paternity establishment. In 1975, Title IV–D of the Social Security Act was

enacted to require States to establish public child support agencies. These IV–D agencies provide child support enforcement services, including paternity establishment services. The Child Support Enforcement Amendments of 1984 required States to permit paternity to be established until a child's 18th birthday.

The Family Support Act of 1988 contained several provisions designed to improve paternity establishment, including performance standards, timeframes for case processing, enhanced funding (90% Federal financial participation) for genetic testing, a requirement that States compel all parties in a contested paternity case to submit to genetic testing upon the request of a party, a requirement that States compel each parent to provide his or her social security number as part of the birth certificate issuance process, and a clarification of the earlier expansion of the requirement permitting paternity establishment to 18 years of age.

The Omnibus Reconciliation Act of 1993 (OBRA '93) further reformed the child support enforcement program to increase the performance standards for both the number of paternities established for children born out-of-wedlock and the timeliness with which paternity establishment is accomplished. One major provision of OBRA '93 was the requirement that States have laws providing for voluntary paternity establishment services at birthing hospitals statewide.

Partly as a result of these Federal and State statutory provisions and their implementation, the number of paternities established each year by the IV–D Child Support Enforcement program has increased substantially from about 270,000 in fiscal year (FY) 1987 to over 553,000 in FY 1993, an increase of over 100 percent in just six years. Nearly a million paternities were established in FY 1996, an increase of over 80 percent in the three years since enactment of OBRA '93.

Finally, in section 101 of PRWORA, Congress cited a number of social and statistical findings relating to the need for paternity establishment. In 1992, only 54 percent of single-parent families with children had a child support order established and, of that number, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection. The number of individuals receiving IV–D services more than tripled since 1965, and more than two-thirds of these recipients are children, with eighty-nine percent of children receiving Aid to Families with Dependent Children benefits living in homes in which no father is present. The increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women. Congress further cited that between 1970 and 1991, the percentage of live births to unmarried women increased nearly threefold, from 10.7 percent to 29.5 percent, and if the current trend continues, 50 percent of all births by the year 2015 will be out-of-wedlock. The estimated rate of nonmarital teen pregnancy rose 23 percent from 54 pregnancies per 1,000 unmarried teenagers in 1976 to 66.7 pregnancies in 1991, while the overall rate of nonmarital pregnancy rose 14 percent from 90.8 pregnancies per 1,000 unmarried women in 1980 to 103 in both 1991 and 1992.

Description of Statutory Provisions

Section 466(a)(5)(C)(iii)(II)(aa) of the Act as amended by Pub. L. 104–193 requires that ''(T)he Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.'' Section 466(a)(5)(C)(iii)(II)(bb) of the Act as amended by Pub. L. 104–193 requires that ''(T)he Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.''

The statute also requires that States develop procedures for a simple civil process for voluntarily acknowledging paternity. This process must ensure that a mother and a putative father do not sign an acknowledgement of paternity before they are both given notice orally or through the use of video or audio equipment and in writing of the alternatives to, the legal consequences of, and the rights (including those rights due to minority status) and responsibilities of acknowledging paternity. In addition, section 466(a)(5)(M) of the Act requires that States develop procedures under which voluntary acknowledgements and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry. These changes required by PRWORA are largely expansions on requirements previously established under OBRA '93. However, as noted above, the Act now requires the Secretary to prescribe by regulations the types of other entities that may offer voluntary paternity establishment services and to write regulations governing the voluntary paternity establishment services offered by hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program.

We propose to implement the requirements of amended section 466(a)(5)(C) by amending § 302.70, addressing State laws, § 303.5, addressing establishment of paternity and § 304.20, addressing availability and rate of Federal financial participation.

Regulatory Philosophy

Historically in the child support enforcement program, the Federal government had specified in detailed regulations how things must be done by States. The Federal Office of Child Support Enforcement (OCSE) has entered an era which necessitates a new philosophy with respect to Federal mandates through regulation. Because the President is committed to reducing the burden on States and streamlining regulations, OCSE's new watchwords are partnership, results, flexibility, and accountability.

Since OCSE's partnership with States is built on shared trust and the primary Federal concern is results, we believe our partners in State and local government should have a significantly greater degree of flexibility, within the constraints of the Federal statute, than previously permitted. Striking the appropriate balance between flexibility and standardization will be a continuing challenge as OCSE strives for an environment that encourages and rewards rather than stifles creativity throughout the child support community.

These proposed regulations reflect OCSE's consultation with our partners and stakeholders on how detailed the required procedures should be and what other sources of voluntary paternity establishment services should be included in the list of entities. OCSE took into careful consideration the fact that so many of the Federal requirements in the new law will necessitate State legislation. In the past, there occasionally have been concerns when State legislatures enacted legislation in response to Federal

statutory and regulatory requirements, but had to return in a later session to enact State laws in response to new or additional Federal regulations. We were concerned to avoid that situation here, if at all possible.

Because the Federal statute and regulations are fairly explicit with respect to State requirements governing paternity establishments, we believe it prudent to merely extend existing regulatory requirements which govern voluntary paternity acknowledgement in hospitals to govern birth record agencies and other entities participating in the State's voluntary paternity establishment program as well.

Other paternity establishment provisions contained in section 331 of Pub. L. 104–193, as well as other portions of Pub. L. 104–193 that address paternity issues, are not addressed in this proposed rulemaking. Necessary changes to existing regulations which are inconsistent with new Federal mandates will be addressed in a separate omnibus rule-making. While we do not intend at this time to restate Federal statutory requirements in regulations, should the need arise based on unforeseen circumstances, we will work with our partners and stakeholders to determine if further regulation and guidance is needed to ensure consistent and effective compliance with Federal statutory requirements and expectations.

In considering how best to implement the statutory requirement that the Secretary promulgate regulations for expanding voluntary paternity establishment services to include not only birthing hospitals, but also birth record agencies and other entities, OCSE has looked for guidance from the President's National Performance Review guidelines for reinventing regulations. The guiding principles are to: cut obsolete regulations; reward results, not red tape; get out of Washington to create grass roots partnerships; and negotiate, not dictate.

Consultation Process

With these guidelines and OCSE's watchwords of partnership, results, flexibility, and accountability, we elicited input from our partners, including State and local IV–D administrators, State and Federal birth record agencies, and others with empirical and applied knowledge of voluntary paternity establishment services. OCSE has consulted with the National Governors' Association, the American Public Welfare Association, the National Conference of State Legislatures, the National Association of Counties, the AFL–CIO, the Center for Law and Social Policy, the Children's Defense Fund, the Center for Budget and Policy Priorities, the United States Conference of Mayors, the National League of Cities, Child Trends, the Manpower Development Research Corporation, the Urban Institute, the Coalition on Human Needs, the National Association of Social Workers, the National Organization for Women's Legal Defense Fund, the American Association of University Women, and others. Some of our partners have long-term experience in the in-hospital program for voluntary paternity establishment services, others have a wider breadth of experience from a vital records perspective, and still others have come from a child support enforcement background with varied experience in working with and through their partners, and in achieving legislative enactments and implementation successes. With their help, we developed the list of entities where States may make voluntary paternity establishment services available.

Description of Regulatory Provisions—Section 302.70(a)(5)(iii)

Current Regulations

Current § 302.70(a)(5)(iii) requires States to have in effect laws requiring the use of procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained, and ensure that due process safeguards are afforded. Such procedures must include a hospital-based program for the voluntary acknowledgement of paternity in the period immediately before or after the birth of a child to an unmarried woman, and a requirement that all public and private birthing hospitals participate in the program. Such procedures must also include a process for voluntarily acknowledging paternity outside of hospitals.

Proposed Regulations

We propose that section 302.70(a)(5)(iii) be revised to require a State to have in effect laws requiring procedures for a simple civil process for voluntarily acknowledging paternity. Under these procedures, before a mother and putative father can sign a voluntary acknowledgement of paternity, the mother and the putative father must be given notice, orally or through the use of video or audio equipment and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity, and ensure that due process safeguards are afforded. This section would be further revised to specify that both parents are to sign the voluntary acknowledgement.

We propose to revise paragraph (a)(5)(iii)(B) to require that State procedures must include a program for voluntary acknowledgement of paternity in birth record agencies and in other entities participating in the State's voluntary paternity establishment program. We propose to add a new paragraph (a)(5)(iii)(C) to require that State procedures governing hospital-based programs and birth record agencies must also apply to other entities participating in the State's voluntary paternity establishment program, including the use of the same notice provisions, the same materials, the same evaluation methods, and the same training for the personnel of these other entities providing voluntary paternity establishment services.

Description of Regulatory Provisions—Section 303.5(g)

Current Regulations

Current § 303.5(g) requires States to establish, in cooperation with hospitals, a hospital-based program in every public and private birthing hospital, by January 1, 1995, for voluntary paternity acknowledgement during the period immediately before or after the birth of a child to an unmarried woman.

The hospital-based program:

(1) Must provide to both the mother and alleged father, if he is present in the hospital, written materials about paternity establishment, the forms necessary to voluntarily acknowledge paternity, a written description of the rights and responsibilities of acknowledging paternity, and the opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(2) Must also provide the mother and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital, afford due process safeguards, and forward the completed acknowledgments or copies to the entity designated by the State; and

(3) Need not provide the voluntary paternity acknowledgement services in cases where the mother or alleged father is a minor or a legal action is already pending, if the provision of such services is precluded by State law.

The State must:

(1) Require that a voluntary acknowledgment obtained through a hospital-based program be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es);

(2) Provide to all public and private birthing hospitals in the State written materials about paternity establishment, forms necessary to voluntarily acknowledge paternity, and copies of a written description of the rights and responsibilities of acknowledging paternity;

(3) Provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the hospital-based program;

(4) Assess each birthing hospital's program on at least an annual basis; and

(5) Designate an entity to which hospital-based programs must forward completed voluntary acknowledgments or copies. Under the State procedures, this entity must be responsible for promptly recording identifying information about the acknowledgments with a statewide database, and the IV–D agency must have timely access to whatever identifying information and documentation it needs to determine if an acknowledgment has been recorded and to seek a support order on the basis of a recorded acknowledgment.

Proposed Regulations

We propose to revise 45 CFR 303.5(g)(1) to require that the State voluntary paternity establishment program also be available at the State birth record agency, local birth record agencies designated by the State and at other entities designated by the State. The designation of the particular entities that may offer voluntary paternity establishment services would be the responsibility of the State.

These entities to be identified by the State could include the following and similar entities: public health clinics (including Supplementary Feeding Program for Women, Infants, and Children (WIC) and Maternal and Child Health (MCH) clinics); private health care providers (including obstetricians, gynecologists, pediatricians, and midwives); agencies providing assistance or services under title IV–A of the Act; agencies providing food stamp eligibility services; agencies providing child support enforcement (IV–D) services; Head Start and child care agencies (including child care information and referral providers); individual child care providers; Community Action Agencies and Community Action Programs; secondary education schools (particularly those that have parenthood education curricula); Legal Aid agencies; and private attorneys; and any similar public or private health, welfare, or social services organization.

Although the Secretary is required to prescribe in regulations the ''types of entities'' which States may designate to provide voluntary paternity services, we wish to allow States the broadest possible discretion to determine which entities within their jurisdiction should be designated, trained and empowered to provided this important service.

We also propose to revise § 303.5(g), to replace the reference to the requirement that the State designate an entity to which the voluntary acknowledgement program must forward completed voluntary acknowledgement forms or copies with a requirement that the State designate the State registry of birth records as the entity to which the voluntary acknowledgement program must forward completed voluntary acknowledgment forms or copies. We also propose to replace references to the hospital-based voluntary paternity establishment program with references to hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program.

By making these changes, we propose to expand the applicability of all existing provisions in § 303.5(g)(2)–(8) to birth record agencies and other entities participating in the State's voluntary paternity establishment program. This is consistent with the statutory requirement that the Secretary prescribe regulations governing the provision of services by the other entities. The statute specifies that the other entities participating in the State's voluntary paternity establishment program must use the same materials and be trained and evaluated in the same manner as the voluntary paternity establishment programs of hospitals and birth record agencies. We believe this consistency will greatly facilitate the establishment of paternities by entities other than hospitals and birth record agencies.

Additionally, to reflect other new statutory requirements, we propose to revise § 303.5(g)(2)(i)(C) and § 303.5(g)(5)(iii), to require that hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program provide to the mother, and the father if present, an oral as well as written description of the consequences of voluntarily acknowledging paternity. The information about consequences may also be provided through the use of video or audio equipment.

The description must address not only the rights and responsibilities of acknowledging paternity, but also the alternatives to, and the legal consequences of, acknowledging paternity. In addition, the description must ensure that due process safeguards are afforded and that any rights due to minority status be described to the parents if a parent is a minor.

Description of Regulatory Provisions—Section 304.20(b)(2)

Current Regulations

Under current § 304.20(b)(2)(vi), Federal financial participation is available for State administrative costs for paternity establishment services, including payments up to $20 to birthing hospitals and other entities that provide prenatal or birthing services for each voluntary acknowledgment obtained pursuant to an agreement with the IV–D agency. Under current § 304.20(b)(2)(vii), Federal financial participation is available for developing and providing to birthing hospitals and other entities that provide prenatal or birthing services written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity. Under current § 304.20(b)(2)(viii), Federal financial participation is available for reasonable and essential short-term training regarding voluntary acknowledgment of paternity associated with a State's hospital-based program.

Proposed Regulations

We propose to revise these paragraphs to allow Federal financial participation in these allowable costs with respect to birth record agencies and other entities participating in the voluntary paternity establishment program. This is consistent with our proposal to expand the applicability of all existing provisions in § 303.5(g) (2)–(8) to birth record agencies and other entities participating in the State's voluntary paternity establishment program.

Regulatory Flexibility Analysis

The primary impact of these regulations is on State governments and individuals, which are not considered small entities under the Regulatory Flexibility Act. Most of the requirements being imposed on entities are required by statute. The regulations require hospitals, birth record agencies and the other entities participating in the State's voluntary paternity establishment program to be subject only to certain minimal requirements.

These requirements include: undergoing training, being evaluated annually, providing oral and written information to mothers and putative fathers, and transmitting the acknowledgements to the State registry of birth records. The information about consequences may also be provided through the use of video or audio equipment. The Federal regulations do not specify the nature or extent of the training, evaluation or materials to be provided. The States will furnish the training, conduct the evaluation, and provide the materials and forms to be used. The requirements imposed by the regulations do not result in a significant impact on a substantial number of small entities. Therefore, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these proposed regulations will not result in a significant impact on a substantial number of small entities.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. The proposed regulations are required by PRWORA and represent expansion of the existing regulations to cover birth record agencies and other entities.

Unfunded Mandates Act

The Department has determined that this proposed rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 45 CFR Parts 302, 303, and 304

Accounting, Child support, Grant programs—social programs, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement Program)

Dated: July 30, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

Approved: September 25, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, we propose to amend title 45 CFR chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.70 is amended by revising paragraph (a)(5)(iii) introductory by revising paragraph (a)(5)(iii)(B), and by adding paragraph (a)(5)(iii)(C) to read as follows:

§ 302.70 Required State laws.

(a) * * *

(5) * * *

(iii) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and putative father can sign a voluntary acknowledgement of paternity, the mother and the putative father must be given notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity, and ensure that due process safeguards are afforded. Such procedures must include:

(A) * * *

(B) A process for voluntary acknowledgement of paternity in birth record agencies, and in other entities participating in the State's voluntary paternity establishment program; and

(C) A requirement that the procedures governing hospital-based programs and birth record agencies must also apply to other entities participating in the State's voluntary paternity establishment program, including the use of the same notice provisions, the same materials, the same evaluation methods, and the same training for the personnel of these other entities providing voluntary paternity establishment services.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

3. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

4. Section 303.5 is amended by revising paragraph (g) to read as follows:

§ 303.5 Establishment of paternity.

* * * * *

(g) *Voluntary paternity establishment programs.* (1) The State must establish, in cooperation with every hospital and birth record agency and with all other entities participating in the State's voluntary paternity establishment program, a program for voluntary paternity establishment services.

(i) The hospital-based portion of the voluntary paternity establishment services program must be operational in private and public birthing hospitals statewide and must provide voluntary paternity establishment services focusing on the period immediately before and after the birth of a child born out-of-wedlock.

(ii) The voluntary paternity establishment services program must also be available at the State birth record agency, every local birth record agency within the State, and at all other entities participating in the State's voluntary paternity establishment program. These entities may include the following types of entities:

(A) Public health clinics (including Supplementary Feeding Program for Women, Infants, and Children (WIC) and Maternal and Child Health (MCH) clinics), and private health care providers (including obstetricians, gynecologists, pediatricians, and midwives);

(B) Agencies providing assistance or services under title IV–A of the Act, agencies providing food stamp eligibility service, and agencies providing child support enforcement (IV–D) services;

(C) Head Start and child care agencies (including child care information and referral providers), and individual child care providers;

(D) Community Action Agencies and Community Action Programs;

(E) Secondary education schools (particularly those that have parenthood education curricula);

(F) Legal Aid agencies, and private attorneys; and

(G) Any similar public or private health, welfare or social services organization.

(2) The hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program must, at a minimum:

(i) Provide to both the mother and alleged father, if he is present:

(A) Written materials about paternity establishment,

(B) The forms necessary to voluntarily acknowledge paternity,

(C) A written and oral or through the use of video or audio equipment description of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity, and

(D) The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(ii) Provide the mother and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity;

(iii) Afford due process safeguards; and

(iv) Forward completed acknowledgements or copies to the State registry of birth records.

(3) The hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program need not provide services specified in paragraph (g)(2) of this section in cases where the mother or alleged father is a minor or a legal action is already pending, if the provision of such services is precluded by State law.

(4) The State must require that a voluntary acknowledgement be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es).

(5) The State must provide to all hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program:

(i) Written materials about paternity establishment, ii) forms necessary to voluntarily acknowledge paternity, and

(ii) Form necessary to voluntarily acknowledge paternity, and

(iii) Copies of a written description of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity.

(6) The State must provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the voluntary paternity establishment services in the hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program.

(7) The State must assess each hospital, birth record agency, and other entity participating in the State's voluntary paternity establishment program that are providing voluntary paternity establishment services on at least an annual basis.

(8) The State must designate the State registry of birth records as the entity to which hospitals, birth record agencies, and other entities that are participating in the State's voluntary paternity establishment program must forward completed voluntary acknowledgements or copies in accordance with § 303.5(g)(2)(iv). Under State procedures, the State registry of birth records must be responsible for promptly recording identifying information about the acknowledgements with a statewide database, and the IV–D agency must have timely access to whatever identifying information and documentation it needs to determine in accordance with § 303.5(h) if an acknowledgement has been recorded and to seek a support order on the basis of a recorded acknowledgement in accordance with § 303.4(f).

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

5. The authority citation for Part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

6. Section 304.20 is amended by revising paragraph (b)(2)(vi) through paragraph (6)(2)(viii) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

(b) * * *

(2) * * *

(vi) Payments up to $20 to hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program, under § 303.5(g) of this chapter, for each voluntary acknowledgement obtained pursuant to an agreement with the IV–D agency;

(vii) Developing and providing to hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program, under § 303.5(g) of this chapter, written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity; and

(viii) Reasonable and essential short-term training associated with the State's program of voluntary paternity establishment services under § 303.5(g).

* * * * *

[FR Doc. 98–088 Filed 1–2–98; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–244, RM–9200]

Radio Broadcasting Services; Kerrville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by The Stronghold Foundation, Inc., requesting the allotment of Channel 291A to Kerrville, TX, as the community's third local FM station. Channel 291A can be allotted to Kerrville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 291A at Kerrville are 30–02–48 NL and 99–08–24 WL. Since Kerrville is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

DATES: Comments must be filed on or before February 9, 1998, and reply comments on or before February 24, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bradford D. Carey, Hardy and Carey, L.L.P., 111 Veterans Boulevard, Suite 255, Metairie, Louisiana, 70005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–244, adopted December 10, 1997, and released December 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter

is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–034 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–245; RM–9202]

Radio Broadcasting Services; St. Marys, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Seven Ranges Radio Company, Inc., proposing the allotment of Channel 287A St. Marys, West Virginia, as the community second local FM transmission service. Channel 287A can be allotted to St. Marys in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 kilometers (6.7 miles) southeast to avoid a short-spacing to the licensed site of Station WZNW(FM), Channel 288B1, Bethlehem, West Virginia. The coordinates for Channel 387A at St. Marys are North Latitude 39–18–03 and West Longitude 81–15–19. Since St. Marys is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before February 9, 1998, and reply comments on or before February 24, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Thomas P. Taggart, Esq., P.O. Box 374, St. Marys, West Virginia 26170 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–245, adopted December 10, 1997, and released December 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–84 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–246; RM–9205]

Radio Broadcasting Services; Walla Walla, WA, and Hermiston, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mark Jacky Broadcasting proposing the substitution of Channel 256C2 for Channel 256C3 at Walla Walla, Washington, and the modification of Station KUJ–FM's construction permit accordingly. To accommodate the upgrade, petitioner also requests the substitution of Channel 258A for Channel 257A at Hermiston, Oregon, and the modification of Station KQFM(FM)s license accordingly. Channel 256C2 can be substituted at Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 256C2 at Walla Walla are North Latitude 45–59–38 and West Longitude 118–10–47. Additionally, Channel 258A can be substituted at Hermiston in compliance with the Commission's minimum distance separation requirements at Station KQFM(FM)'s presently authorized site. The coordinates for Channel 258A at Hermiston are North Latitude 45–51–57 and West Longitude 119–18–45.

DATES: Comments must be filed on or before February 9, 1998, and reply comments on or before February 24, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Robert Lewis Thompson, Esq., Taylor, Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–246, adopted December 10, 1997, and released December 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–139 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9, Notice No. 8]

RIN 2130–AB22

Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to revise the regulations regarding the use and design of two-way end-of-train telemetry devices (two-way EOTs) to specifically address certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and swift action is necessary to clarify and address the applicability of the two-way EOT requirements to these types of operations.

DATES: Written comments regarding this proposal must be filed no later than January 20, 1998. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Stop 10, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Wilson, Motive Power and Equipment Division, Office of Safety, RRS–14, FRA, 400 Seventh Street, SW., Stop 25, Washington, DC 20590 (telephone 202–632–3367), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, SW., Stop 10, Washington, DC 20590 (telephone 202–632–3178).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1997, FRA published a final rule amending the regulations governing train and locomotive power braking systems at 49 CFR part 232 to add provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). *See* 62 FR 278. The purpose of the revisions was to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of freight trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. *See* Pub. L. No. 102-365 (September 3, 1992); 49 U.S.C. 20141. In this document, FRA proposes to revise the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and prompt action is necessary to clarify and address the applicability of two-way EOT requirements to these types of operations.

The current regulations regarding two-way EOTs provide an exception from the requirements for ''passenger trains with emergency brakes.'' *See* 49 CFR 232.23(e)(9). The language used in this exception was extracted in total from the statutory exception contained in the statutory provisions mandating that FRA develop regulations addressing the use and operation of two-way EOTs or similar technology. *See* 49 U.S.C. 20141(c)(2). A review of the legislative history reveals that there was no discussion by Congress as to the precise meaning of the phrase ''passenger trains with emergency brakes.'' Consequently, FRA is required to effectuate Congress' intent based on the precise language used in that and the other express exceptions and based on the overall intent of the statutory mandate. *See* 49 U.S.C. 20141(c)(1)-(c)(5). Furthermore, any exception contained in a specific statutory mandate should be narrowly construed. *See Chesapeake & Ohio Ry.* v. *United States,* 248 F. 85 (6th Cir. 1918) *cert. den.*, 248 U.S. 580; *DRG R.R.* v. *United States,* 249 F. 822 (8th Cir. 1918); *United States* v. *ATSF Ry.*, 156 F.2d 457 (9th Cir. 1946).

The intent of the statutory provisions related to two-way EOTs was to ensure that trains operating at a speed over 30 mph or in heavy grade territory were equipped with the technology to effectuate an emergency application of the train's brakes starting from both the front and rear of the train. The specific exceptions contained in the statute were aimed at trains (i) that do not operate within the express parameters or (ii) that are equipped or operated in a fashion that provides the ability to effectuate an emergency brake application that commences at the rear of the train without the use of a two-way EOT. *See* 49 U.S.C. 20141(c)(1)-(c)(5). Based on the intent of the statute and based upon a consistent and narrow construction of the specific language used by Congress in the express exceptions, FRA believes it is clear that Congress did not intend the phrase ''passenger trains with emergency brakes'' to constitute a blanket exception for all passenger trains. If that was Congress' intent, it would not have added the qualifying phrase ''with emergency brakes.'' In FRA's view, this language limits the specific statutory exception to passenger trains equipped with a separate emergency brake valve in each car throughout the train and, thus, to passenger trains possessing the ability to effectuate an emergency application of the train's brakes from the rear of the train. Therefore, passenger trains that include RoadRailers®, auto racks, express cars, or other similar vehicles that are designed to carry freight that are placed at the rear of the train, that are not equipped with emergency brake valves, would not fall within the specific statutory or regulatory exception as they are incapable of effectuating an emergency brake application that commences at the rear of the train. Further, FRA does not believe that Congress envisioned freight-type equipment being hauled at the rear of passenger trains when the specific exception was included in the statute.

FRA believes that Congress intended to except only those trains traditionally considered to be passenger trains, which would include passenger trains containing baggage and mail cars as these have consistently been considered passenger equipment with emergency brakes. However, passenger trains which operate with numerous inaccessible baggage or mail cars attached to the rear of the train that lack any ability to effectuate an emergency brake application from the rear of the train and would, in FRA's view, fall outside the specific statutory and regulatory exception for ''passenger trains with emergency brakes.''

Subsequent to the issuance of the final rule and the period permitted for the submission of petitions for

reconsideration of the rule, Amtrak raised concerns regarding the applicability of the final rule to some of its passenger train operations, particularly those which recently began to operate with numerous express, material handling cars, or RoadRailers® entrained in the consist. These concerns focused on FRA's enforcement guidance provided to its field inspectors, which stated that the exception for ''passenger trains with emergency brakes'' was intended to apply only to trains traditionally considered to be passenger trains, a category that would include passenger trains containing a limited number of baggage and mail cars at the rear of the train. This guidance was based on the reasoning provided in the preceding discussion. Amtrak contended that FRA's interpretive guidance was an improper reading of the statutory and regulatory exception and did not adequately consider the superior braking capabilities of passenger equipment. Although FRA disagrees that its guidance was improper, FRA does agree that a closer examination of the applicability of the two-way EOT requirements to passenger trains needed to be performed in light of the superior braking ratios of passenger cars and the presence of emergency brake valves on the passenger cars in mixed train consists which provide certain safety assurances that are not present in traditional freight operations. Consequently, FRA agrees that the mixed passenger and ''express'' service currently being operated by Amtrak is unique and needs to be handled separately from traditional freight operations.

None of the consists proposed to be excepted raises any issue with respect to the ability to stop on grade using the rearmost available conductor's valve. The issue is the ability to stop within normal signal spacing after determining that there is a blockage in the train line. To gain a perspective on the stopping characteristics and safety implications of the ''mixed'' passenger train operations, FRA requested the Volpe National Transportation Systems Center (Volpe) to review the information and procedures used by Amtrak in developing various stopping distance calculations submitted to FRA. In addition, FRA requested that Volpe develop and analyze its own data regarding these types of ''mixed'' passenger trains. In making their calculations, both Volpe and Amtrak used variables of grade; train configuration; and the number, weight, and types of cars and locomotives expected to be used in these types of operations. Although all of the calculations were based on worse-case scenarios (e.g., the angle cock was assumed to be closed just behind the last car with an accessible emergency brake valve, and only friction braking—tread or disc brakes of locomotives and cars—was considered available to stop the train), all stops were achieved on the specified grade used in the calculation.

In making its calculations Volpe used a MathCad program to compute stopping distances. Volpe used the results of its calculations as a check against the results Amtrak had produced and submitted to FRA. Volpe concluded that Amtrak's procedures predicted longer (more conservative) stopping distances than the approach taken by Volpe. Amtrak's results were also compared to the requirements of the Amtrak Communication and Signal Department, Specification S–603, Curve 8, which is used to determine stopping distances for passenger equipment for signal block spacing. Curve 8 values for stopping distances are augmented by a factor of 25 percent to account for conditions which may impair brake performance. The absolute (actual) signal block spacing on the Northeast Corridor is actually greater than any of the stopping distances produced by either Volpe or Amtrak in their calculations. Therefore, stopping distances within established signal blocks should not be a problem. The process Amtrak used was sufficiently conservative so that predicted stopping distances were greater than would be experienced in reality. Nevertheless, FRA has worked with Amtrak to define further limitations adequate to ensure safety under identified worst-case conditions, and these limitations are set forth in this proposal.

Need for 15-Day Comment Period

As previously discussed, Amtrak currently operates a number of trains that include numerous material handling cars, express cars, auto racks, mail cars, and/or RoadRailer® equipment. These types of rolling equipment are either not equipped with emergency brake valves or, if equipped with such valves, they are not accessible to any member of the train crew. Amtrak expects that the operation of this type of rolling equipment will continue to grow and that many of its trains will eventually have a number of these vehicles in their consists. As explained earlier, FRA believes that a passenger train operated with this rolling equipment falls outside the statutory and regulatory exception to the two-way EOT requirement for ''passenger trains with emergency brakes,'' and thus, would be required under the existing rules to be equipped with an operative two-way EOT or alternative technology. However, FRA also recognizes the unique nature of these types of ''mixed'' operations and realizes that the safety assurances provided by the braking ratios and the presence of emergency brake valves at various locations through much of the consist on certain mixed passenger trains make requiring the use of a two-way EOT unnecessary.

As will be further clarified, FRA believes that swift action must be taken with regard to the provisions proposed in this document and that a lengthy comment period would be impracticable, unnecessary, and contrary to the public interest. A number of freight railroads are currently expressing concern and apprehension over permitting these ''mixed'' passenger trains to operate over their rails in light of FRA's above-mentioned interpretive guidance. In fact, at least one instance has occurred in which a ''mixed'' Amtrak train was detained for six hours by a freight railroad until a two-way EOT was applied because the freight railroad refused to permit the train to operate without the device. In addition, requiring Amtrak to acquire a number of two-way EOTs and operate under the provisions of the current regulatory scheme during a lengthy comment period would impose a substantial and unwarranted financial and operational burden without improving the safety of Amtrak operations. Furthermore, the proposals contained in this document include certain restrictions on the operation and make-up of certain passenger trains that are proposed for exception from the two-way EOT requirements, restrictions that FRA believes enhance the safety of those operations and that are not currently mandated.

The current situation mandates swift action to address both safety concerns and practical operating concerns. On the one hand, Amtrak is continuing to take delivery of express and other equipment and to build this line of business in order to close its operating deficit and to support continued intercity rail passenger service in a time of declining support from the public treasury. The public's interest in continued rail passenger service warrants reasonable flexibility to achieve this business objective. This development has corresponded with the implementation of two-way EOT requirements, rapidly complicating what appeared at the outset to be a relatively straightforward issue. Prior to the effective date of the rule, Amtrak had implemented a two-way EOT system on its AutoTrain,

previously the only Amtrak train operated with any significant number of unoccupied cars at the rear of the train. Anticipating the need to equip other trains as the express business grows, Amtrak is equipping over 100 locomotives and deploying rear-end units at appropriate points along its lines where trains are built. Meanwhile, Amtrak has committed to FRA to operate cars with cables for head-end power transmission (such as mail and baggage cars) at the front of trains where practicable given constraints on loading and unloading, in order limit the number of cars to the rear of the train that are beyond the last car with an accessible emergency valve. As noted above, passenger trains have historically operated with small numbers of unoccupied cars at the rear and without difficulty from the point of view of effective braking. However, as express service grows and Amtrak builds trains responsive to that growth (a phenomenon that is well underway), the danger increases that Amtrak's own internal policies for use of available two-way EOT systems may not be honored in the field through oversight. That is, having clear and certain Federal requirements becomes essential to public safety. FRA recognizes that previous interpretive guidance has been excessively narrow in relation to the safety issues presented by mixed consists. Accordingly, FRA will employ the criteria contained in this proposed rule in exercising enforcement discretion during the period of this rulemaking.

In conclusion, FRA believes that prompt action is necessary in order to alleviate and avoid the concerns noted above. Consequently, FRA is issuing this NPRM with a comment period of only 15 days in order to quickly address the applicability of the two-way EOT requirements to ''mixed'' passenger train operations.

FRA wishes to make clear that if no substantive adverse comments are received on this proposal within the 15-day comment period, it will immediately issue a final rule containing the provisions of this proposal. Any comments received during this 15-day comment period will be fully considered prior to the issuance of a final rule. FRA intends for any final rule issued to take effect immediately upon publication. FRA is now soliciting comments on this proposal and will consider those comments in determining whether there is a need to amend the proposal at the final rule stage. FRA also intends to exercise its enforcement discretion and will not strictly enforce the current two-way EOT requirements against passenger train operations during the pendency of this proposal, provided that the passenger train is operated in accordance with the proposed provisions contained in this NPRM.

Section-by-Section Analysis

FRA proposes to amend § 232.23 by revising paragraphs (e) and (g) and by adding a new paragraph (h) to specifically address passenger train operations that include using cars that do not have readily accessible emergency brake valves.

Paragraph (e) of § 232.23 contains a listing of the trains that are excepted from the two-way EOT requirements. FRA proposes conforming changes to paragraphs (e)(8) and (e)(9). In paragraph (e)(9) FRA proposes to retain the exception for passenger trains in which all of the cars in the train are equipped with a readily accessible emergency brake valve, as discussed in detail above.

In paragraph (e)(10) FRA proposes an exception to the requirements regarding two-way EOTs for passenger trains that operate with a car placed at the rear of the train that is equipped with an emergency brake valve readily accessible to a crew member in radio communication with the locomotive engineer of the train. FRA intends for this proposed exception to be applicable to passenger trains containing cars that do have a readily accessible emergency brake valve at the rear of the train. FRA believes this proposed exception is justified as it is virtually identical to the exception granted to freight trains with an occupied caboose (contained in paragraph (e)(3)) since it would permit an emergency application of brakes to be initiated from the occupied car at the rear of the passenger train.

In paragraph (e)(11) FRA proposes to except certain passenger trains that have cars placed at the rear of the train that do not have readily accessible emergency brake valves. This proposed exception is intended to recognize the safety of these types of trains if configured and operated in accordance with the provisions of this exception. The proposed exception contained in this subparagraph applies only to trains of twenty-four (24) cars or fewer. Therefore, passenger trains that have more than 24 cars in the consist and that do not fall within the exceptions contained in subparagraphs (e)(9) or (e)(10) would be required to be equipped with an operative two-way EOT device or alternative technology. It should be noted that FRA intends that each bogie used in RoadRailer® operation be counted as a car for purposes of calculating the number of cars in a passenger train consist. Furthermore, FRA proposes that a locomotive that is not designed to carry passengers should not be considered a car for purposes of these calculations.

Based on data and information submitted by Amtrak and reviewed by Volpe and based upon Volpe's independent analysis regarding passenger train braking ratios and the response of passenger train brakes, FRA believes that certain ''mixed'' passenger trains can be safely operated without being required to be equipped with a two-way EOT or alternative technology provided certain operational and train configuration restrictions are maintained. Paragraph (e)(11)(i) proposes that if the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a consist containing twelve (12) cars, the sixth (6th) car (or a car closer to the rear) in the consist must have a readily accessible emergency brake valve; likewise, in an eleven (11) car consist, the sixth (6th) car (or a car closer to the rear) must have a readily accessible emergency brake valve, since all half numbers will be rounded up. Paragraph (e)(11)(ii) proposes that if the total number of cars in a passenger train consist is from thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a twenty-one (21) car consist, the fourteenth (14th) car (or a car closer to the rear) must have a readily accessible emergency brake valve.

In addition to these train-configuration requirements, paragraphs (e)(11)(iii) and (iv) contain certain proposed operating requirements that must be followed by any passenger train operating pursuant to this specific exception. Such trains would be required to have a train crew member occupy the rearmost car equipped with a readily accessible emergency brake valve and remain in constant radio communication with the locomotive engineer whenever the train is operating over a section of track with an average grade of two percent or higher over two continuous miles. FRA recommends that the engineer alert the train crew member approximately ten (10) minutes prior to descending the heavy grade, so the crew member will be in place at the

crest of the grade. Furthermore, FRA proposes that the crew member not leave his or her position until the locomotive engineer advises that the train has traversed the grade. FRA believes that these proposed operational requirements will ensure that immediate action can be taken by a member of the train crew to effectuate an emergency brake application whenever the train is descending a heavy grade.

FRA proposes to amend paragraph (g) to indicate that the operating limitations that will be imposed on a passenger train required to be equipped with a two-way EOT that experiences an en route failure of the device will be contained in paragraph (h). It should be noted that FRA intends that the criteria contained paragraph (g) to determine when a loss of communication between the front and rear units will be considered an en route failure will be applicable to passenger train operations.

Paragraph (h) contains the operational limitations and restrictions that are proposed to be placed on passenger trains that experience en route failures of two-way EOTs. Due to the time-sensitive nature of passenger operations, FRA believes that placing a speed restriction on these trains would not be the most effective method of handling en route failures of a device. Rather, FRA believes that other operating restrictions can be imposed to ensure the safety of these trains. FRA believes that in order to realize the benefits of a two-way EOT as contemplated by Congress, the device must be operative when the train descends a heavy grade. Therefore, FRA proposes that if a passenger train is required to be equipped with an operable device, it shall not be permitted to descend an average grade of two percent or more for two continuous miles until an operable device is installed or an alternative method of initiating an emergency brake application from the rear of the train is achieved. However, FRA further proposes that passenger trains that develop an en route failure of the two-way EOT may continue to operate over track that is not in heavy grade territory as long as a crew member occupies the rearmost car with a readily accessible emergency brake valve and remains in constant radio communication with the locomotive engineer. FRA also believes that since the train no longer has the safety assurances provided by a two-way EOT, the engineer must periodically test the braking characteristics of the train by making running brake tests. If the engineer suspects the brakes are not functioning properly, immediate action shall be taken to bring the train to a stop until corrections can be made. FRA also proposes that all en route failures of the devices must be corrected either at the next location where the necessary repairs can be made or at the next location where a required brake test of the train is to be conducted, whichever point the train arrives at first.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposal has been evaluated in accordance with existing policies and procedures. Because the requirements contained in this proposal clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that this NPRM does not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this proposal does not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

This proposal does not change any information collection requirements.

Environmental Impact

FRA has evaluated this proposal in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this proposal does not have any effect on the quality of the environment.

Federalism Implications

This proposal does not have a substantial effect on the States, on the relationship between the national government on the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Request for Public Comments

FRA proposes to revise part 232 regarding two-way EOTs as set forth below. FRA is contemplating eventually moving the two-way EOT requirements related to passenger train operations to proposed part 238 containing the Passenger Equipment Safety Standards and would potentially seek the consultation of the working group currently involved with finalizing those standards on the issues addressed in this proposal. Consequently, FRA solicits comments on all aspects of this proposal whether through written submissions, participation in the passenger equipment working group, or both.

List of Subjects in 49 CFR Part 232

Railroad power brakes, Railroad safety, Two-way end-of-train devices.

The Proposal

In consideration of the foregoing, FRA proposes to amend part 232, title 49, Code of Federal Regulations to read as follows:

PART 232—RAILROAD POWER BRAKES AND DRAWBARS

1. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102, 20103, 20107, 20108, 20110–20112, 20114, 20133, 20141, 20301–20304, 20701–20703, 21301, 21302, 21304, and 21311; and 49 CFR 1.49(c), (g), and (m).

2. Section 232.23 is amended by revising paragraphs (e) introductory text, (e)(8), and (e)(9) and adding a new sentence to the beginning of the introductory text of paragraph (g) and adding new paragraphs (e)(10), (e)(11) and (h) to read as follows:

§ 232.23 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

* * * * *

(e) The following types of trains are excepted from the requirement for the use of a two-way end-of-train device:

* * * * *

(8) Trains that operate exclusively on track that is not part of the general railroad system;

(9) Passenger trains in which all of the cars in the train are equipped with an emergency brake valve readily accessible to a crew member;

(10) Passenger trains that have a car at the rear of the train, readily accessible to one or more crew members in radio contact with the engineer, that is equipped with an emergency brake valve readily accessible to such a crew member; and

(11) Passenger trains that have twenty-four (24) or fewer cars (not including locomotives) in the consist

and that are equipped and operated in accordance with the following:

(i) If the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(ii) If the total number of cars in a passenger train consist is thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(iii) Prior to descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, the engineer of the train shall communicate with the conductor, to ensure that a member of the crew with a working two-way radio is stationed in the car with the rearmost readily accessible emergency brake valve on the train when the train begins its descent; and

(iv) While the train is descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, a member of the train crew shall occupy the car that contains the rearmost readily accessible emergency brake valve on the train and be in constant radio communication with the locomotive engineer. The crew member shall remain in this car until the train has completely traversed the heavy grade.

* * * * *

(g) Except on passenger trains required to be equipped with a two-way end-of-train device (which are provided for in paragraph (h) of this section), en route failures of a two-way end-of-train device shall be handled in accordance with this paragraph.

* * *

* * * * *

(h) A passenger train required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall be operated in accordance with the following:

(1) The train shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles until an operable two-way end-of-train device is installed on the train;

(2) A member of the train crew will be immediately positioned in the car which contains the rearmost readily accessible emergency brake valve on the train and shall be equipped with an operable two-way radio that communicates with the locomotive engineer;

(3) The locomotive engineer shall periodically make running tests of the train's air brakes until the failure is corrected; and

(4) Each en route failure shall be corrected at the next location where the necessary repairs can be conducted or at the next location where a required brake test is to be performed, whichever is reached first.

3. Appendix A to Part 232, ''Schedule of Civil Penalties,'' is amended by revising the heading of the entry for § 232.23 and revising the entry for § 232.23(g) and adding an entry for § 232.23(h), to read as follows:

Appendix A to Part 232—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
* * * * *		
232.23 Operating standards:		
* * * * *		
(g) En route failure, freight	5,000	7,500
(h) En route failure, passenger	5,000	7,500
* * * * *		

Issued in Washington, D.C., on December 29, 1997.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 98–134 Filed 1–2–98; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 63, No. 2

Monday, January 5, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–077N]

Availability of Survey Results From a Nutritional Analysis of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of results from the ''Nutritional Analysis of Meat and Poultry Products,'' a survey conducted to determine the accuracy of the nutrition labeling of meat and poultry products. The products, which were statistically representative of nationally available products under the mandatory nutrition labeling program, were analyzed under contract for specific nutrients. The survey found that approximately 92 percent of all tested nutrients had values consistent with labeling claims.

ADDRESSES: Submit written requests for single copies of the summary or the full report to the FSIS Docket Room, Docket #97–077N, Attn: Ms. Diane Moore, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700.

SUPPLEMENTARY INFORMATION: On January 6, 1993, FSIS published a final rule entitled ''Nutrition Labeling of Meat and Poultry Products'' (58 FR 632) with corrections on August 18, 1993, (58 FR 43787) and technical amendments on September 10, 1993, (58 FR 47624). The final rule permits voluntary nutrition labeling on single-ingredient, raw meat and poultry products and establishes mandatory nutrition labeling for all other meat and poultry products, with certain exemptions.

In 1996, Covance (formerly Corning Hazelton) Laboratories was awarded a contract to analyze samples of meat and poultry products for specified nutrients in order to provide an overall assessment of the accuracy of nutrition labeling. The survey was conducted as part of FSIS' effort to verify that nutrition information, which is provided by food manufacturers, is accurate and consistent with the Agency's regulatory requirements. In addition, the survey responds to the General Accounting Office (GAO) recommendation that FSIS and the Food and Drug Administration (FDA) develop a coordinated strategy to evaluate the overall effectiveness of Federal food labeling regulations.

Three hundred products were analyzed in the survey. The sampling design was developed using A.C. Nielsen's Scantrack Tapes. Covance analyzed all samples for protein, total fat, saturated fat, cholesterol, sodium, moisture, and ash. Calories, calories from fat, and carbohydrate values were calculated for all products. Covance also analyzed products with label nutrient values greater than 6 percent of the Daily Value for fiber, vitamins A and C, calcium, and iron.

FSIS evaluated the data to determine whether the label values were within the regulatory specifications for compliance, and 92 percent were consistent with labeling values. These results are comparable to those obtained by FDA in a similar study conducted in December 1996.

Done in Washington, DC, on: December 16, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 98–63 Filed 1–2–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Whiskey Campo Resource Management Project, Boise National Forest, Elmore County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Mountain Home Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the Whiskey Campo project area, located approximately 5 miles west of Featherville, Idaho, in the middle to upper elevation of the Trinity Creek watershed. The project area encompasses about 12,870 acres of National Forest System land. Approximately 5,550 acres of the project area are located within the Whiskey Jack Inventoried Roadless Area (RARE No. 02009) and about 900 acres of the project area are located within the Rainbow Inventoried Roadless Area (RARE No. 02008). Access is via Forest Development Road (FDR) 172. The project area is located about 130 road miles east of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

Proposed Action

Timber Stand Management Activities—Approximately 2,000 acres of forested land would be commercially thinned and underburned with low severity prescribed fire. Some salvage harvest of large diameter, beetle-infested Douglas-fir would occur in these stands. On approximately 5,000 acres of forested land, bark beetle infested and severely dwarf mistletoe infected trees would be salvage harvested.

Helicopter yarding would be done on approximately 6,000 acres. Skyline yarding would be done on approximately 200 acres. A combination of tractor and offroad jammer (excavator) yarding would be done on approximately 800 acres.

Approximately 2 miles of road would be constructed to access timber stands proposed for treatment. The newly constructed roads would be closed to all motorized use and revegetated following the project. Two helicopter landings would be constructed and revegetated. Six existing helicopter landings would be used and revegetated.

Aspen Stand Rejuvenation—On approximately 400 acres of aspen stands dispersed throughout the project area, prescribed fire and/or harvest of invading conifer trees would be used to rejuvenate decadent stands or maintain vigorous, young stands. These activities would promote regeneration of aspen suckers and saplings and prevent conversion to conifer stands.

Elk Habitat Improvement—Approximately 7 miles of the roads in the Spring Creek drainage would be obliterated and/or closed to all motorized vehicles with earthen barricades. Such closures would bring the elk habitat effectiveness of the Spring Creek drainage into compliance with the Forest Plan.

Fish Habitat Improvements—Five existing culverts currently posing a barrier to upstream fish passage would be replaced with bottomless culverts or other suitable structures to allow fish passage upstream. Bottomless culverts provide for slower water velocity and more pools, which facilitate upstream fish passage.

Approximately 13.7 miles of FDR 172 would be graveled. Graveling of the road surface would help retain the fine sediment particles on the road surface.

Travel Safety Modifications to FDR 172—Approximately 25 ''blind'' curves and narrow road sections would be modified to improve sight distance and provide sufficient safe passing opportunities.

Preliminary Issues

The potential development of the Whiskey Jack and Rainbow Inventoried Roadless Areas is an anticipated concern. Under the Proposed Action, approximately 1.9 miles of road construction, 150 acres of ground-based yarding methods, and 1,750 of helicopter yarding would occur in the Whiskey Jack IRA. Approximately 250 acres of helicopter yarding would occur in the Rainbow IRA.

The effects of road construction and timber stand management activities on wildlife and fisheries are also anticipated concerns. Trinity Creek is designated a high priority watershed (Forest Plan—Inland Native Fish Strategy) because of its potential bull trout habitat. Habitat for some threatened, endangered or sensitive species exists in the project area. Proposed activities have the potential to have both beneficial and adverse effects to wildlife and fisheries habitat.

Possible Alternative to the Proposed Action

One alternative to the Proposed Action has been identified. It is the No Action Alternative. Other alternatives may be developed as issues are raised and information is received

Decisions To Be Made

The Boise National Forest Supervisor will decide whether or not to implement the project. If the project is to be implemented, the Forest Supervisor will decide which activities to include in the project, when the project should occur, and what mitigation and monitoring is needed to ensure the project is environmentally acceptable.

Schedule

Draft EIS, May 1998. Final, July 1998.

Public Involvement

Scoping is being initiated with this notice, a legal notice in the Idaho Statesman, and a letter to individuals, groups, organizations, and agencies who have expressed an interest in this type of project. Comments received from these public involvement efforts will be incorporated into the analysis process.

Comments

Written comments concerning the proposed project and analysis are encouraged and should be postmarked within 30 days following publication of this announcement in the **Federal Register.** Comments received in response to this notice will be released in their entirety if requested pursuant to the Freedom of Information Act. Mail comments to Frank Marsh, Mountain Home Ranger District, 2180 American Legion Boulevard, Mountain Home, ID 83647; telephone 208–587–7961 or 208–373–4310. Further information can be obtained at the same location.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice availability in the **Federal Register.**

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 EIS 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 EIS stage but that are not raised until after completion of the final EIS 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 very important for those interested in this Proposed Action participate by the close of the 45-day comment period so 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 EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS 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 EIS 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. Comments received on the draft EIS will be released in their entirety if requested pursuant to the Freedom of Information Act.

Responsible Official

David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: December 22, 1997.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 98–039 Filed 1–2–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF INTERIOR

National Park Service

Blackstone River Valley National Heritage Corridor; Sunshine Act Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National

Heritage Corridor Commission will be held on Thursday, January 29, 1998.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 PM in the ITU Union Hall, Museum of Work and Culture, 42 South Main St., Woonsocket, RI for the following reasons:

1. Status of Ten Year Plan
2. Nominations of Commissioners
3. Budget

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

Susan K. Moore, Executive Director Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Susan K. Moore, Executive Director of the Commission at the aforementioned address.

Susan K. Moore,

Executive Director BRVNHCC.

[FR Doc. 97–34240 Filed 12–31–97; 10:42 am]

BILLING CODE 4310–70–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 4, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed: Laundry Service, Naval Hospital, San Diego, California, NPA: Job Options, Inc., San Diego, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–127 Filed 1–2–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement list Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 2, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for Hurlburt Field Air Force Base, Florida)

NPA: Lions Club Industries, Inc., Durham, North Carolina
Pen, Retractable, Cushion Grip, Executive ''Aristocrat''
7520–01–446–4500
7520–01–446–4503
7520–01–446–4504
7520–01–446–4505
NPA: Industries of the Blind, Inc. Greensboro, North Carolina
Shirt, Sleeping
8415–00–890–2099
8415–00–890–2100
8415–00–890–2101
8415–00–890–2102
8415–00–890–2103
8415–00–935–6855
(Additional 10% of the Government's requirement)
NPA: BOST Human Development Services Fort Smith, Arkansas
Janitorial/Custodial
Administrative Areas, Tinker Air Force Base, Oklahoma
NPA: Oklahoma Goodwill Industries, Inc. Oklahoma City, Oklahoma
Janitorial/Custodial
U.S. Army Reserve Center, Buildings 3270 A & B, Charleston, South Carolina
NPA: Dorchester County Board of Disabilities and Special Needs
Summerville, South Carolina
Mailing Service
Department of Housing and Urban Development, Albany, New York
NPA: Northeastern Association of the Blind at Albany, Inc., Albany, New York

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–129 Filed 1–2–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: February 9, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 7, August 15, September 26, October 24, 31, November 7 and 14, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 36256, 43698, 50555, 55391, 58939, 60218 and 61081) of proposed additions to and deletions from the Procurement List.

Additions

The following comments pertain to Cap, Camouflage, Desert (8415–01–326–1570 thru –1581). Comments were received from the current contractor for the caps. The contractor indicated that the caps represent a relatively small part of its sales, so it will not be severely impacted by the decision to add them to the Procurement List. However, the contractor questioned the appropriateness of adding the caps to the Javits-Wagner-O'Day (JWOD) Program because it claimed that two JWOD nonprofit agencies had failed to produce them successfully in the past two years. Consequently, the contractor stated that the addition would do little to help people with severe disabilities while taking business away from commercial hat manufacturers.

The previous contractor has been authorized to produce under the JWOD Program, but has not yet done so. Moreover, the contract it defaulted on was acquired through competitive bidding. The other JWOD nonprofit agency the contractor mentioned is the one which will be producing these caps, which differ only in color from caps this nonprofit agency has successfully produced for the Government. The second nonprofit agency's only role in the previous contract was to help the first nonprofit agency after that agency had fallen far behind in production. The second nonprofit agency bore no responsibility in the contract default. The Government contracting activity which purchases the caps has informed the Committee that it considers the nonprofit agency designated by the Committee capable of producing the caps, and it confirmed this assessment when asked to react to the commenting contractor's assertions on this point. Consequently, the Committee believes that this addition to the Procurement List will successfully create considerable employment for people with severe disabilities.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Naval Construction Battalion Center, Gulfport, MS)
Office and Miscellaneous Supplies
(Requirements for the Naval Oceanographic Office, Stennis, MS)
Office and Miscellaneous Supplies
(Requirements for Altus Air Force Base, Oklahoma)
Tape, Electronic Data Processing
7045–00–377–9235
7045–01–123–0367
7045–01–293–4809
7045–01–338–6542
7045–01–372–8269
7045–01–364–2466
7045–01–269–8115
7045–01–115–0502
7045–01–193–4994
Illuminator/Corrector Stx and Refills
7520–01–386–2407
7520–01–386–2441
7510–01–390–0704
7510–01–390–0705
7510–01–390–0708
7510–01–390–0709
Cap, Camouflage, Desert
8415–01–326–1570 thru–1581

Services

Food Service Attendant for the following locations:
Schofield Barracks, Building 3004, Fort Shafter, Hawaii
Building 300, Helemano Military Reservation, Hawaii
Food Service Attendant
U.S. Coast Guard, Integrated Support Command, Seattle, Washington

HVAC System Filter Maintenance
Basewide (less Family Quarters), Fort Sam Houston, Texas
Kennel Caretaker, U.S. Customs Service, JFK Airport, Jamaica, New York
Janitorial/Custodial, Albany Research Center, Albany, Oregon
Janitorial/Custodial
Mount Weather Emergency Assistance Center, Bldgs. 400, 401, 403, 405, 409, 411 (offices and restrooms only), 413, 431 and Walkway (between 411 & 413), Bluemont, Virginia
Janitorial/Custodial
U.S. Marine Corps Base, Buildings 2042, 2048, 2082, 3078, 3092, 3093 & 3094, Quantico, Virginia
Janitorial/Custodial
U.S. Forest Service Building, Elkins, West Virginia
Janitorial/Grounds Maintenance
VA Outpatient Clinic, Griffiss Air Base, Rome, New York
Laundry Service
Naval Amphibious Base, Buildings 302, 303 and 505, Coronado, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Organizer, Day Planner, Travel Size
7530–01–366–5856
Bag, Currency
8105–00–NIB–0006

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–130 Filed 1–2–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 51827, FR Doc. 97–26327, in the issue of October 3, 1997, in the first column, the following NSN shown as 7340–00–197–1274 should read 7340–00–488–7939.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–131 Filed 1–2–98; 8:45am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 83–97]

Foreign-Trade Zone 219—Yuma, AZ; Application for Subzone Status; Meadowcraft, Inc. (Wrought Iron Patio Furniture), Yuma County, Arizona

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Yuma County Airport Authority, Inc., grantee of FTZ 219, requesting subzone status for the finishing and distribution (non-manufacturing) facility of Meadowcraft, Inc. (Meadowcraft), located in Yuma County, Arizona. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 16, 1997.

The facility (600,000 sq. ft. on 75 acres; 100 employees) is located at the intersection of Highway 95 and County 21st Street, Yuma County, approximately three miles north of the U.S.-Mexico border. It will be used to finish and distribute wrought iron patio furniture, which is imported from Meadowcraft's maquiladora facility in San Luis, Mexico. The finishing primarily involves priming and painting the imported furniture. Glass table tops, some of which are sourced from abroad, will be added to certain furniture pieces. No manufacturing or processing authority is being sought. The Yuma County facility will be used to distribute products in the Western U.S. and abroad.

It appears that the main purpose for FTZ procedures is to help Meadowcraft to implement a more cost-effective system for handling Customs requirements (including reduced brokerage fees and Customs merchandise processing fees). In addition, Meadowcraft intends to apply to Customs for direct delivery of merchandise, which will improve the company's efficiency. FTZ status may also make a site eligible for benefits provided under state/local programs.

The application indicates that the savings from zone procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 6, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 23, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

U.S. Customs Port of Entry—San Luis, Highway 95 and International Border, San Luis, Arizona 85364.

Dated: December 19, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 98–29 Filed 1–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 82–97]

Foreign-Trade Zone 15—Kansas City, Missouri Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, requesting authority to expand its zone at sites in Chillicothe, Missouri, adjacent to the Kansas City, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 15, 1997.

FTZ 15 was approved on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73) and expanded on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74); February 28, 1996 (Board Order 804, 61 FR 9676, 3/11/96); and, May 31, 1996 (Board Order 824, 61 FR 29529, 6/11/96). The zone project includes 4 general-purpose sites in the Kansas City, Missouri, port of entry area: *Site 1* (250,000 sq. ft.)—Midland International Corp. warehouse, 1690 North Topping, Kansas City; *Site 2* (2,815,000 sq. ft.)—Hunt Midwest surface/underground warehouse complex, 8300 N.E. Underground Drive, Kansas City; *Site 3* (10,000 acres)—Kansas City International Airport complex, Kansas City; *Site 4* (416 acres)—surface/underground business park (Carefree Industrial Park), 1600 N. M–291 Highway, Sugar Creek; and, *Site 5* (5.75 million sq. ft.)—CARMAR Underground Business Park and Surface Industrial Park (1000 acres) located at No. 1 Civil War Road, Carthage. An application is currently pending with the Board for an additional site in Hermann, Missouri (Doc. 44–97).

The applicant is now requesting authority to further expand the general-purpose zone to include eight additional sites (380 acres, 110,000 sq. ft.) in Chillicothe, Missouri: *Site 7a* (4 acres, 60,000 sq. ft.)—warehouse facility of Midwest Quality Glove, Inc., 835 Industrial Road, Chillicothe; *Site 7b* (11 acres)—Chillicothe-Brunswick Rail Yard, Washington Street, Chillicothe; *Site 7c* (154 acres, 50,000 sq. ft.)—Chillicothe Industrial Park, Corporate Road, Chillicothe; *Site 7d* (22 acres)—CIDC Industrial Park, Brunswick International and Ryan Streets, Chillicothe; *Site 7e* (50 acres)—Beetsma Industrial Park No. 1, Highway 36, Chillicothe; *Site 7f* (111 acres)—Beetsma Industrial Park No. 2, Highway 36, Chillicothe; *Site 7g* (22 acres)—West Side Industrial Park, Gilbert and Green Streets, Chillicothe; and, *Site 7h* (6 acres)—an industrial development site (adjacent to the John Graves Food Service facility), 725 Industrial Road, Chillicothe. The Chillicothe Development, Inc. (a not-for-profit organization), in cooperation with the City of Chillicothe, will be the FTZ operator of the sites and will coordinate development of the facilities for general-purpose zone activity. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 6, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 23, 1998.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Farmers Electric Cooperative, 105 Harvester Road, Chillicothe, MO 64601.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: December 18, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 98–28 Filed 1–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[Order No. 945]

Expansion of Foreign-Trade Zone 185 Culpeper County, Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Culpeper County Chamber of Commerce, grantee of FTZ 185, requesting authority to expand FTZ 185 to include an additional site in Culpeper County, Virginia, was filed by the Board on April 26, 1996 (FTZ Docket 35–96, 61 FR 21157, 5/9/96);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 185 to include an additional site is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 22nd day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 98–026 Filed 1–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Steel Wire Rope From Mexico: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Leah Schwartz or Maureen Flannery, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results

The Department of Commerce (the Department) has received a request to conduct an administrative review of the antidumping duty order on Steel Wire Rope from Mexico. On May 21, 1997, the Department initiated this administrative review covering the period March 1, 1996 through February 28, 1997.

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Administrative Review of Steel Wire Rope from Mexico, dated December 24, 1997. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to March 31, 1998, and for the final results to 120 days after the publication of the preliminary results.

These extensions of time limits are in accordance with section 751(a)(3)(A) of the Act.

Dated: December 24, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–025 Filed 1–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122997A]

Magnuson-Stevens Act Provisions; Overfished Fisheries

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

ACTION: Notice of overfished fisheries.

SUMMARY: NMFS has identified overfished stocks or stocks that are approaching a condition of being overfished, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). The purpose of this notice is to notify the public that the Regional Fishery Management Councils (Councils) have been informed of those fisheries that are overfished and directed to initiate action to end overfishing and rebuild stocks, in the case of overfished fisheries, and to prevent overfishing in fisheries that are approaching an overfished condition.

ADDRESSES: Copies of the Report on the Status of Fisheries of the United States may be obtained from George H. Darcy, Domestic Fisheries Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the report is also available through the internet at <<http://kingfish.ssp.NMFS.gov/SFA>>.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2341.

SUPPLEMENTARY INFORMATION:

Background

This action is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) as amended by the SFA, which was signed into law on October 11, 1996. Section 304(e) of the Magnuson-Stevens Act requires that the Secretary of Commerce (Secretary) report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a Fishery Management Plan (FMP) or international agreement, the status is to be determined using the criteria for overfishing specified in such FMP or agreement. A fishery is classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within 2 years. Pursuant to section 304 of the Magnuson-Stevens Act, the Councils were notified by letter on September 30, 1997, of the species that were overfished or approaching an overfished condition, as follows:

Dear Council Chairman:

Enclosed is the Report on the Status of Fisheries of the United States, prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act on October 11, 1996. This report identifies 76 overfished stocks and 10 stocks that are approaching an overfished condition that are covered by fishery management plans (FMPs). By September 30, 1998, each Council is required to develop measures to end overfishing and rebuild stocks that are overfished, and to prevent overfishing from occurring for stocks that are approaching an overfished condition, for those species covered by FMPs under its management authority. There are also 10 stocks identified in this report as overfished that are not covered by an FMP. Each Council is also required to develop measures to end overfishing and rebuild those stocks within its geographical area of authority, in the same timeframe. Rebuilding programs must be as short as possible, but not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise.

The proposed national standard guidelines were published on August 4, 1997, and final guidelines are imminent. The revisions to the national standard 1 guidelines will require that the overfishing definitions contained in each FMP be examined on the basis of their ability to ensure stock levels that can produce maximum sustainable yield (MSY) on a continuing basis. Most existing overfishing definitions will require an amendment to bring them into conformance with the Magnuson-Stevens Act and the national standard guidelines. It is likely that, as the overfishing definitions contained in the FMPs are amended to comply with the new guidelines, many of the species that

are now classified as ''not overfished'' on the basis of existing overfishing definitions will ultimately be reassessed as ''overfished.'' Consequently, this list represents a minimum number of overfished fisheries of the United States and probably understates the number of fisheries that will eventually be determined to be overfished.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Rolland A. Schmitten, Assistant Administrator for Fisheries

Dated: December 29, 1997.

Bruce C. Morehead,

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

[FR Doc. 98–141 Filed 1–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122497A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on January 19–23, 1998.

ADDRESSES: These meetings will be held at the Marriott's Grand Hotel, One Grand Boulevard, Point Clear, AL; telephone: 334–928–9201.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

January 21

1:30 p.m.—Convene.

1:45 p.m. - 5:30 p.m.—Receive public testimony on: (1) the request from the South Atlantic Fishery Management Council (SAFMC) for resubmission of a management measure detailed in Amendment 8 to the Coastal Migratory Pelagics (Mackerel) Fishery Management Plan (FMP) which would allow the use of sink nets in waters north of Cape Lookout, NC; (2) the areal extent of the cooperative closure of Federal waters to shrimping with the state of Texas during the 1998 fishing season; (3) Amendment 6 to the Stone Crab FMP which contains a provision for extending the moratorium on the registration of stone crab vessels by the Regional Administrator of NMFS; and, (4) the total allowable catch (TAC) and other framework measures for red snapper for the 1998 fishing year.

January 22

8:00 a.m. - 12:00 p.m.—Receive a report of the Reef Fish Management Committee.

1:30 p.m. - 4:30 p.m.—Receive a report of the Mackerel Management Committee

4:30 p.m. - 5:15 p.m.—Receive a report of the Ad Hoc Sustainable Fisheries Committee.

5:15 p.m. - 5:30 p.m.—(CLOSED SESSION) Receive reports of the Advisory Panel (AP)/Scientific and Statistical Committee (SSC) Selection Committees.

January 23, 1998

8:00 a.m. - 8:15 a.m.—Receive a report of the Stone Crab Management Committee.

8:15 a.m. - 8:30 a.m.—Receive a report of the Habitat Protection Committee.

8:30 a.m. - 8:45 a.m.—Receive a report of the Deep Water Crab Committee.

8:45 a.m. - 9:00 a.m.—Receive a report of the Ad Hoc Vessel Monitoring Committee.

9:00 a.m. - 9:30 a.m.—Receive a report of the Ad Hoc Marine Reserves Committee.

9:30 a.m. - 9:45 a.m.—Receive a report of the Shrimp Management Committee.

9:45 a.m. - 10:00 a.m.—Receive a report of the International Commission for the Conservation of Atlantic Tunas Advisory Committee.

10:00 a.m. - 10:15 a.m.—Receive a report from the SAFMC Liaison.

10:15 a.m. - 10:45 a.m.—Receive Enforcement Reports.

10:45 a.m. - 11:00 a.m.— Receive a report of the Ecosystem AP.

11:00 a.m. - 11:30 a.m.—Receive reports of the Highly Migratory Species (HMS) Longline Advisory Panel, HMS AP, and Billfish AP.

11:30 a.m. - 12:00 p.m.—Receive Directors' Reports.

12:00 p.m. - 12:15 p.m.—Other business to be discussed. Under Other Business, the Gulf Council may also consider recommendations to NMFS regarding National Standard 1 to the Magnuson-Stevens Fishery Conservation Act based on the pending reopening of the comment period through January 28, 1998.

January 19

9:00 a.m. - 10:00 a.m.—(CLOSED SESSION) Convene the AP/SSC Selection Committees to consider appointments to the Billfish AP, the Standing SSC, and the consolidated Shark, Swordfish, and Tuna AP to be more consistent with the direction being taken by NMFS with regard to management of the HMS Complex.

10:00 a.m. - 12:00 p.m.—Convene the Ad Hoc Vessel Monitoring Committee to review the results of a NMFS/state of Florida pilot study on the use of transponders to monitor fishing vessels. The Committee will also review a policy with regard to a Vessel Monitoring System (VMS).

1:00 p.m. - 5:30 p.m.—Convene the Reef Fish Management Committee to consider the status of the stocks of red snapper and a TAC for 1998. The Committee will consider the previously completed stock assessment by NMFS and a peer-group review of management of the red snapper fishery. This review was mandated by Congress through passage of the Sustainable Fisheries Act (SFA). In complying with this mandate, NMFS empaneled three groups of scientists from outside the Gulf region to conduct the peer-group review during July and August. The panels reviewed information provided by NMFS and by the commercial fishing industry related to: (1) the statistical information and analyses, (2) the economic information and analyses, and (3) management and science procedures and data. The Committee will also consider a separate stock assessment developed by Dr. Brian Rothschild of the University of Massachusetts. Based on these data and the recommendations of the Reef Fish Stock Assessment Panel (RFSAP) and SSC, the Committee will develop recommendations to the Council on TAC and possibly other associated framework measures for red snapper in 1998. The Committee will also review an Options Paper for Amendment 17 which includes alternatives for a commercial license limitation system for reef fish resources in the Gulf, other than red snapper.

January 20

8:00 a.m. - 9:00 a.m.—Convene the Shrimp Management Committee to review an analysis of the 1997 cooperative shrimp closure with the state of Texas and recommendations of the Shrimp AP with regard to possible changes in 1998. The Committee may

also discuss Amendment 9 to the Shrimp FMP and make recommendations to the Council regarding its approval.

9:00 a.m. - 10:30 a.m.—Convene the Deep Water Crab Management Committee to review provisions of the SAFMC's FMP and a recommendation of the Gulf States Marine Fisheries Commission that the Gulf Council consider development of a Deep Water Crab FMP for the Gulf of Mexico.

10:30 a.m. - 12:00 p.m.—Convene the Habitat Protection Committee to review recommendations of the Texas and Florida/Alabama Habitat APs, as well as a report of the Technical Review Panel regarding the development of the Essential Fish Habitat (EFH) Generic Amendment. The Committee will also review the Interim Final Guidelines for EFH from NMFS.

1:00 p.m. - 3:00 p.m.—Convene the Ad Hoc Marine Reserves Committee to consider management measures for marine reserves previously included in an options paper for Amendment 16 to the Reef Fish FMP (but later removed) and recommendations of the RFSAP and SSC. The Committee will also initiate the development of an action plan for study of marine reserves.

3:00 p.m. - 5:30 p.m.—Convene the Ad Hoc Sustainable Fisheries Committee to discuss provisions of a Generic SFA Amendment. The Committee will also consider a schedule of actions for the development and submission of the amendment to NMFS in accordance with the SFA.

January 21

8:00 a.m. - 11:00 a.m.—Convene the Mackerel Management Committee to review comments and recommendations from the SAFMC with regard to Amendment 9 to the Coastal Migratory Pelagics FMP and a revised draft (public hearing draft) of Amendment 9 that incorporates changes from the November 1997 Council meeting. The Committee will also review an Options Paper for Amendment 10 that includes provisions for a commercial license limitation system for king mackerel and resubmission of a sink net provision of Amendment 8, as previously discussed. The Committee may also consider a control date for the dolphin and wahoo fisheries in the Gulf.

11:00 a.m. - 12:00 p.m.—Convene the Stone Crab Management Committee to consider recommendations to the Council regarding final action on Amendment 6 (extending the moratorium on fishing permits). In deliberations, the Committee will consider public hearing comments, written comments, AP/SSC recommendations, NMFS comments, and minutes from workshops held by the Florida Marine Fisheries Commission.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 12, 1998.

Dated: December 29, 1997.

Bruce C. Morehead,

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

[FR Doc. 98–145 Filed 1–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: National Security Education Program (Service Agreement Report for Scholarship and Fellowship Awards); DD Forms 2752 and 2753; OMB Number 0704–0368.

Type of Request: Reinstatement.

Number of Respondents: 300.

Responses Per Respondent: 2.

Annual Responses: 600.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 100.

Needs and Uses: The information collection is necessary to obtain verification that applicable scholarship and fellowship recipients are fulfilling the service obligation mandated by the National Security Education Act of 1991, Title VIII of P.L. 102–183, as amended. Respondents are recipients of undergraduate scholarship and graduate fellowship assistance from the National Security Education Program (NSEP), established by the National Security Education Act of 1991. DD Form 2752 is the Service Agreement that award recipients sign in order to acknowledge their understanding of their service obligation, and agree to the obligation. DD Form 2753 is the Service Agreement Report Form on which the student provides an account of his or her work toward fulfilling the service obligation, or justifies a request for deferment. The forms supporting this information collection requirement represent the sole means of establishing a written agreement of the service obligation and progress reports toward fulfilling this obligation between students who receive NSEP undergraduate scholarship and graduate fellowship awards, the program office, and the Department.

Affected Public: Individuals.

Frequency: Semi-Annually.

Respondents's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposals should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12 Filed 1–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: National Security Education Program (NSEP Grants to Institutions of Higher Education); DD Forms 2729 and 2730; OMB Number 0704–0366.

Type of Request: Reinstatement.

Number of Respondents: 185.

Responses per Respondent: 1.

Annual Response: 185.

Average Burden Per Response: 8.75 hours.

Annual Burden Hours: 1,619.

Needs and Uses: The information collection is necessary to obtain and record the qualification and budget information of universities submitting proposal for National Security Education Program funding. Respondents are representatives of U.S. colleges and universities who choose to submit a proposal in competition for a National Security Education Program (NSEP) Institutional Grant. The NSEP was established by the National Security Education Act of 1991. DD Form 2729, ''National Security Education Program Proposal Budget Estimate Worksheet,'' is a single-page document in which the applicant indicates the cost associated with the proposal by four major categories. Without this form there would be no precise, standard manner for applicant to portray their budget requests. Further, there would be no consistent measure by which the merit-review panelists could judge these proposals. DD Form 2730, ''National Security Education Program Proposal Cover Sheet,'' is a concise vehicle for transmitting proposals. This form eliminates the need for lengthy, nonstandard letters of transmittal.

Affected Public: Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16 Filed 1–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Nuclear Deterrence

ACTION: Notice of Advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence will meet in closed session on January 26, 1998 at Lawrence Livermore National Laboratory, Livermore, California; and on February 17, 1998 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address the U.S. ability to deter and prevent the effective use of weapons of mass destruction against U.S. territory, forces, and allies.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 24, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–13 Filed 1–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Control of Military Excess/Surplus Materiel

AGENCY: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Control of Military Excess/Surplus will meet in closed session on January 7–9, 1998 at Kelly Air Force Base, San Antonio, Texas.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine existing regulatory and statutory guidance in support of controls, DoD Demilitarization policy, and private sector possession of DoD surplus materiel. Investigate the framework which defines MLI/SLI and SME and evaluate the capabilities and shortfalls for identifying and controlling them. Investigate concepts for analysis and execution of the control of DoD surplus materiel in a post cold-war environment focusing on trade-off analysis of different levels of control.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b© (1) (1994), and that accordingly this meeting will be closed to the public.

Dated: December 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–14 Filed 1–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on January 26–27 and February 12–13, 1998 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b© (1) (1991), and that accordingly these meetings will be closed to the public.

Dated: December 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–15 Filed 1–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: January 21 and 22, 1998.

Time: January 21, Executive committee, 5:00–6:00 p.m., (open), 6:00–7:00 p.m., (closed); Full Board, 7:00–8:30 p.m., (open). January 22, Full Board, 8:00 a.m.–10:15, a.m., (open); 10:15 a.m.–11:15 a.m., (closed); 11:15 a.m.–4:30 p.m., (0pen).

Location: Capital Hilton Hotel, 1001 16th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001 and is required to review within 90 days (i.e., by February 11, 1998) and modify the contract to the extent the Board determines necessary, if the contract cannot be modified to the extent the Board determines necessary, the contract shall be terminated, and a new contract negotiated.

On January 21, in open session, 5:00–6:00 p.m., the Executive Committee will hear a proposal to use the NAEP 12th grade sample in future longitudinal studies related to student educational patterns beyond high school. Then, the Executive Committee will meet in closed session from 6:00–7:00 p.m., to discuss cost estimates for the FY 1998 NAEP contract and cost estimates for the Request for Proposals for the 2000–2002 NAEP contract. Public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

Also, on January 21, from 7:00–8:30 p.m., the full Board will hear a presentation on the TIMSS project and view a video on the same subject.

On January 22, the full Board will convene. In open session, 8:00 to 10:15 a.m., the Board will approve the agenda, hear the Executive Director's report, and receive a report from the Special Committee to Review the Voluntary National Tests Contract. From 10:15 to 11:15 a.m., the Board will meet in closed session to discuss the Special Committee's recommendations concerning cost estimates for development of the Voluntary National Tests, and proposed staffing patterns for implementation of the requirements of the Voluntary National Tests contract. This information relates to the source selection criteria by which government contracts may be modified or awarded. Not only would the disclosure of such data implicate proscriptions set forth in the Federal Acquisition Regulations, but also such disclosure would significantly frustrate a proposed agency action. Specifically, disclosure of the Board's discussion prematurely, including contract specifications and government cost estimates, could affect private decisions made by the contractor which might damage the financial interests of the government as a whole, by, for example, increasing the costs to the government, and might make it impossible for the two sides to reach agreement. Such matters are protected by exemption 9B of Section 552b(c) of Title 5 U.S.C.

Beginning at 11:15 a.m., until adjournment, approximately 4:30 p.m., the Board will convene in open session. Agenda items for this open portion include Board discussion and action on other Special Committee recommendations. Also, the Board will hear an update on the reviews of the reading and math Voluntary National Tests specifications that were conducted by Subject Area Committees #1 and #2.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of Section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: December 30, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–137 Filed 1–2–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Environment, Safety and Health; Continuation of Solicitation for Epidemiology and Other Health Studies Financial Assistance Program (Notice 98–01)

AGENCY: Department of Energy.

ACTION: Annual notice of continuation of potential availability of grants and cooperative agreements.

SUMMARY: The Office of Health Studies within the Office of Environment, Safety and Health of the Department of Energy (DOE) announces its continuing interest in receiving applications or pre-applications for grants and cooperative agreements for occupational and environmental health studies of DOE employees and DOE contractors, as well as related DOE international health programs, concerning nuclear weapons research, development, production, use, storage, and dismantling.

DATES: Deadlines for applications or pre-applications will be contained in separate notices of Availability to be published at a later time in the **Federal Register** that will address specific program areas to be funded by the Office of Health Studies in fiscal year 1998. All applications accepted under these subsequent notices must be received by the Office of Health Studies on or before September 30, 1998.

ADDRESSES: After the issuance of a Notice of Availability, applicants may obtain additional information from Dr.

Paul Seligman, Deputy Assistant Secretary, Office of Health Studies (EH–6), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290; facsimile: 301–903–3445; telephone: 301–903–5926.

SUPPLEMENTARY INFORMATION: The policies and procedures governing the purpose and scope, program areas, eligibility, application requirements, evaluation criteria, and selection procedures for the Office of Health Studies Financial Assistance Program, were published in the **Federal Register** (60 FR 5838) on January 31, 1995, and codified at 10 CFR part 602. Proposed research applications and pre-applications must comply with the requirements set forth in part 602.

The three offices within the Office of Health Studies (the Office of International Health Programs, the Office of Occupational Medicine and Medical Surveillance, and the Office of Epidemiologic Studies) promote studies to identify and assess the health risks associated with occupational or environmental exposures to ionizing radiation or toxic chemicals in the following populations: employees of DOE and DOE contractors (particularly those at high risk for exposure to ionizing radiation or toxic chemicals), residents of communities near DOE facilities, and populations throughout the world at high risk for exposure to ionizing radiation or toxic chemicals resulting from accidental exposures or proximity to nuclear or other energy-related facilities. Access to and use of information for conducting studies under this notice will comply with the Privacy Act of 1974 and DOE policies 60 FR 33510 regarding existing systems of records published June 28, 1995.

For fiscal year 1998, the Office of Health Studies estimates that approximately $500,000 will be available for grants or cooperative agreements from the Office of International Health Programs. The number of awards made will depend on the number of applications received for which the results of competitive merit review are favorable.

The Office of Occupational Medicine and Medical Surveillance and the Office of Epidemiologic Studies do not anticipate having funds available to support either cooperative agreements or grants during fiscal year 1998 for epidemiologic studies of the DOE workforce or communities near DOE facilities.

Pursuant to a Memorandum of Understanding between DOE and the Department of Health and Human Services, published March 7, 1991 (56 *FR* 9701) and extended through fiscal year 2000, additional funds for occupational health studies may be available through the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC). See 62 FR 24657, published May 6, 1997, or contact Mr. Larry Elliott, Chief, Health-Related Energy Research Branch, NIOSH, Mail Stop R–44, 4676 Columbia Parkway, Cincinnati, OH 45226; telephone: 513–841–4400; fax: 513–841–4470; or e-mail: lje1@cdc.gov; or Dr. Roy M. Fleming, Associate Director for Grants, CDC, NIOSH, 1600 Clifton Road, N.E., Building 1, Room 3053, Mail Stop: D–30, Atlanta, Georgia 30333; telephone: 404–639–3343; fax: 404–639–2196; or e-mail: rmf2@cdc.gov. Information on NIOSH grants is also available through the Internet. The NIOSH homepage address is: http://www.cdc.gov/niosh/homepage.html. Once on the homepage, take the following steps to find information on grant funding opportunities: (1) Scroll down to, and click on, Funding Opportunities/Extramural Programs; (2) click again on Current Funding Opportunities; (3) click on Research Grants; (4) scroll down to Past Funding Opportunities; and (5) click on Announcement No. 740. This is a general announcement that is reissued annually.

The National Center for Environmental Health of CDC funds radiation-related research in the community setting, including dose reconstruction studies, and anticipates making available additional funding in fiscal year 1998 for research grants. For current information, contact Mr. Paul Renard, Radiation Studies Branch, NCEH, 4770 Buford Highway, N.E., Atlanta, GA 30341; telephone: 404–488–7040.

DOE is under no obligation to pay for any cost associated with the preparation or submission of any application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice. Results of studies carried out as grants or cooperative agreements with the Office of Health Studies will be made available to DOE workers, to the public, and to managers responsible for protecting worker health and safety. Data will be made available through DOE's Comprehensive Epidemiologic Data Resource.

Issued in Washington, DC, on December 22, 1997.

Paul J. Seligman,

Deputy Assistant Secretary for Health Studies.

[FR Doc. 98–107 Filed 1–2–98; 8:45am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research and Office of Environmental Management

Energy Research Financial Assistance Program Notice 98–08; Environmental Management Science Program: Research Related to High Level Radioactive Waste

AGENCY: Office of Energy Research and Office of Environmental Management. U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Energy Research (ER) and Environmental Management (EM), U.S. Department of Energy, hereby announce their interest in receiving grant applications for performance of innovative, fundamental research to support specific activities for high level radioactive waste; which include, but are not limited to, characterization and safety, retrieval of tank waste and tank closure, pretreatment, and waste immobilization and disposal.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 98–08, should be received by DOE by 4:30 P.M. E.S.T., January 27, 1998. A response encouraging or discouraging a formal application generally will be communicated to the applicant within three weeks of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.D.T., April 16, 1998, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1998.

ADDRESSES: All preapplications, referencing Program Notice 98–08, should be sent to Dr. Roland F. Hirsch, ER–73, Mail Stop F–240, Office of Biological and Environmental Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Preapplications will be accepted if submitted by U. S. Postal Service, including Express Mail, commercial mail delivery service, or hand delivery, but will not be accepted by fax, electronic mail, or other means.

After receiving notification from DOE concerning successful preapplications,

applicants may prepare and submit formal applications. Applications must be sent to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 98–08. The above address for formal applications must also be used when submitting formal applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, ER–73, Mail Stop F–240, Office of Biological and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–5349, fax: (301) 903–0567, E-mail: roland.hirsch@oer.doe.gov, or Mr. Mark Gilbertson, Office of Science and Risk Policy, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW, Washington, D.C. 20585, telephone: (202) 586–7150, E-mail: mark.gilbertson@em.doe.gov. This Notice is also available on the World Wide Web at http://www.er.doe.gov/production/grants/fr98__08.html.

SUPPLEMENTARY INFORMATION: The Office of Environmental Management, in partnership with the Office of Energy Research, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the cleanup of DOE's environmental legacy. The program was initiated in Fiscal Year 1996. We are soliciting ideas for basic scientific research which promotes the broad national interest of a better understanding of the fundamental characteristics of highly radioactive chemical wastes and their effects on the environment.

The DOE Environmental Management program currently has ongoing applied research and engineering efforts under its Technology Development Program. These efforts must be supplemented with basic research to address long-term technical issues crucial to the EM mission. Basic research can also provide EM with near-term fundamental data that may be critical to the advancement of technologies that are under development but not yet at full scale nor implemented. Proposed basic research under this Notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge. This program is designed to inspire ''breakthroughs'' in areas critical to the EM mission through basic research and will be managed in partnership with ER. ER's well-established procedures, as set forth in the Energy Research Merit Review System, as published in the **Federal Register**, March 11, 1991, Vol. 56, No. 47, pages 10244–10246, will be used for merit review of applications submitted in response to this Notice. This information is also available on the World Wide Web at http://www.er.doe.gov/production/grants/merit.html. Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained at http://www.em.doe.gov/science.

Additional Notices for the Environmental Management Science Program may be issued during Fiscal Year 1998 covering other areas within the scope of the EM program.

Purpose

The need to build a stronger scientific basis for the Environmental Management effort has been established in a number of recent studies and reports. The FY 1998 Conference Report for Appropriations for Energy and Water Development, Report 105–271, dated September 26, 1997, on page 92 states the following:

> ''The conferees are pleased with the progress to date in implementing the environmental science program * * *''

The Environmental Management Advisory Board Science Committee (Resolution on the Environmental Management Science Program, May 2, 1997) made the following observations:

> ''EMSP results are likely to be of significant value to EM'' * * * ''Early program benefits include: improved understanding of EM science needs, linkage with technology needs, and expansion of the cadre of scientific personnel working on EM problems'' * * * ''Science program has the potential to lead to significant improvement in future risk reduction and cost and time savings.''

The objectives of the Environmental Management Science Program are to:

- Provide scientific knowledge that will revolutionize technologies and clean-up approaches to significantly reduce future costs, schedules, and risks;
- ''Bridge the gap'' between broad fundamental research that has wide-ranging applicability such as that performed in DOE's Office of Energy Research and needs-driven applied technology development that is conducted in EM's Office of Science and Technology; and
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

Representative Research Areas

Basic research is solicited in areas of science with the potential for addressing problems in the cleanup of high level radioactive waste. Relevant scientific disciplines include, but are not limited to, chemistry (including actinide chemistry, analytical chemistry and instrumentation, interfacial chemistry, and separation science), computer and mathematical sciences, engineering science (chemical and process engineering), materials science (degradation mechanisms, modeling, corrosion, non-destructive evaluation, sensing of waste hosts, canisters), and physics (fluid flow, aqueous-ionic solid interfacial properties underlying rheological processes).

Program Funding

Up to a total of $4,000,000 of Fiscal Year 1998 Federal funds is expected to be available for new Environmental Management Science Program awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All projects will be evaluated using the same criteria, regardless of the submitting institution.

Collaboration and Training

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit

organizations, federal laboratories and FFRDCs, including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic applicants who wish to form a collaborative project with a DOE FFRDC may *not* include the DOE FFRDC in their application as a lower-tier participant (subcontract). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication may be submitted. The original and five copies must be received by January 27, 1998, to be considered. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research (using the list in the Application Categories section). The preapplication should consist of up to three pages of narrative describing the research objectives and the plan for accomplishing them, and should also include a paragraph describing the research background of the principal investigator and key collaborators if any.

Preapplications will be evaluated relative to the scope and research needs of the DOE's Environmental Management Science Program by qualified DOE program managers from both ER and EM. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Application Format

Applicants are expected to use the following format in addition to following instructions in the Office of Energy Research Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- ER Face Page (DOE F 4650.2 (10–91))
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section)
- Table of Contents
- Project Abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget Explanation
- Budgets and Budget explanation for each collaborative subproject, if any
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages):

Goals
Significance of Project to the EMSP
Background
Research Plan
Preliminary Studies (if applicable)
Research Design and Methodologies

- Literature Cited
- Collaborative Arrangements (if applicable)
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator

Application Categories

In order to properly classify each preapplication and application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, (please use only the designation on this list and please select only one field of scientific research) from the following list of Field of Scientific Research:

1. Actinide Chemistry
2. Analytical Chemistry and Instrumentation
3. Interfacial Chemistry
4. Separations Science
5. Computer and Mathematical Sciences
6. Engineering Sciences
7. Materials Science
8. Physics
9. Other

Application Evaluation and Selection

Scientific Merit. The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources
4. Reasonableness and Appropriateness of the Proposed Budget.

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Relevance to Mission. Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. These objectives were established in the Conference Report for the Fiscal Year 1996 Energy and Water Development Appropriations Act, and are published in the Congressional Record—House, October 26, 1995, page H10956.

DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Research funded in the Environmental Management Science Program in Fiscal Year 1996 and Fiscal Year 1997 can be viewed at **http://www.doe.gov/em52/science-grants.html.**

Application Guide and Forms

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at **http://www.er.doe.gov/production/grants/grants.html.**

Major Environmental Management Challenges

This research announcement has been developed for Fiscal Year 1998, along with a development process for a long-term program within Environmental Management, with the objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. The following is an overview of the technical challenge facing the Environmental Management Program in the area of High Level Radioactive Waste which is the focus of this announcement. More detailed descriptions of the specific technical needs and areas of emphasis associated with this problem area can be found in the Background section of this Notice.

High-level Radioactive Waste Tanks. The Department is the guardian of over 300 large storage tanks containing over 90 million gallons of highly radioactive wastes, which include organic and inorganic chemical compounds, in solid, colloidal, slurry, and liquid phases. The environment within the tanks is highly radioactive and chemically harsh. A few of the tanks have leaked to the environment while others are corroding.

Specific areas of emphasis in technology needs and research challenges related to high level waste (HLW) tank problems include, but are not limited to:

- Characterization and Safety
- Retrieval of Tank Waste and Tank Closure
- Pretreatment and Separation Processes for Tank Waste
- Waste Immobilization and Disposal

Historically, characterization of tank waste has been very expensive, has failed to obtain representative data for many tanks, and has generated safety concerns from worker exposure to radioactive waste. Within the Characterization and Safety area there is the need to develop systems to identify chemical and physical characteristics of the waste in situ, improve data quality and timeliness, and reduce safety concerns.

In the Retrieval of Tank Waste and Tank Closure area, there is the need to develop cost-efficient methods to remove saltcake, sludge, and waste heels and close a high-level waste tank that may contain a flammable gas environment. Some sites have numerous tanks that contain saltcake so that the potential cost savings of less expensive saltcake retrieval methods is very large.

Pretreatment and Separation Processes for Tank Waste will separate tank wastes into low-and high-level fractions, thereby significantly reducing the volumes of high-level waste requiring disposal. These separations include not only chemical separations, but also physical separations.

Low level waste (LLW) immobilization will reduce waste volumes and produce waste forms that are chemically and physically durable. EM is applying two technologies (grout and glass) to the same waste stream to allow an unbiased appraisal of the true costs and risks associated with implementing each technology for full-scale tank waste remediation. Both technologies must be robust enough to handle the range of constituents found in the tank wastes.

The aforementioned areas of emphasis do not preclude, and DOE strongly encourages, any innovative or creative ideas contributing to solving EM HLW challenges mentioned throughout this Notice.

Background

Environmental Management (EM) is responsible for the development, testing, evaluation, and deployment of remediation technologies within a system architecture to characterize, retrieve, treat, concentrate, and dispose of radioactive waste stored in the underground storage tanks at DOE facilities and ultimately stabilize and close the tanks. The goal is to provide safe and cost-effective solutions that are acceptable to both the public and regulators.

Within the DOE complex, 335 underground storage tanks have been used to process and store radioactive and chemical mixed waste generated from weapon materials production and manufacturing. Collectively, these tanks hold over 90 million gallons of high-level and low-level radioactive liquid waste in sludge, saltcake, and as supernate and vapor. Very little has been treated and/or disposed of in final form.

Tanks vary in design from carbon or stainless steel to concrete, and concrete with carbon steel liners. Two types of storage tanks are most prevalent: the single-shell and double-shell concrete tanks with carbon steel liners. Capacities vary from 5,000 gallons ($19m^3$) to 1,300,000 gallons ($4920m^3$). The tanks are covered with a layer of soil ranging from a few feet to tens of feet thick.

Most of the waste is alkaline and contains a diverse portfolio of chemical constituents including nitrate and nitrite salts (approximately half of the total waste), hydrated metal oxides, phosphate precipitates, and ferrocyanides. The 784 MCi of radionuclides are distributed primarily among the transuranic (TRU) elements and fission products, specifically strontium-90, cesium-137, and their decay products yttrium-90 and barium-137. In-tank atmospheric conditions vary in severity from near ambient to temperatures over 93°C. Tank void-space radiation fields can be as high as 10,000 rad/h.

EM is focusing attention on four DOE locations:

- Hanford Site near Richland, Washington.
- Idaho National Engineering and Environmental Laboratory near Idaho Falls, Idaho.
- Oak Ridge Reservation near Oak Ridge, Tennessee.
- Savannah River Site near Aiken, South Carolina.

Hanford has 177 tanks that contain approximately 55 million gallons of hazardous and radioactive waste. There are 149 single-shell tanks that have exceeded their life expectancy. Sixty-seven of these tanks have known or suspected leaks. Due to several changes in the production processes since the early 1940s, some of the tanks contain incompatible waste components, generating hydrogen gas and excess heat that further compromise tank integrity.

The 11 stainless steel tanks at Idaho store approximately 2 million gallons of acidic radioactive liquids. Additionally, approximately 4000 m^3 of calcined waste solids are stored in seven stainless steel bins enclosed in massive underground concrete vaults.

Dilute low-level waste (LLW) supernatants and associated sludge at Oak Ridge are stored in the inactive

Gunite and associated tanks, the old hydrofracture tanks, and other tanks. The wastes from underground collection systems are currently being retrieved and consolidated in the stainless steel central treatment/storage tanks, including eight Melton Valley Storage Tanks.

Tank waste at Savannah River consists of 33 million gallons of salt, salt solution, and sludge containing waste stored in 51 underground storage tanks, two of which have been closed (emptied of all waste and filled with grout). Twenty-three tanks are being retired, because they do not have full secondary containment. Nine tanks have leaked detectable quantities of waste from the primary tank to secondary containment.

Most of the participant sites share four problem areas. These areas are:

- Characterization and Safety.
- Retrieval of Tank Waste and Tank Closure.
- Pretreatment and Separation Processes for Tank Waste.
- Waste Immobilization and Disposal.

Characterization and Safety

DOE, contractors, and stakeholders have committed to a safe and efficient remediation of HLW, mixed waste, and hazardous waste stored in underground tanks across the DOE complex.

Currently, there are only limited fully developed or deployed in situ techniques to characterize tank waste. In situ characterization can eliminate the time delay between sample removal and sample analysis and aid in guiding the sampling process while decreasing the cost (approximately $1 million is spent for one tank core extrusion) of waste analysis. Most importantly, remote analysis eliminates sample handling and safety concerns due to worker exposure. However, analysis of extruded tank samples allows a more complete chemical and physical characterization of the waste when needed. Knowledge of the chemical and radioactive composition and physical parameters of the waste is essential to safe and effective tank remediation.

There are three primary drivers for the development of new chemical analysis methods to support tank waste remediation: (1) provide analyses for which there are currently no reliable existing methods, (2) replace current methods that require too much time and/or are too costly, and (3) provide methods that evolve into on-line process analysis tools for use in waste processing facilities.

Characterization of the elemental and isotopic chemical constituents in DOE tank waste is an important function in support of DOE tank waste operation and remediation functions. Proper waste characterization enables: safe operation of the tank farms; resolution of tank safety questions; and development of processes and equipment for retrieval, pretreatment, and immobilization of tank waste. All of these operations are dependent on the chemical analysis of tank waste.

Moisture is one of the key elements influencing the safety status of some of Hanford's HLW tanks. Ferrocyanides were added to tank wastes to increase the available storage space when production outstripped the ability to provide adequate storage space. Organics from some of the extraction processes used at Hanford ended up in tanks because of inefficient reagent recovery processes. Moisture provides a thermal buffer for the prevention of ignition and propagation of thermal reactions in waste containing ferrocyanides or organics. Insufficient moisture level raises the possibility of explosion. The conditions for a thermal event are reduced by the presence of water in the wastes. A method is needed to measure and quantify tank waste water concentrations in situ.

The need for chemical characterization of the tank wastes is driven by both safety and operational considerations. Safety drivers include the monitoring of organic chemicals and oxidizers to address flammability and energetics, nitrate and nitrite levels to address corrosion concerns, plutonium levels to address criticality prevention considerations, and detection of organic and inorganic species to identify chemical incompatibility hazards associated with ferrocyanides, nitrates, sulfates, carbonates, phosphates, and other oxyanions. Operational concerns include the monitoring of phosphate levels driven by the potential formation of sodium phosphate crystals, thereby increasing the viscosity of the waste by formation of a gelatinous matrix which will reduce the ability of pumps to transfer and retrieve waste.

Current techniques of tank waste analysis involve the removal of core samples from tanks, followed by costly and time consuming wet analytical laboratory testing. Savings in both cost and time could be realized in techniques that involve in situ probes for direct analysis of tank materials.

Single-shell and double-shell waste tank construction is common across the DOE complex. The single-shell tanks present potential environmental hazards because only a single barrier contains the liquids and any breach in the barrier will cause contaminant spillage. A sluicing method being considered to retrieve the waste requires thousands of gallons of water, raising the possibility of HLW leakage into the surrounding environment. In other tanks, water is added to prevent the waste matrix from drying and provides a deterrent from possible ignition due to flammable gases. There is a need to develop instrumentation to determine the location of a leak, the amounts of materials that were exposed, and the quantity of the contaminant material.

Assessments of the long-term performance of waste forms is rare; performance assessments of radionuclide containment rely primarily on the geologic barriers (e.g., long travel times in hydrologic systems or sorption on mineral surfaces). The physical and chemical durability of the waste form, however, can contribute greatly to the successful isolation of radionuclides; thus the effects of radiation on physical properties and chemical durability of waste forms are of great importance. The changes in chemical and physical properties occur over relatively long periods of storage, up to a million years, and at temperatures that range from 100 to 300 degrees Celsius, depending on waste loading, age of the waste, depth of burial, and the repository-specific geothermal agent. Thus, a major challenge is to effectively simulate high-dose radiation effects that will occur over relatively low-dose rates over long periods of time at elevated temperatures. Thus there is a paramount need for improved understanding and modeling of the degradation mechanisms and behavior of primary radioactive waste hosts and/or their containment canisters, corrosion mechanisms and prevention in aqueous and/or alkali halide containing environments, and remote sensing and non-destructive evaluation.

Examples of specific science research challenges include but are not limited to: basic measurement science and sensor development required for remote detection of low concentrations of hydrogen inside tanks and in containers; basic analytical studies needed to develop new methods for chemical and physical characterization of solid and liquids in slurries and for development of advanced processing methodologies; basic instrument development needed to perform in situ radiological measurements and collect spatially resolved species and concentration data; basic materials and engineering science needed to develop radiation hardened instrumentation.

Retrieval of Tank Waste and Tank Closure

Underground tanks throughout the DOE in Hanford, Savannah River, Oak

Ridge, and Idaho have stored a diverse accumulation of wastes during the past fifty years of weapons and fuel production. If these tanks were entrapped in a manner that would preclude the escape into the environment for hundreds of years, there would be no reason to disturb them. However, a number of the storage tanks are approaching the end of their design life. At the four sites, 90 tanks have either leaked or are assumed to have leaked waste into the soil and sediments near the tanks.

Recently, dewatering processes have removed much of the free liquid from the alkaline waste tanks. The tanks now contain wastes ranging in consistency from remaining supernate and soft sludge to concrete-like saltcake. Tanks also contain miscellaneous foreign objects such as Portland cement, measuring tapes, samarium balls, and in-tank hardware such as cooling coils and piping. Unlimited sluicing, adding large quantities of water to suspend solids, is the baseline method for sludge removal from tanks. This process is not capable of retrieving all of the material from tanks. Besides dealing with aging tanks and difficult wastes, retrieval also faces the problem of the tank design itself. Retrieval tools must be able to enter the tanks, which are under an average of 10 feet of soil, through small openings called risers in the tops of the tanks.

Retrieval of tank waste and tank closure requires tooling and process alternative enhancements to mixing and mobilizing bulk waste as well as dislodging and conveying heels. Heel removal is linked to tank closure. The working tools and removal devices being developed include suction devices, rubblizing devices, water and air jets, waste conditioning devices, grit blasting devices, transport and conveyance devices, cutting and extraction tools, monitoring devices, and various mechanical devices for recovery or repair of waste dislodging and conveyance tools.

The areas directly below the access risers are often disturbed or contain a significant amount of discarded debris. Therefore, evaluation of tank waste characteristics by measurements taken at these locations may not be representative of the properties of the waste in other areas of the tanks.

To monitor current conditions and plan for tank remediation, more information on the tank conditions and their contents is required. Current methods used at DOE tank sites are limited to positioning sensors, instruments, and devices to locations directly below access penetrations or attached to a robotic arm for off-riser positioning. These systems can only deploy one type of sensor, requiring multiple systems to perform more than one function in the tank.

Currently, decisions regarding necessary retrieval technologies, retrieval efficiencies, retrieval durations, and costs are highly uncertain. Although tank closure has been completed on only two HLW tanks (at Savannah River), the tank contents proved amenable to waste retrieval using current technology. DOE has just begun to address the issue of how clean a tank must become before it is closed. Continued demonstration that tank closure criteria can be developed and implemented will provide substantial benefit to DOE.

A related problem that retrieval process development is examining, is the current lack of a retrieval decision support tool for the end users. As development activities move forward toward collection of retrieval performance and cost data, it has become very evident that the various sites across the complex need to have a decision tool to assist end users with respect to waste retrieval and tank closure. Tank closure is intimately tied to retrieval, and the sensitivity of closure criteria to waste retrieval is expected to be very large.

All the existing processes and technologies that could be used as a baseline for tank remediation have not yet been identified. Identifying these processes is one of EM's major issues in addressing the tank problems. The overall purpose of retrieval enhancements is to continue to lead the efforts in the basic understanding and development of retrieval processes in which waste is mobilized sufficiently to be transferred out of tanks in a cost-effective and safe manner. From that basic understanding, data are provided to end users to assist them in the retrieval decisionmaking process. The overall purpose of retrieval enhancements is to identify processes that can be used to reduce cost, improve efficiency, and reduce programmatic risk.

The hermetic sealing and closure of containment vessels and the long term resistance to corrosion and stress corrosion cracking and failure of such seals and closures warrants attention. Routine or conventional welding and joining procedures, while adequate to form hermetic seals in a non-hostile environment, may result in local composition gradients across weld or join interfaces and heat-affected-zones that create local electrochemical cells that are vulnerable to galvanic degradation and/or corrosion related cracking. Research is needed to establish reliable welding or joining procedures that will not result in either the establishment of local gradients in chemical composition or in grain-boundary depletion of passivating chemical elements at welding or joining closures.

Basic engineering and separation science studies are needed to support tank remediation of liquids which contain high concentrations of solids.

Pretreatment and Separation Processes for Tank Waste

DOE has about 90 million gallons of HLW and LLW stored in tanks at four primary sites within the DOE complex. It is neither cost-effective nor practical to treat and dispose of all of the tank waste to meet the requirements of the HLW repository program and the Nuclear Waste Policy Act.

The current baseline technology systems for waste pretreatment at DOE's tank waste sites are expensive. Technology gaps exist. Large volumes of HLW will be generated, while there is limited space in the planned Nuclear Waste Repository for HLW from DOE. Even if adequate space were made available, treatment and disposal of HLW is still very expensive, estimated to be about $1 million for each canister of vitrified HLW.

Only a small fraction of the waste, by weight, is made up of radionuclides. The bulk of the waste is chemical constituents intermingled with, and sometimes chemically bonded to, the radionuclides. However, the chemicals and radionuclides can be separated into HLW and LLW fractions for easier treatment and disposal.

Most of the waste stored in tanks was put there as a result of nuclear fuel processing for weapons production. In that process, irradiated fuel and its cladding were first dissolved, uranium and plutonium were recovered as products, and the highly radioactive fission product wastes were concentrated and sent to tanks for long-term storage.

Fuel processing at Savannah River did not change substantially from the beginning of operations in about 1955 to the present. While these wastes are fairly uniform, they still require pretreatment to separate the LLW from HLW prior to immobilization. Waste at Idaho is stored at acidic pH in stainless steel tanks. Much of it has already been calcined at high temperature to a dry powder. Tank wastes at Oak Ridge are small in volume (less than 1 million gallons) and radionuclide inventory (0.16 MCi) compared to other sites (33

million gallons and 534 MCi at Savannah River and 55 million gallons and 198 MCi at Hanford).

At Hanford, several processes were used over the years (beginning in 1944), each with a different chemical process. This resulted in different waste volumes and compositions. Wastes at Hanford and Savannah River are stored as highly alkaline material so as not to corrode the carbon steel tanks. The process of converting the waste from acid to alkaline resulted in the formation of different physical forms within the waste.

The primary forms of waste in tanks are sludge, saltcake, and liquid. The bulk of the radioactivity is known to be in the sludge which makes it the largest source of HLW. Saltcake is characteristic of the liquid waste with most of the water removed. Saltcake is found primarily in older single-shell tanks at Hanford.

Saltcake and liquid waste contain mostly sodium nitrate and sodium hydroxide salts. They also contain soluble radionuclides such as cesium. Strontium, technetium, and transuranics are also present in varying concentrations. The radionuclides must be removed, leaving a large portion of waste to be treated and disposed of as LLW and a very small portion that is combined with HLW from sludge for subsequent treatment and disposition.

Waste in tanks has been blended and evaporated to conserve space. Although sludge contains most of the radionuclides, the amount of HLW glass produced (vitrification is the preferred treatment of HLW) could be very high without pretreatment of the sludge. Pretreatment of the sludge by washing with alkaline solution can remove certain nonradioactive constituents and reduce the volume of HLW. Pretreatment can also remove constituents that could degrade the stability of HLW glass. If the alkaline sludge washing is not effective, some sludge may need to be dissolved in acid and treated by extraction techniques to make a suitable feed to HLW vitrification. This option is currently outside the sites baseline.

The pretreatment functional area seeks to address multiple needs across the DOE complex. The primary objectives are to reduce the volume of HLW, reduce hazards associated with treating LLW, and minimize the generation of secondary waste.

The concentration of certain chemical constituents such as phosphorus, sulfur, and chromium in sludge can greatly increase the volume of HLW glass produced upon vitrification of the sludge. These components have limited solubility in the molten glass at very low concentrations. Some sludge has high concentrations of aluminum compounds which can also be a controlling factor in determining the volume of HLW glass produced. Aluminum above a threshold concentration in the glass must be balanced with proportional amounts of other glass-forming constituents such as silica. There are estimated to be 25 different types of sludge at Hanford distributed among more than 100 tanks. Samples from 49 tanks would represent approximately 93 percent sludge in Hanford tanks. Testing of enhanced sludge washing, the combination of caustic leaching and water washing of sludge, on all of these samples is needed to determine whether enhanced sludge washing will result in an acceptable volume of HLW glass destined for the repository and will allow processing in existing carbon steel tanks at Hanford and Savannah River.

The efficiency of enhanced sludge washing is not completely understood. Inadequate removal of key sludge components could result in production of an unacceptably large volume of HLW glass. Improvements are needed to increase the separation of key sludge constituents from the HLW.

Enhanced sludge washing is planned to be performed batchwise in large double-shell tanks of nominal one million gallon capacity. This will generate substantial volumes of waste solutions which require treatment and disposal as LLW. Settling times for suspended solids may be excessive and the possibility of colloid or gel formation could prohibit large-scale processing. Alternatives are needed that will reduce the amount of chemical addition required and prevent the possibility of colloid formation. Sludge at Savannah River, Hanford, and Oak Ridge will be washed to remove soluble components prior to HLW vitrification. Removing suspended solids from the wash solutions is inherently inefficient due to long intervals required for the solids to settle out. The baseline process for sludge washing at Savannah River and Hanford is done batchwise in large, one-million gallon underground storage tanks. This requires large volumes of wash solution, powerful mixing pumps, and long settling times. Retrieval of waste using large volumes of dilution water is planned at Hanford. To consider the benefits of flocculent addition and the possibility of using countercurrent decantation to help optimize sludge washing, the settling characteristics of the solids need to be determined.

Baseline sludge washing processes at both Hanford and Savannah River call for large volumes of caustic (sodium hydroxide) solution. The supernatant from sludge washing then becomes feed to LLW treatment. The added caustic can be recovered after washing and recycled to subsequent sludge washing steps. In addition, the HLW sludge at Hanford and Savannah River contains large quantities of sodium salts that can, in principle, be recovered as sodium hydroxide and also be recycled.

Approximately 1.8 million gallons of acidic liquid waste are stored in single-shell, stainless steel, underground storage tanks at Idaho. In 1992 a Notice of Noncompliance was filed stating that the tanks did not meet secondary containment requirements of the Resource Conservation and Recovery Act. Subsequently, an agreement was reached between DOE, the Environmental Protection Agency, and the Idaho Department of Health and Welfare that commits DOE to remove the liquid waste from all underground tanks by the year 2015. Recent discussions with the state of Idaho have accelerated this date to 2012.

The baseline treatment for Idaho liquid wastes produced after 2012 is the full treatment option, wherein actinides and fission products will be removed from the liquid waste and HLW calcine.

The depleted stream will be processed to Class A LLW standards and the radionuclides will be immobilized in an HLW fraction.

The transuranic extraction process for removal of actinides, or transuranics, from acidic wastes has been tested on actual Idaho waste in continuous countercurrent process equipment. The strontium extraction process shows promise for co-extraction of strontium and technetium and also has been demonstrated on Idaho waste in continuous countercurrent operation.

DOE's underground storage tanks contain liquid wastes with high concentrations of radioactive cesium. The various processes for retrieving and redissolution of HLW calcine for pretreatment are not fully demonstrated.

DOE's underground storage tanks at Hanford, Savannah River, Oak Ridge, and Idaho contain liquid wastes with high concentrations of radioactive cesium. Cesium is the primary radioactive constituent found in alkaline supernatant wastes. Since the primary chemical components of alkaline supernatants are sodium nitrate and sodium hydroxide, the majority of the waste could be disposed of as LLW if the radioactivity could be reduced below Nuclear Regulatory Commission limits. Processes have been

demonstrated that removed cesium from alkaline supernatants and concentrate it for eventual treatment and disposal as HLW.

At Hanford, cesium must be removed to a very low level (3 Ci/m3) to allow supernatant waste to be treated as LLW and disposed of in a near-surface disposal facility. The revised Hanford Federal Facility Agreement and Consent Order, or Tri-Party Agreement (between DOE, Environmental Protection Agency and the Washington State Department of Ecology) also recommends treatment of LLW in a contact-maintained or minimally shielded vitrification facility to speed remediation and reduce costs. Cesium removal performance data are needed to estimate dose rates for this process and provide input to the design of an LLW pretreatment facility for Hanford supernatants.

At Savannah River, cesium removal by ion exchange may be needed as an alternative to the current in-tank precipitation process. Cesium ion exchange may also be needed to separate cesium from Defense Waste Processing Facility recycle, or offgas condensate, to greatly reduce the amount of cesium that is routed back to the waste storage tanks.

Technetium (Tc)–99 has a long half-life (210,000 years) and is very mobile in the environment when in the form of the pertechnetate ion. Removal of Tc from alkaline supernatants and sludge washing liquids is expected to be required at Hanford to permit treatment and disposal of these wastes as LLW. The disposal requirements are being determined by the long-term performance assessment of the LLW waste form in the disposal site environment. It is also expected that Tc removal will be required for at least some wastes to meet Nuclear Regulatory Commission LLW criteria for radioactive content. To meet these expected requirements, there is a need to develop technology that will separate this extremely long-lived radionuclide from the LLW stream and concentrate it for feed to HLW vitrification.

A number of liquid streams encountered in tank waste pretreatment contain fine particulate suspended solids. These streams may include tank waste supernatant, waste retrieval sluicing water, and sludge wash solutions. Other process streams with potential for suspended solids include evaporator products and ion exchange feed and product streams. Suspended solids will foul process equipment such as ion exchangers. Radioactive solids will carry over into liquid streams destined for LLW treatment, increasing waste volume for disposal and increasing the need for shielding of process equipment. Streams with solid/liquid separation needs exist at all of the DOE tank waste sites.

Some examples of specific science research challenges include but are not limited to: fundamental analytical chemical studies needed for improvement of separation processes; materials science of waste forms germane to their performance; elucidation of technetium chemistry; basic engineering and separation science studies required to support pretreatment activities and the development of solid/liquid separations; fundamental separations chemistry of precipitating agent and ion exchange media needed to support the development of improved methods for decontamination of HLW; fundamental physical chemistry studies of sodium nitrate/nitrite needed for HLW processing; basic materials science studies concerned with the dissolution of mixed oxide materials characteristic of calcine waste needed to design improved pretreatment processes; basic chemistry of sodium when mixed with rare earth oxides needed for the development of alternative HLW forms; fundamental chemical studies associated with high temperature (500°C) calcination of nitrate solutions using agents others than sugar needed for advanced HLW calcination processing.

Waste Immobilization and Disposal

Waste immobilization technology converts radioactive waste into solid waste forms which will last in natural environments for thousands of years. Wastes requiring immobilization at DOE sites include LLW such as the pretreated liquid waste from waste tanks and HLW such as the tank sludge. There are also a number of secondary wastes requiring immobilization that result from tank waste remediation operations, such as resins from cesium and technetium removal operations.

The baseline technologies to immobilize radioactive wastes from underground storage tanks at DOE sites include converting LLW to either grout or glass and converting HLW to borosilicate glass. Grout is a cement-based waste form that is produced in a mixer tank and then poured into canisters or pumped into vaults. Glass waste forms are created in a ceramic-lined metal furnace called a melter. Tank waste and dry materials used to form glass are mixed and heated in the melter to temperatures ranging from 1,800°F to 2,700°F. The molten mixture is then poured into log-shaped canisters for storage and disposal. The working assumption is that the LLW will be disposed of on site, or at the Waste Isolation Pilot Plant if transuranic elements are present. The HLW will be shipped for off-site disposal in a licensed HLW repository, such as the one proposed at Yucca Mountain, Nevada.

Methods are needed to immobilize the LLW fraction resulting from the separation of radionuclides from the liquid and high-level calcine wastes at Idaho. LLW is to be mixed with grout, poured into steel drums, and transferred to an interim storage facility, but alternatives are being considered. Tests must be conducted with surrogate and actual wastes to support selection of a final waste form. Savannah River has selected saltstone grout (pumped to above ground concrete vaults and solidified) as the final waste form. Savannah River would like to evaluate LLW glass as an alternative to saltstone disposal.

DOE sites at Hanford, Savannah River, Idaho and Oak Ridge will remove cesium from the hazardous radioactive liquid waste in the underground storage tanks. If cesium is removed, it costs less to treat the rest of the waste. However, cesium removal from tank waste, while cost-effective, creates a significant volume of solid waste that must be turned into a final waste form for ultimate disposal. The plan is to separate cesium from the liquid waste using ion exchange or other separations media, treat the cesium-loaded separations media to prepare it for vitrification, and convert the cesium product into a glass waste form suitable for final disposal. Personnel exposures during processing and the amount of hazardous species in the offgases must be kept within safe limits at all times.

The effectiveness of advanced oxidation technology for treating organic cesium-loaded separations media prior to vitrification is not proven. After a suitable melter feed is obtained, vitrification of the cesium-loaded media must be demonstrated. Technology development is needed because: (1) Compounds are in the separation media that must be destroyed or they will cause flammability problems in the melter and decrease the durability and waste loading of the final waste form, (2) high beta/gamma dose rates are associated with handling cesium-containing waste, and (3) cesium volatizes in the melter and becomes a highly radioactive offgas problem.

Confidence and assurance that long-term immobilization will be successful in borosilicate glass warrants research and improved understanding of the

structural and thermodynamic properties of glass (including the structure and energetics of stable and metastable phases), systematic irradiation studies that will simulate long-term self-irradiation doses and spectra (including archived glasses containing Pu or Cm, and over the widest range of dose, dose rate and temperature) and predictive theory and modeling based on computer simulations (including ab initio, Monte Carlo, and other methods).

Some examples of specific science research challenges include but are not limited to: fundamental chemical studies needed to determine species concentrations above molten glass solutions containing heavy metals, cesium, strontium, lanthanides, actinides, with and without a cold cap composed of unmelted material; materials science studies of molten materials that simulate conditions anticipated during vitrification and storage in vitrified form of HLW needed to develop improved processes and formulations; fundamental physical chemistry studies of sodium nitrate/nitrite mixtures needed for HLW stabilization.

References for Background Information

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

DOE. 1997. Accelerating Cleanup: Focus on 2006, Discussion Draft. http://www.em.doe.gov/acc2006

DOE. 1997. Radioactive Tank Waste Remediation Focus Area Technology Summary (Rainbow Book). http://www.em-52.em.doe.gov/ifd/rbbooks/tanks/tansrb.htm

DOE. 1997. Research Needs Collected for the EM Science Program—June 1997. http://www.doe.gov/em52/needs.html

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DOE. 1996. Office of Environmental Restoration EM–40. http://www.em.doe.gov/er/index.html

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''Radiation Effects in Glasses Used for Immobilization of High-Level Waste and Plutonium Disposition'', W. J. Weber, R.C. Ewing, C. A. Angell, G. W. Arnold, A. N. Cormack, J.M. Delaye, D. L. Griscom, L. W. Hobbs, A. Navrotsky, D. L. Price, A. M. Stoneham, and M. C. Weinberg, J. Mater. Res., Vol. 12, No. 8, August 1997, pp. 1946–1978.

National Research Council. 1997. Building an Environmental Management Science Program: Final Assessment. National Academy Press, Washington, DC. http://www.nap.edu/readingroom/books/envmanage/

National Research Council. 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, D.C. http://www.nap.edu/readingroom/books/doeemp/

Secretary of Energy Advisory Board. Alternative Futures for the Department of Energy National Laboratories. February 1995. Task Force on Alternative Futures for the Department of Energy National Laboratories, Washington, D.C. http://www.doe.gov/html/doe/whatsnew/galvin/tf-rpt.html

U.S. Congress, Office of Technology Assessment. Complex Cleanup: The Environmental Legacy of Nuclear Weapons Production, February 1991. U.S. Government Printing Office, Washington, D.C. NTIS Order number: PB91143743. To order, call the NTIS sales desk at (703) 487–4650. http://www.wws.princeton.edu:80~ota/disk1/1991/9113__n.html

National Science and Technology Council. 1996. Assessing Fundamental Science, Council on Fundamental Science. http://www.nsf.gov/sbe/srs/ostp/assess/

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, December 24, 1997.

Ralph H. DeLorenzo,

Acting Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–114 Filed 1–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–63–007]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

December 29, 1997.

Take notice that on December 22, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Third Revised Sheet No. 230A to be effective November 1, 1997.

CIG states that the purpose of this compliance filing is to comply with the order issued October 31, 1997 in Docket No. RP97–63–006, to reflect the language in GISB Standard 1.3.30 regarding zones.

Any person desiring to protest this filing should file protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–57 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–94–000]

Columbia Gas Transmission Corporation; Notice of Proposed Change in FERC Gas Tariff

December 29, 1997.

Take notice that on December 22, 1997, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1998:

Twenty-third Revised Sheet No. 25
Twenty-third Revised Sheet No. 26
Twenty-third Revised Sheet No 27
Ninth Revised Sheet No. 30A

Columbia states that the instant filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408 et al., approved by the Commission on April 17, 1997, (79 FERC § 61,044 (1997)). Under the approved section of the Settlement, Columbia is required to true-up its collections from the Settlement Component for 12-month periods commencing November 1, 1996. The initial 12-month period ended October 31, 1997. Columbia is making this true-up filing in compliance with the Settlement to return an over-recovered amount of $680,404, including interest, for the initial 12-month period through an adjustment to the Settlement Component of the base rates for the period January 1, 1998 through October 31, 1998.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–61 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–8–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 29, 1997.

Take notice that on December 15, 1997, El Paso Natural Gas Company (El Paso) tendered for filing two Transportation Service Agreements (TSAs) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Sixth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSAs for Commission approval since the TSAs contain payment provisions which differ from El Paso's Volume No. 1–A Form of Transportation Service Agreements and General Terms and Conditions. The TSAs and the tariff sheet, which references the TSAs, are proposed to become effective on January 14, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Lois D. Cashell,

Secretary.

[FR Doc. 98–50 Filed 1–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–10–000]

Equitrans, L.P. Notice of Proposed Changes in FERC Gas Tariff

December 29, 1997.

Take notice that on December 22, 1997, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1998:

Seventh Revised Sheet No. 400
Ninth Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheets to take effect on January 1, 1998, the first calendar quarter, in accordance with Order No. 581.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Sheet, N.E., Washington, D.C. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–52 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–143–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

December 29, 1997.

Take notice that on December 17, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, MI 48226, filed an abbreviated application pursuant to Section 7(c) of the Natural Gas Act and Sections 157.7 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction of mainline pipeline looping in Mackinac County, Michigan, all as more fully set forth in the application that is on file with the Federal Energy Regulatory Commission and open to public inspection.

Specifically, Great Lakes seeks authorization to construct and operate 14.1 miles of 12.75-inch diameter pipeline looping which would complete the looping of the last remaining single-line portion of its Sault Mainline Extension in Mackinac County in Michigan's Upper Peninsula. This project, which Great lakes refers to as the Sault Looping Project, is estimated to cost $11,100,000.

Great lakes states that the purpose of the looping is to provide system flexibility and reliability, and will confer benefits to existing system customers. For this reason, Great Lakes request that the Commission pre-determine that the costs associated with the proposed facilities qualify for rolled-in rate treatment.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 12, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Great Lakes to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 98–49 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–9–000]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 29, 1997.

Take notice that on December 22, 1997, Kentucky West Virginia Gas Company, L.L.C., (Kentucky West), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1998:

Second Revised Sheet No. 320

Kentucky West states that this filing is made to update Kentucky West's index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Kentucky West requests a waiver of the Commission's notice requirements to permit the tariff sheet to take effect on January 1, 1998, the first calendar quarter, in accordance with Order No. 581.

Kentucky West states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–51 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–342–004]

Kern River Gas Transmission Company; Notice of Compliance Filing

December 29, 1997.

Take notice that on December 19, 1997, Kern River Gas Transmission Company (Kern River), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective July 1, 1998:

Fourth Revised Sheet No. 70
Original Sheet No. 140
Original Sheet No. 141
Original Sheet No. 142
Sheet Nos. 143–199
Fourth Revised Sheet No. 500–A
Fourth Revised Sheet No. 600–A
Fourth Revised Sheet No. 700–A
First Revised Sheet No. 891

Kern River states that the purpose of this filing is to comply with the Commission's November 19, 1997, Order on Rehearing in this proceeding, which directed Kern River to submit a pooling proposal consistent with the GISB standards.

Kern River states that a copy of this filing has been served upon all intervenors in Docket No. RP97–342.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–59 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–95–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Tariff Sheets

December 29, 1997.

Take notice that on December 23, 1997, Koch Gateway Pipeline company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective January 23, 1998:

Second Revised Sheet No. 1404
First Revised Sheet No. 1405
Second Revised Sheet No. 1407

Koch states that the above referenced tariff sheets are being submitted to reflect the removal of Section 7.3(b) from Koch's currently effective tariff. This section was originally filed to disclose assets that were shared under the United Gas umbrella between United Gas Pipe Line Company and the affiliated companies of Gulf South. As part of the industry restructuring and the Koch acquisition these assets were consolidated into United Gas Pipeline Company and the affiliated companies were dissolved in December, 1993. All of these operating assets are now owned and operated by Koch Gateway Pipeline Company.

Koch also states that it has served copies of the instant filing upon each affected customer, interested state commissions, and other parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–62 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–326–014 and RP95–242–013]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 29, 1997.

Take notice that on December 22, 1997, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Seventeenth Revised Sheet No. 14 and Fifth Revised Sheet No. 21, to be effective December 1, 1997 and January 1, 1998, respectively.

Natural states that the purpose of this filing is to implement two elements of the Stipulation and Agreement (Settlement) filed by Natural on May 31, 1996, and approved by the Commission in a letter order issued on November 3, 1997 in Docket Nos. RP95–326–010 and RP95–242–010. The revised tariff sheets correct a minor clerical error in the ITS rate matrix and institute certain increased Settlement rates under Rate Schedule FSS.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective on December 1, 1997 and January 1, 1998.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket Nos. RP95–325 and RP95–242.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–055 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–326–015 and RP95–242–014]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 29, 1997.

Take notice that on December 22, 1997, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Fourth Revised Sheet No. 21, to be effective December 1, 1997.

Natural states that the purpose of this filing is to comply with the Commission's letter order issued December 15, 1997 in Docket Nos. RP95–326–000, et al., and RP95–242–000, et al., which required Natural to reflect certain reduced rates under Rate Schedule FSS. The filing also includes an explanation of the rate applicable to the LN option under Rate Schedules FTS and FTS–G, as required by the letter order.

Natural requested any waivers which may be required to permit the tendered tariff sheet to become effective on December 1, 1997.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket Nos. RP95–325 and RP95–242.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–56 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–167–008]

Sea Robin Pipeline Company; Notice of Refund Report

December 29, 1997.

Take notice that on December 22, 1997, Sea Robin Pipeline Company (Sea Robin), tendered for filing a report reflecting billing adjustments made to its shippers on December 19, 1997.

Sea Robin states that the report sets forth the amount refunded, to all non-contesting shippers for the period January 1, 1997 through April 30, 1997, and the amount billed to all shippers (contesting and non-contesting) for the period from May 1, 1997, through September 30, 1997. Sea Robin states that the amounts refunded and adjusted have been netted for each shipper.

Such adjustments reflect implementation of the rates approved by the Commission's November 3, 1997 Order in this docket and as filed by Sea Robin in the Stipulation and Agreement dated December 31, 1996. Sea Robin requests a waiver from the Commission to charge no interest on the amounts refunded and rebilled since almost all shippers owe to Sea Robin more than the amount refunded and the net effect of such interest charges would be immaterial. Sea Robin also requests a waiver of Section 6.4 of the General Terms and Conditions of its tariff to not adjust shippers' imbalance cash-out invoices to reflect the revised rates for the affected period January–September, 1997. Such waiver is appropriate since the effect of the rate adjustment on the Index Price calculated under Section 6.4 for the cash-out of imbalances is de minimus.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest should be filed on or before January 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–54 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–518–001]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

December 29, 1997.

Take notice that on December 23, 1997, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing, with an effective date of January 22, 1998.

Transco states that the purpose of the instant filing is to modify Transco's September 5, 1997, filing in Docket No. RP97–518–000 (September 5 Filing) in order to more accurately reflect the Storage Buyers' withdrawal entitlements under Transco's Rate Schedule S–2 storage service. In the September 5 Filing, Transco modified the provisions of Transco's Rate Schedule S–2 storage service to conform to the service currently provided by Texas Eastern Transmission Corporation (Texas Eastern) to Transco under Texas Eastern's Rate Schedule X–28.

Transco states that it has since discovered that, while the quantity limitations listed in Section 6.3 of Rate Schedule S–2 accurately reflect the total withdrawal entitlements for all of Transco's S–2 customers in aggregate, applying the stated percentages to individual customer withdrawal entitlements results in a quantity that varies slightly from the daily withdrawal entitlements stated in each customer's, service agreement due to small rounding differences. In order to remedy this discrepancy, Transco is proposing herein to eliminate the percentages stated in Section 6.3 of Rate Schedule S–2 and insert, in lieu thereof, a reference to the executed S–2 service agreement which sets forth the daily withdrawal quantity limitations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–60 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92–236–010]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

December 29, 1997.

Take notice that on December 22, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing certain revised tariff sheets to First and Second Revised Volume Nos. 1 and Original Volume Nos. 1–A, 1–B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's Letter Order issued December 10, 1997 in Docket Nos. RP92–236–000, et al., as more fully described in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–53 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–148–007]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

December 29, 1997.

Take notice that on December 19, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A and B to the filing.

Williston Basin states that it is submitting the instant filing solely to comply with the Commission's Order on Rehearing issued November 19, 1997 in Docket RP97–148–001 which directed Williston Basin to remove language added to the capacity release section of its tariff and to include the language of the GISB standards relating to capacity release verbatim.

Williston Basin also states that on July 1, 1997, it filed tariff sheets in Docket No. RP97–410–000 to make certain tariff modifications necessary to simplify and enhance its current services to its customers. In its July 31, 1997, Order Accepting Tariff Sheets Subject to Conditions in Docket No. RP94–410–000, the Commission accepted the proposed tariff sheets effective August 1, 1997. Therefore, Williston Basin states that it is also including tariff sheets proposed to be effective August 1, 1997, reflecting the changes proposed in the instant filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulation Commission, 888 First Street, N.E., Washington, D.C 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are filed with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 98–58 Filed 1–2–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5947–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Health Protection Survey of Beaches

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been for-warded to the Office of Management and Budget (OMB) for review and approval: National Health Protection Survey of Beaches. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 4, 1998.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1814.01.

SUPPLEMENTARY INFORMATION:

Title: National Health Protection Survey of Beaches (EPA ICR No. 1814.01). This is a new collection.

Abstract: Bacterial and other microbiological contaminants continue to pose potentially serious human health problems for the Nation's recreational waters, including bathing beaches. These adverse effects have been one of EPA's long-standing concerns. They are directly related to such Clean Water Act responsibilities as water quality standards and surface water quality, and to the Agency's efforts to ensure that the waters of the United States are ''fishable'' and ''swimmable.'' In 1986, EPA formally issued a revision to its bacteriological ambient water quality criteria recommendations to protect persons participating in body contact recreation. Since that time, few states have adopted the revised criteria and the use of the criteria has varied greatly from one location to the next. In addition, recent studies have confirmed the adverse health effects resulting from bathing in contaminated waters. Therefore, water quality in bathing beach areas is a critical concern to EPA.

EPA believes there is a need to improve the overall quality and availability of public information about health protection activities at beaches, which include, but are not limited to, water quality standards, monitoring and assessment activities, and beach closures. Many organizations share responsibility for these activities. Consequently, EPA's Office of Water will conduct an annual ''beach'' survey. The survey will be sent to environmental health officials from State, tribal, county, and city agencies, as well as representatives from various interest groups. It will obtain and verify

information on the location and condition of swimming beaches and the agencies and persons responsible for maintaining and issuing advisories or closings for those beaches at freshwater sites (the Great Lakes and others) and saltwater (estuarine and coastal) sites around the Nation. Responses to the questionnaire (either on paper or electronically via the Internet) are required to determine compliance with water quality standards, to assess public health risks, and to determine what steps EPA should take next, if any. Completion of the questionnaire and map marking will be voluntary.

EPA will assemble the information (maps and questionnaire responses) into electronic database and graphic formats that can be readily analyzed and shared with responsible parties (e.g., EPA program and regional offices, other federal, state, tribal, county, and city agencies), as well as the public. The nationwide collection of information is being phased in, beginning with a pilot survey of Great Lakes and other selected beaches in 1998. When the survey is fully implemented, it is estimated that 2,000 respondents will be involved each year. The estimated annual cost for the survey per respondent is anticipated to decrease each year, since respondents will only be requested to provide information that has changed during the year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 5/5/97 (**Federal Register** vol. 62, no. 86, pp. 24442–24443); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: County or other entity public health and environmental protection agencies.

Estimated Number of Respondents: 2000.

Frequency of Response: One time per year.

Estimated Total Annual Hour Burden: 4160 hours.

Estimated Total Annualized Cost Burden: $160,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1814.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 30, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–108 Filed 1–2–98; 8:45am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5947–2]

Local Government Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency.

ACTION: Notice of Charter Renewal.

SUMMARY: The Charter for the Environmental Protection Agency's (EPA) Local Government Advisory Committee (LGAC) will be renewed for an additional two-year period, as a necessary committee in the public interest, in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. appl.2 section 9(c). The purpose of LGAC is to provide advice and counsel to the Administrator of EPA on issues associated with enhancing the Agency's partnership with local governments in order to provide more efficient and effective environmental protection. It is determined that LGAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

FOR FURTHER INFORMATION CONTACT: Denise Zabinski Ney, Designated Federal Officer, LGAC, U.S. EPA, 401 M Street, SW (1502), Washington, DC 20460 or via electronic mail at <ney.denise@epamail.epa.gov>.

Dated: December 29, 1997.

Denise Zabinski Ney,

Designated Federal Officer.

[FR Doc. 98–112 Filed 1–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5946–2]

EPA's National Drinking Water Contaminant Occurrence Data Base

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of a Joint Requirements Planning Meeting on the National Drinking Water Contaminant Occurrence Data Base.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a three-day Joint Requirements Planning (JRP) meeting on EPA's development of a National Drinking Water Contaminant Occurrence Data Base (NCOD). The JRP is a structured meeting designed to gather requirements on a new information system from a varied body of stakeholders with an interest in the system. At the upcoming meeting, EPA is seeking review and comment from key national, state, individual stakeholders, and other interested parties concerning the data elements to be included in the development of the NCOD.

DATES: The Joint Requirements Planning Meeting on the National Drinking Water Contaminant Occurrence Data Base will be held on January 26–28, 1998 from 9:00 a.m. to 5:00 p.m. EST.

ADDRESSES: The meeting will be held at the EPA Systems Development Center (SDC), Suite 300, conference rooms 1–3. The SDC is located at 200 N. Glebe Road, Arlington, VA. For additional information, please contact Harriet Colbert, at phone: (202) 260–2302, fax: (202) 260–3762, or by e-mail at colbert.harriet@epamail.epa.gov. Members of the public wishing to attend the meeting may register by phone by contacting Harriet Colbert by January 16, 1998.

FOR FURTHER INFORMATION CONTACT: For information and logistics for the meeting, please contact Harriet Colbert, at phone: (202) 260–2302, fax: (202) 260–3762, or by e-mail at colbert.harriet@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background on the National Drinking Water Contaminant Occurrence Data Base

Section 126(g)(1) of the Safe Drinking Water Act Amendments of 1996 (SDWA) requires the Administrator to assemble and maintain a National Drinking Water Contaminant Occurrence Database (NCOD) by using information on the occurrence of both regulated and unregulated contaminants in public water systems and reliable information from other public and private sources. This NCOD will be a collection of data of documented quality on unregulated and regulated chemical or microbial contaminants likely to occur in drinking water systems. The purpose of the data system is to support the identification and selection of contaminants for future regulation or other appropriate actions and to support the review of existing regulations for possible modification. The database must be developed no later than three years after the date of enactment of the SDWA Amendments. Therefore, SDWA requires the Office of Ground Water and Drinking Water (OGWDW) to develop the NCOD by August 6, 1999.

B. Request for Stakeholder Involvement

At the May 1997 NCOD Stakeholders meeting, there was general concurrence that the primary user of the database will be EPA. Stakeholders such as industry, environmental groups, states, and the general public are secondary users. As a result of the meeting, the NCOD Team established a system development strategy. The strategy will serve as a ''road map'' over the next two years for developing the first release of the data base to meet the statutory requirements. One of the major steps in implementing the development strategy is to determine what the needs are and specify what types of data are required to meet those needs. User requirements will serve as the foundation upon which the database will be developed.

Discussion materials will be available at the meeting. The main issue for discussion at the meeting will be the review and comment on data elements that are needed to allow sound scientific analysis to support contaminant identification, contaminant selection, regulatory development, and regulatory re-examination. The data elements were identified at two previous JRP meetings held in October and November, 1997. The first was for EPA staff interested in the NCOD. The draft baseline set of data elements were identified at that meeting. The second meeting was with EPA stakeholders to review and comment on the draft baseline data elements. The third and final JRP will combine the attendees of both previous meetings and additional interested parties.

The public is invited to provide comments on the issue listed above or other issues related to the National Drinking Water Contaminant Occurrence Data Base during the January 26–28 meeting.

Dated: December 29, 1997.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–111 Filed 1–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30413B; FRL–5763–4]

U.M.I. Agrochemicals Ltd.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Foli-R-Fos 400, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8291; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of June 19, 1996 (61 FR 31104; FRL–5376–2), which announced that U.I.M. Agrochemicals (Aust.) Pty. Ltd., 30-42 Railway Terrace, Rocklea, Brisbane Market, Qld. 4106 Australia, had submitted an application to register the product Foli-R-Fos 400 (69579–R), containing the new active ingredient Mono-and di-potassium salts of phosphorous acid at 45.5 percent, an active ingredient not included in any previously registered product.

The application was approved on November 5, 1997, as Foli-R-Fos 400 as a systemic fungicide for the suppression of Phytophthora and Pythium in ornamentals and bedding plants and for Phytophthora in conifers and Pythium in turf (EPA Registration Number 69579–1).

The Agency has considered all required data on risks associated with the proposed use of Mono-and di-potassium salts of phosphorous acid, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of Mono-and di-potassium salts of phosphorous acid when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on Mono-and di-potassium salts of phosphorous acid.

A copy of the fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed

to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: December 22, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–109 Filed 1-2-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5946–4]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

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, as amended (''CERCLA''), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Daly Drum Service site in Rockford, IL, which was signed by the Superfund Division Director, Region 5. The settlement resolves an EPA claim under Section 107(a) of CERCLA against Barber-Colman Co., Chrysler Corp., Commonwealth Edison Co., Dayton Superior Corp., Deere & Co., Del Monte Foods, Illinois Oil Products, Inc., Iowa Oil Co., Kelly Springfield Tire Co., Lenz Oil Co., Madison-Kipp Corp., Milport Chemical Co., Newell Window Furnishings Co., Potter Form & Tie Co., Rock Valley Oil & Chemical Co., Sundstrand Corp., Viking Chemical Co., and Witco Corp. The settlement requires the settling parties to pay $242,450 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Records Center (7th floor), 77 West Jackson Blvd., Chicago, IL 60604.

DATES: Comments must be submitted on or before February 4, 1998.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Records Center (7th floor), 77 West Jackson Blvd., Chicago, IL 60604. A copy of the proposed settlement may be obtained from Alan Walts, Assistant Regional Counsel, 77 West Jackson Blvd., Chicago, IL 60604. Comments should reference the Daly Drum Service site in Rockford, Illinois and should be addressed to Alan Walts, Assistant Regional Counsel, 77 West Jackson Blvd. (Mail Code C–14J), Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Alan Walts, Assistant Regional Counsel, at (312) 353–8894.

Dated: December 23, 1997.

Wendy Carney,

Acting Director, Superfund Division, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 98–113 Filed 1–2–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 24, 1997

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 4, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0411.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form No.: FCC Form 485.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; businesses or other for profit; not-for-profit institutions; federal government; state, local, or tribal government.

Number of Respondents: 5,345.

Estimated Time Per Response: Ranges from .50 to 5.0 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; and third party disclosure.

Cost to Respondents: $57,000.

Total Annual Burden: 11,026 hours.

Needs and Uses: The Report and Order, CC Docket 96–238, addresses provisions in the Telecommunications Act of 1996 that necessitates changes to the rules for formal complaints filed against common carriers. Information filed pursuant to 47 CFR 1.720 *et seq.* is provided either with or in response to a formal complaint to determine whether or not there has been a violation of the Communications Act of 1934, as amended, or the Commission's Rules or Orders. Affected respondents are complainants and potential defendant common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–33 Filed 1–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, December 30, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 30, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–34237 Filed 12–31–97; 10:44 am]

BILLING CODE 6714–01–M

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Niagara Bancorp, MHC, Lockport, New York and Niagara Bancorp, Inc., Lockport, New York; to become bank holding companies by acquiring voting shares of Lockport Savings Bank, Lockport, New York.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Financial Corporation, Terre Haute, Indiana; to acquire 100 percent of the voting shares of The Morris Plan Company of Terre Haute, Inc., Terre Haute, Indiana, and industrial loan company.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Bolivar Banking Corporation, Shelby, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Bolivar County, Shelby, Mississippi.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Diboll State Bancshares, Inc., Diboll, Texas, and Diboll State Bancshares of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Pineland State Bank, Pineland, Texas.

E. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Capital Community Bancorporation, Inc., Orem, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Orem Community Bank, Orem, Utah.

Board of Governors of the Federal Reserve System, December 29, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–32 Filed 1-2-98; 8:45 am]

BILLING CODE 6210-01-F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. MainStreet BankGroup Incorporated, Martinsville, Virginia; to acquire 100 percent of the voting shares of Tysons Financial Corporation, McLean, Virginia, and thereby indirectly acquire Tysons National Bank, McLean, Virginia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Fidelity Company, Dyersville, Iowa; to acquire 100 percent of the voting shares of Iowa Bank (in organization), Bellevue, Iowa.

2. Indiana United Bancorp, Greensburg, Indiana; to merge with P.T.C. Bancorp, Brookville, Indiana, and thereby indirectly acquire People's Trust Company, Brookville, Indiana.

Board of Governors of the Federal Reserve System, December 30, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–142 Filed 1-2-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

Dresdner Bank AG, Frankfurt, Germany (''Notificant''), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.24 of the Board's Regulation Y (12 CFR 225.24), to engage *de novo* through its nonbanking subsidiaries, Oechsle International Advisors, L.P., Boston, Massachusetts (''OIA''), and RCM Capital Management, L.L.C., San Francisco, California (''RCM''), in acting as a commodity pool operator for limited partnerships organized as commodity pools investing in assets in which a bank holding company is permitted to invest. *See The Bessemer Group, Inc.*, 82 Fed. Res. Bull. 569 (1996). Notificant would engage in these activities in accordance with certain limitations and conditions previously established by the Board by order, with a number of exceptions that are discussed in the notice. Notificant currently proposes to engage in commodity pool operator activities through OIA and RCM, but seeks authority to engage in commodity pool operator activities without geographic limitation through any of its existing or future subsidiaries.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 16, 1998. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 29, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–31 Filed 1–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Mason-Dixon Bancshares, Inc., Westminster, Maryland; to acquire Bay Finance, LLC and Bay Insurance, LLC, both of Westminster, Maryland, which would acquire certain assets and assume certain liabilities of the following Maryland companies: Rose Shanis & Co., Inc., Rose Shanis Sons, Inc., Rose Shanis & Co., and Stephen Corp., all of Baltimore, Maryland, and thereby engage in consumer finance activites and to act as an agent in the sale of credit related insurance, pursuant to §§ 225.28(b)(1), (b)(11)(i), and (b)(11)(ii) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528; **Federal Reserve Bank of Cleveland** (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566, and **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Huntington Bancshares Incorporated, Columbus, Ohio, Area Bancshares Corporation, Owensboro, Kentucky, and Wachovia Corporation, Winston-Salem, North Carlina; to engage through SecureWare, Inc., Atlanta, Georgia, in data processing activities, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 30, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–143 Filed 1-2-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 7, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 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 matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 31, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–34239 Filed 12-31-97; 10:42 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following workshop.

Name: Workshop on Public and Occupational Health Concerns at Rocky Flats, Colorado.

Time and Date: 3 p.m.–9 p.m., January 7, 1998.

Place: Doubletree Hotel, 8773 Yates Drive, Westminster, Colorado 80030–3678, telephone 303/427–4000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The purpose of this workshop is to provide guidance to public health researchers on the inclusion of communities in the planning, conduct, and application of research.

History has demonstrated, when medical and public health science is planned and conducted in the absence of considering the social context of its work, people have been harmed. As a result, society has responded with laws and regulations to protect human subjects who participate in research. Lacking in this discussion has been the issue of planning and conducting research that involves and impacts communities. This workshop will provide a unique opportunity to open dialogue between government, communities, and researchers. This dialogue should result in a proposed framework through which CDC promotes public health, advances democratic principles, establishes an ethical basis for community-based research, enhances scientific credibility, and provides mechanisms for building public trust while advancing the science of public health.

Matters to be Discussed: Agenda items will include presentations on the Dose Reconstruction Project, the National Institute for Occupational Safety and Health studies, and the Workers Medical Surveillance project. Time will be set aside for public comments and discussions, with Agency staff, followed by the workshop being divided into breakout sessions: (1) Environmental Health Issues and (2) Occupational Health Issues.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Michael J. Sage, Deputy Chief, Radiation Studies Branch (RSB), or Carolyn M. Hart, RSB, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: December 30, 1997.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–34238 Filed 12-31-97; 12:53 pm]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0513]

Agency Information Collection Activities: Proposed Collection; Comment Request

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 reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on provisions concerning orphan drugs.

DATES: Submit written comments on the collection of information by March 6, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

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 reinstatement 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 listed below.

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.

Orphan Drugs—(21 CFR Part 316)—(OMB Control Number 0910–0167—Reinstatement)

Sections 525 through 528 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aa through 360dd) give the FDA statutory authority to: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs, (2) designate eligible drugs as orphan drugs, (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval, and (4) encourage sponsors to make orphan drugs available for treatment on an ''open protocol'' basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316 (21 CFR part 316) and specify procedures that sponsors of orphan drugs use in availing themselves of the incentives provided for orphan drugs in the act and sets forth procedures FDA will use in administering the act with regard to orphan drugs. Section 316.10 specifies the content and format of a request for written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Section 316.20 specifies the content and format of an orphan drug application which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.26 allows an applicant to amend the application under certain circumstances. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining orphan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
316.10, 316.12, and 316.14	0	0	0	0	0
316.20, 316.21, and 316.26	90	1.78	160.20	125	20,025
316.22	5	1	5	2	10
316.27	5	1	5	4	20
316.30	450	1	450	2	900
316.36	.2	3	.6	15	9
Total					20,964

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information requested from respondents represents, for the most part, an accounting of information already in possession of the applicant. It is estimated, based on the frequency of requests over the past 5 years, that 90 persons or organizations per year will request orphan drug designation and that no requests for recommendations on design of preclinical or clinical studies will be received. Based upon FDA experience over the last decade, FDA estimates that the effort required to prepare applications to receive consideration for sections 525 and 526 of the act (21 CFR 316.10, 316.12, 316.20, and 316.21) is generally similar and is estimated to require an average of 95 hours of professional staff time and 30 hours of support staff time per application. Estimates of annual activity and burden for foreign sponsor nomination of a resident, agent, change in ownership or designation, and inadequate supplies of drug in exclusivity, are based on total experience by FDA with such requests since 1983.

Dated: December 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10 Filed 1–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0512]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 4, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses—21 CFR

801.410(c), (e), and (f)—(OMB Control Number 0910–0182)—Reinstatement

FDA has the statutory authority under section 501, 502, and 371(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, and 371(a)) to regulate medical devices. Section 801.410 (21 CFR 801.410) requires that lenses be rendered impact-resistant and capable of withstanding the impact test referred to as the ''referee test'' in the regulation. Under § 801.410(c)(1), eyeglasses and sunglasses must be fitted with impact-resistant lenses except in cases where an optometrist or physician finds that such lenses will not fulfill a patient's visual requirements. In such cases, the optometrist or physician must notify the patient in writing and specify in a written prescription that nonimpact lenses be used in the patient's eyewear.

Under § 801.410(e) and (f), manufacturers and distributors of impact-resistant lenses, both eyeglasses and sunglasses, are required to maintain certain records. Under § 801.410(e) manufacturers, distributors, retailers, and importers are required to maintain records such as invoice(s), shipping documents, and records of sale or distribution of all impact-resistant lenses, including finished prescription eyeglasses and sunglasses, which shall be kept and maintained for a period of 3 years. However, the names and addresses of individuals purchasing nonprescription eyeglasses and sunglasses at the retail level need not be kept and maintained by the retailer. Under § 801.410(f) any persons conducting ''referee'' (lens impact) tests in accordance with § 801.410(d) shall maintain the results thereof and a description of the test method and of the test apparatus for a period of 3 years.

These records are valuable to FDA when investigating complaints (i.e., eye injury complaints). If records were not maintained, FDA investigations would be made more difficult to conduct and ultimately the public would not have the necessary protection from substandard eyeglasses. The regulation is designed to protect the eyeglass wearer from potential eye injury resulting from shattering of ordinary eyeglass lenses. Examination of data available on the frequency of eye injuries resulting from the shattering of ordinary crown glass lenses indicates that the use of such lenses constitutes an avoidable hazard to the eye of the wearer. Between 50 and 60 percent of the American public wear prescription eye wear.

Firms subject to this regulation are not required to submit the written records to FDA. FDA normally reviews and may copy records during an inspection of the manufacturer. The manufacturers are required to make the records available to FDA on an ''as needed'' basis.

Respondents to this collection of information are manufacturers, importers, distributors, and retailers of impact-resistant sunglasses and eyeglasses.

The burden of maintaining sale and/or distribution records, as required by § 801.410(e), is estimated at 0 hours because firms are routinely retaining the records beyond the 3-year period for reasons of routine business practice. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the recordkeeping needed to comply is usual and customary because it would occur in the normal course of activities. Based on conversations with eye care professionals, FDA also estimates that the burden under § 801.410 is virtually nil because very few prescriptions for nonimpact lenses are written. Therefore, no estimate for this section has been included in the chart.

FDA estimates the burden of this collection of information as follows :

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.410(f)	30	590,000	17,700,000	492	14,760

There are no capital costs or operating and maintenance costs associated with this collection of information.

There are approximately 30 manufacturers of eyeglasses in the U.S. Optical Manufacturers Association, which represents 98 percent of the domestic industry involved in lens manufacturing, and the association has stated to FDA that the regulation does not impose a burden on their members. This position is based on the fact that the recordkeeping and testing requirements of the regulation represent minimum requirements for a conscientious manufacturer.

Dated: December 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–72 Filed 1-2-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0433]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 4, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Threshold of Regulations for Substances Used in Food-Contact Articles—21 CFR 170.39—(OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless it either conforms to the terms of a regulation prescribing its use or to an exemption for investigational use. Consequently, the safety of the substance under its intended conditions of use must be established, and a food additive regulation issued, before the substance can be used in food. In accordance with section 409 of the act, manufacturers of all components of a food-contact article (e.g., food packaging or food processing equipment) whose use meets the food additive definition in sections 201(s) of the act (21 U.S.C. 321) must submit a petition establishing the safe conditions of use before such food-contact articles may be marketed, unless they are the subject of an exemption for investigational use under section 409(i) of the act.

Section 170.39 (21 CFR 170.39) establishes a process that provides a manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation (60 FR 36582, July 17, 1995). The agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration is at or below 0.5 parts per billion. The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes: (1) The chemical composition of the substance for which the request is made, (2) detailed information on the conditions of use of the substance, (3) a clear statement of the basis for the request for exemption from regulation as a food additive, (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance, (5) results of a literature search for toxicological data on the substance and its impurities, and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.39	60	1	60	88	5,280

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The previous annual reporting estimate is based on information received from representatives of the food packaging and processing industries and on agency records. FDA typically receives 60 threshold of regulation exemption requests per year. These requests require between 28 to 108 hours (h) to prepare.

The agency received two comments to the **Federal Register** of December 10, 1996 (61 FR 65067), from two trade associations; one that represents the plastic food-packaging industry and one that represents companies that market packaged food. The issues raised by these comments, and the agency's response to them, are set forth as follows.

1. One comment fully supported and endorsed the threshold of regulation process established by § 170.39 but expressed the opinion that the current requirement that an environmental assessment (EA) accompany each exemption request is an undue paperwork burden. The comment expressed the view that the considerable effort involved in preparing an EA for

every exemption request is grossly out of proportion to the minimal increment in protection of the environment that may be gained. The comment proposed an alternative approach whereby an EA would be required only in extraordinary circumstances (i.e., where significant adverse environmental impacts may occur that are not subject to regulation by other authorities).

The comment did note that FDA had published a proposed rule (National Environmental Policy Act (NEPA): Proposed Revision of Policies and Procedures; in the **Federal Register** of April 3, 1996 (61 FR 14922); republished May 1, 1996 (61 FR 19476), that would eliminate the requirement for EA's for certain types of actions resulting from requests for exemption from regulation as a food additive under § 170.39 and that would also eliminate the requirement for information on possible environmental effects at the sites of manufacture of all FDA-regulated substances. This comment, submitted by a trade association, noted that the association also submitted a comment to the agency on the proposed NEPA rule. The association's comment on the proposed NEPA rule is essentially identical to the present comment outlined in the preceding paragraph.

In the **Federal Register** of July 29, 1997 (62 FR 40570), the agency published a final rule revising its NEPA policies and procedures (''the final NEPA rule''). The final NEPA rule was issued after the agency reviewed and addressed the comments received on its April 3, 1996, proposed rule, including the comment submitted by the trade association, summarized previously.

As discussed in detail in the preamble to the final NEPA rule (62 FR 40579 through 40581), the agency agreed in part with the comment and expanded the scope of actions included in two categorical exclusions § 25.32(i) and (j) (21 CFR 25.32(i) and (j)), including actions on requests for exemption from regulation under § 170.39. However, as further discussed in the preamble to the final NEPA rule, the agency did not agree completely with this comment. Specifically, FDA concluded that certain classes of actions on food-contact materials should continue to require EA's and that the preparation of EA's for requests for these actions is not unduly burdensome for the industry. The § 170.39 exemption requests that continue to require an EA are, for the most part, for actions on substances present at greater than 5 percent of finished food-packaging materials that are not components of coatings and for actions on substances present at 5 percent or less of finished food-packaging materials that are not expected to remain with finished food-packaging materials through use by consumers. As the agency explained in the preamble to the final NEPA rule, actions on these types of substances have the potential for significant environmental impact, and such potential can be evaluated only by the agency's review of EA's prepared by requesters. In accordance with 21 CFR 25.21, EA's are also required for those actions where extraordinary circumstances indicate that there may be significant environmental effects, even though the actions belong to a class that ordinarily would warrant exclusion from the requirement to prepare an EA. Guidance on preparing EA's is available from the Food and Drug Administration's Office of Premarket Approval (HFS–200), 200 C St. SW., Washington, DC 20204.

In addition to the review summarized previously that resulted in the agency expanding the scope of two categorical exclusions (§ 25.32(i) and (j)), the agency has also reviewed the types of uses of food-contact articles that have been the subject of exemption requests received since the threshold of regulation process was implemented on August 16, 1995. The agency estimates that the percentage of uses that will qualify for categorical exclusion under the agency's revised NEPA regulations may be as high as 8 percent. It is further estimated that those exemption requests that qualify for categorical exclusions will require, on average, 48 h to prepare as opposed to the 88 h typically required to prepare exemption requests that include an EA. This would represent a 45 percent reduction in paperwork burden for such requests. The overall paperwork burden associated with the threshold of regulation process would also decrease dramatically. Prior to implementation of the amended NEPA regulations, the annual industry burden associated with threshold of regulation exemption requests was estimated to be 5,280 h based on the assumption that the agency receives 60 requests per year and that each request requires on average 88 h to prepare. If, as projected, 87 percent of threshold of regulation exemption requests qualify for the categorical exclusions discussed previously, it is estimated that the overall paperwork burden would decrease to 3,200 h (52 requests x 48 h + 8 requests x 88 h). This would represent a 39 percent overall reduction in paperwork burden.

2. One comment asserted that the requirement that a manufacturer of a substance submit an exemption from regulation request to FDA is not necessary for the proper performance of FDA's functions. Instead, the comment argued that manufacturers should be able to make their own determination as to whether the use of a substance in a food contact article meets the criteria for exemption set out in § 170.39. The comment further asserted that allowing self-determinations of exemption status would substantially reduce the burden on industry.

FDA disagrees with this comment for several reasons. In the preamble to the final rule issuing § 170.39, the agency responded in detail to comments recommending that manufacturers be permitted to determine themselves whether use of a substance is entitled to an exemption from the food additive listing regulation requirement (60 FR 36582 at 36586 through 36587. In that response, the agency explained that under *Monsanto* v. *Kennedy*, 613 F. 2d 947 (D.C. Cir. 1979), only the Commissioner of Food and Drugs has the authority to exempt a substance from regulation as a food additive. The agency's response also discussed in detail the policy rationale underlying the procedure in § 170.39 (i.e., that a process wherein the agency determines which substances will be exempt from regulation as food additives will be binding on the agency and will ensure more consistent exemption decisions). For the same reasons discussed in the preamble to the final rule, FDA concludes that this comment does not provide a basis for altering the information collection requirements of § 170.39.

Dated: December 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–086 Filed 1-2-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0374]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Latex Condoms; User Labeling; Expiration Dating'' has been approved

by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 26, 1997 (62 FR 50497), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0352. The approval expires on November 30, 2000.

Dated: December 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–075 Filed 1-2-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0506]

Commercialization of In Vitro Diagnostic Devices (IVD's) Labeled for Research Use Only or Investigational Use Only; Draft Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft Compliance Policy Guide (CPG) entitled ''Commercialization of In Vitro Diagnostic Devices (IVD's) Labeled for Research Use Only or Investigational Use Only.'' The purpose of the CPG is to provide guidance on FDA's enforcement priorities concerning investigational or research IVD's that are being commercialized for diagnostic or prognostic purposes.

DATES: Written comments on the draft CPG may be submitted by April 6, 1998.

ADDRESSES: Submit written comments on the draft CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of the draft CPG to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850 (301–443–6597 or outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your requests, or FAX your request to 301–443–8818. Facsimiles of the draft CPG are available from the Division of Small Manufacturers Assistance, CDRH. To receive the draft CPG on your fax machine, call the CDRH Facts-On-Demand system at 1–800–899–0381 or 301–827–0111 from a touch tone telephone. At the first voice prompt press ''1'' to access DSMA Facts, at the second voice prompt press ''2,'' and then enter the document number, ''671,'' followed by the pound sign, ''#''. Follow the remaining voice prompts to complete the request. Copies of the draft CPG may also be downloaded to a personal computer with access to the World Wide Web (www). The Office of Regulatory Affairs (ORA) and CDRH Home Pages include the draft CPG and may be accessed at ''http://www.fda.gov/ora'' or ''http://www.fda.gov/cdrh'' respectively. The draft CPG will be available on the Compliance References or Compliance Information pages for ORA and CDRH respectively.

FOR FURTHER INFORMATION CONTACT: Betty W. Collins, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4588, ext. 165.

SUPPLEMENTARY INFORMATION: FDA has developed a draft CPG to provide guidance on FDA's enforcement priorities concerning investigational or research IVD's that are being commercialized for diagnostic or prognostic purposes. This draft CPG applies to IVD's sold or distributed as test kits. Many manufacturers of IVD's have not followed the requirements set forth in parts 809 and 812 (21 CFR parts 809 and 812). As a result, numerous IVD's labeled for research or investigational purposes are being promoted, distributed, and used for commercial purposes. This has resulted in the widespread use of laboratory tests with unproven performance characteristics. Unless exempted from the requirement to submit premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(k)), IVD's that are commercially distributed for diagnostic use prior to FDA approval or clearance are adulterated and misbranded under sections 501(f)(1)(B) and 502(o) of the act (21 U.S.C. 351(f)(1)(B) and 352(o)). Such distribution subjects the devices and responsible firms to regulatory action.

However, FDA recognizes that certain improperly commercialized IVD's have been in extensive clinical use for a significant period of time. FDA further recognizes that immediate regulatory action against certain IVD's might result in adverse consequences to individual patients and the public health. Therefore, FDA has prepared a draft CPG in order to describe its enforcement policy. Except in specified instances, FDA does not intend to initiate enforcement action, for 18 to 30 months from the **Federal Register** publication date of the notice of availability (NOA) for the final CPG on commercialization of IVD's labeled for research use only or investigational use only, against IVD's that have not been approved or cleared, provided the IVD manufacturers, importers, and distributors take steps and obtain FDA approval of a premarket approval application, product license application, or clearance of a premarket notification submission under section (510(k)) of the act during that time period. Those steps include undertaking, by 6 months from the **Federal Register** publication date of the NOA for the final CPG, any necessary clinical investigations or other studies under a protocol sufficient to allow determination of the IVD's safety and effectiveness. FDA believes that the 18- to 30-month time period is a reasonable period for gathering safety and effectiveness data and obtaining FDA approval or clearance. This draft CPG applies to IVD's that are regulated by FDA's CDRH and Center for Biologics Evaluation and Research, and supersedes FDA's earlier draft made public in June 1996.

This draft CPG does not cover analyte specific reagents (ASR's) that, as specified under §§ 809.10(e), 809.30, and 864.4020 (21 CFR 864.4020), are not labeled or promoted with performance claims, and are sold to: (1) In vitro diagnostic manufacturers; (2) clinical laboratories regulated under the Clinical Laboratory Improvement Amendments of 1988 as qualified to perform high complexity testing under 42 CFR part 493 or clinical laboratories regulated under the Veterans Health Administration Directive 1106; and (3) organizations that use the ASR to make tests for purposes other than providing diagnostic information to patients and practitioners. ASR's are defined as

antibodies, both polyclonal and monoclonal, specific receptor proteins, ligands, nucleic acid sequences, and similar reagents which, through specific binding or chemical reaction with substances in a specimen, are intended for use in a diagnostic application for identification and quantification of an individual chemical substance or ligand in biological specimens. FDA's final rule on ASR's was published in the **Federal Register** of November 21, 1997 (62 FR 62243).

Additionally, this draft CPG does not pertain to in vitro products whose use is limited to laboratory research that is entirely unrelated to the development of IVD's.

This draft guidance document represents the agency's current thinking on commercialization of in vitro diagnostic devices labeled for research use only or investigational use only. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft CPG entitled ''Commercialization of In Vitro Diagnostic Devices (IVD's) Labeled for Research Use Only or Investigational Use Only.'' 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 agency will review all comments, but in issuing a final CPG, need not specifically address every comment. The agency will make changes to the CPG in response to comments, as appropriate. A copy of the draft CPG and received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 22, 1997.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 98–011 Filed 1-2-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0525]

Draft Guidance for Industry: ''Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs)''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs).'' This document provides guidance to sponsors of regulated medical products (human drugs, biologics, and medical devices) by describing circumstances in which sponsors may be held responsible for promotional activities performed by healthcare organizations or PBM's that violate the Federal Food, Drug, and Cosmetic Act (the act) and regulations issued thereunder. The intent of this draft guidance is to provide clarification and consistency in the agency's regulation of medical product promotion in light of changes in the healthcare environment.

DATES: Written comments may be submitted on the draft guidance document by April 6, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: An electronic version of this draft guidance is available on the Internet using the World Wide Web (WWW) at http://www.fda.gov/cder/guidance.htm. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Submit written requests for single copies of the draft guidance for industry entitled ''Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Benefits Management Companies (PBMs)'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Regarding prescription drugs: Laurie B. Burke, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828, or via Internet at burkel@cder.fda.gov;

Regarding prescription biological products: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–200), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or via Internet at stifano@cber.fda.gov;

Regarding restricted medical devices: Byron L. Tart, Center for Devices and Radiological Health (HFZ–302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4639, or via Internet at bxt@cdrh.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA's Guidance Document Development Process

On March 28, 1997, as part of the agency's ongoing efforts to ensure meaningful public participation in the guidance document development process, FDA's Division of Drug Marketing, Advertising, and Communications (DDMAC) requested public comment on guidance documents relating to prescription drug advertising and labeling (Ref. 1). Included in the list of currently proposed guidance documents was ''Promotion to Managed Care Organizations.'' The draft guidance document now being made available is the first draft document to be issued on this topic and addresses only one aspect of promotion to managed care, i.e., promotion by healthcare organizations or PBM's. Other related draft guidance documents will be issued separately under the general heading ''Promoting Medical Products in a Changing Healthcare Environment.''

B. Statutory and Regulatory Requirements

Under the act, FDA has responsibility for regulating the labeling and, in many cases, the advertising of medical

products (human drugs, biologics, and medical devices). Section 301 of the act (21 U.S.C. 331) prohibits the introduction or delivery for introduction into interstate commerce of an adulterated or misbranded drug or device and of an unapproved new drug; the adulteration or misbranding of a drug or device in interstate commerce; and the doing of any act that results in the adulteration or misbranding of a drug or device while such article is held for sale after shipment in interstate commerce. The introductory phrase of section 301 provides that the ''causing'' of any prohibited act, as well as the act itself, is prohibited.

A drug or device is misbranded if its labeling is false or misleading (section 502(a) of the act (21 U.S.C. 352(a)) or if its labeling fails to bear adequate directions for use (section 502(f) of the act). A change or modification in the intended use of a device may cause the device to be adulterated (section 501(f)(1)(B) of the act (21 U.S.C. 351(f)(1)(B)) and misbranded (section 502(o) of the act). Labeling and advertising include promotional information that is disseminated by a sponsor or by other persons on behalf of the sponsor (see 21 CFR 202.1(l)(1) and (l)(2)).

C. FDA's Information-Gathering Activities

In August 1994, FDA invited four product sponsors to meet with the agency individually to discuss regulatory issues in light of their newly established relationships with PBM's. Since that time, FDA has continued to gather information about changes in the process of healthcare delivery. In so doing, the agency has participated in programs, meetings, and workshops with managed care experts and other parties, including medical product sponsors, managed care organizations, academia, consumer advocacy groups, and health professional organizations. FDA has also participated in the design and review of studies and reports funded and/or performed by other Federal organizations to address various aspects of medical benefits management. These organizations included the Health Care Financing Administration (HCFA), the Office of the Inspector General of Health and Human Services (OIG–HHS), and the Federal Trade Commission (FTC) staff. FDA has also reviewed documents pertaining to the General Accounting Office (GAO) and the National Association of Attorneys General (NAAG) investigations, as well as court proceedings that examined contractual arrangements between medical product sponsors and other healthcare entities.

On October 19 and 20, 1995, FDA held a public hearing on ''Pharmaceutical Marketing and Information Exchange in Managed Care Environments'' (Ref. 2). The purpose of this hearing was to solicit information and views concerning the potential impact of changing organizational structures and information dissemination channels in the managed care setting on the agency's responsibilities to regulate drug marketing and promotion. FDA heard testimony from 26 individuals representing sponsors, PBM's, managed care organizations, national pharmacy organizations, advertising agencies, academia, law firms, State and Federal agencies, and consumer advocacy groups. The agency reviewed an additional 38 comments from similar organizations that were submitted to the hearing docket. Since the public hearing, the agency has held individual discussions about the changing healthcare environment with representatives from the pharmaceutical industry, a State attorney general's office, retail and institutional pharmacists, representatives from several professional organizations, representatives from several consumer advocacy organizations, and representatives from medical insurer organizations who provide pharmacy benefits. FDA continues to participate in several interagency work groups that address policy development issues relevant to the influence of managed care.

II. FDA's Findings Regarding Changes in the Healthcare Environment That Affect FDA's Regulation of Medical Product Promotion

As a result of the activities outlined in section I.C of this document, several important changes in the healthcare marketplace were identified that affect FDA's regulatory approach with respect to promotional labeling and advertising. One such change is the acquisition of healthcare provider organizations and PBMs by medical product sponsors. Because of public concern about the effects of the merger of pharmaceutical sponsors with PBM's, GAO investigated, among other things, the objectives of these mergers. GAO reported that ''drug manufacturers have merged or allied with PBMs because they believe that the PBMs' market power will help maintain the manufacturers' profits at a time when their drugs face increased competition.'' GAO also reported that, in order ''to bolster profits, manufacturers are relying on their PBM partners to help them increase market share for their drugs and develop new programs for treating specific diseases (Ref. 3).'' This type of environment fosters medical product promotion by sponsor-controlled PBM's on behalf of the sponsor.

In 1995, FTC issued a consent order to address the antitrust implications of Eli Lilly's (the Lilly Order) acquisition of the PCS Health System (PCS), a large PBM. The FTC's Order was intended to minimize anticompetitive foreclosure by ensuring that PCS customers have an alternative to sponsor-controlled formularies. The Lilly Order therefore requires, among other things, that PCS offer an ''open'' formulary that is compiled by an independent pharmacy and therapeutics (P&T) committee utilizing only objective criteria. However, the Order does not restrict or ensure independence in the promotional practices of sponsor-controlled PBM's. Furthermore, FTC's Order explicitly permits Lilly-PCS to offer other more restrictive formularies to its customers and places no restrictions on the selection of drug products for those formularies.

In addition to corporate ownership, many sponsors are pursuing marketing affiliations and pricing agreements with PBM's and other healthcare provider organizations. Some of these agreements provide product-specific incentives for the provider organizations to influence prescribing decisions. In some cases, patients on chronic drug therapy are switched from one product to another as a result of these incentives. Some agreements include variable pricing (via rebates) according to market share growth attained (Ref. 4). In an effort to affect the market share of specific products, a healthcare provider organization may enforce restrictions on prescribing decisions or disseminate promotional materials designed to influence prescribing decisions toward particular products and away from their competitors (Ref. 5).

Additionally, PBM's are expanding their role beyond claims processing and mail-order pharmacy to other activities, such as treatment intervention and disease management programs. These activities include compiling and furnishing a wide range of materials about medical products to their clients (healthcare plans and providers) with the intent of providing information and services that will influence clinical outcomes and control healthcare costs (Ref. 6).

As a result, promotional activities of medical product sponsors are often focused on managed care's demand for product-specific information.

Increasingly, promotional activities are being directed to, and channeled through, providers who make coverage policies and treatment recommendations for groups of insured individuals in managed healthcare organizations. Coverage policies may include the use of specified drug formularies [1] or preferred product lists. [2] Treatment recommendations or decisions may be enforced by a number of interventions, (Ref. 7) such as the dissemination of materials to healthcare providers and patients, implementation of disease management [3] programs, prior authorization requirements, [4] interchange programs, [5] and drug utilization reviews. [6] The incentive to promote medical products is extended by product sponsors to other persons in cases where contracts include sliding rebate scales based on the proportion of claims processed that conform to the formulary or declared product preferences (Ref. 8).

FDA was told at the October 1995 public hearing that promotional efforts are now being directed toward P&T committee members in hopes of influencing decisions about formulary inclusion of particular product(s) (Ref. 9). FDA is also aware that some benefits management companies who have business relationships with medical product sponsors are distributing product-specific information to P&T committees (as well as to managed care professionals and patients) that is false or misleading and would be considered violative if distributed directly by the product sponsor (Ref. 10).

A survey of 368 health maintenance organization (HMO) decisionmakers [7] in the United States (Ref. 11) found that the biggest concern of HMO's about PBM's is the potential for bias resulting from alliances of the PBM's with drug manufacturers. Preferred or restricted product lists or formularies are sometimes established without objective criteria and without review by independent bodies who utilize deliberative scientific decisionmaking processes (Ref. 12). In some situations, formulary decisions are made to serve the economic needs of the healthcare organization or of the sponsors whose drugs are found on those formularies (Ref. 13). Despite the concerns of HMO's, however, HMO's rely primarily on PBM-supplied data and reports for overseeing performance of their PBM's. They rely less on independent assessments from their own clinicians and patients (Ref. 14).

III. Conclusions

During the past several years, there have been many changes in the way healthcare is delivered and in the role medical product sponsors play in that marketplace. For example, some product sponsors have acquired or entered into agreements with healthcare organizations or PBM's. Medical product sponsors often cause subsidiaries and other persons acting on their behalf to participate in promotional activities, including the dissemination of promotional labeling and advertising, and, in some instances, such arrangements are utilized as a means to avoid regulatory oversight of these activities.

FDA is particularly concerned about promotional activities that may create a public health risk. For example, promotional materials disseminated to healthcare providers and patients may result in inappropriate medical decisions if the information is false, misleading, or promotes an unapproved use. FDA is also concerned that sponsors are not submitting all such materials to the agency under the existing postmarketing reporting requirements. Furthermore, FDA seeks to maintain ''a level playing field'' for all medical product sponsors with respect to the regulation of their promotional activities. In public testimony, a pharmaceutical industry representative suggested to FDA that sponsors should be held accountable for promotional material related to their product(s) even when such material is prepared by or disseminated through a PBM or other healthcare provider (Ref. 15).

Therefore, this draft guidance document clarifies circumstances in which FDA may hold a medical product sponsor responsible for promotional activities performed by a healthcare organization/PBM subsidiary of the sponsor, and by a nonsubsidiary healthcare organization/PBM on behalf of the sponsor that violate the act and regulations. The draft guidance lists several factors that the agency will use to determine sponsor responsibility for medical product promotion performed by a nonsubsidiary healthcare organization/PBM on behalf of the sponsor.

The draft guidance for industry also reminds medical product sponsors of their responsibility to submit or, in the case of some devices maintain historical files of, promotional labeling and advertising. This responsibility includes those activities performed by subsidiaries or, in certain cases, by healthcare organizations/PBM's.

IV. References

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

1. ''Prescription Drug Advertising and Promotional Labeling, Development and Use of FDA Guidance Documents; Request for Comments,'' (62 FR 14912 to 14917, March 28, 1997).

2. ''Pharmaceutical Marketing and Information Exchange in Managed Care Environments, Public Hearing,'' (60 FR 41891 to 41893, August 14, 1995).

3. Pharmacy Benefit Managers, Early Results on Ventures with Drug Manufacturers, United States General Accounting Office, Washington, DC 20548, GAO/HEHS–96–45, November 195.

4. ''Assessment of the Impact of Pharmacy Benefit Managers,'' HCFA–95–023/PK, September 30, 1996.

5. Testimony by Stephen Stefano, Vice President and General Manager, Health Management Division, Glaxo Wellcome, at FDA public hearing, p.25, October 19, 1995.

6. Testimony by Per Lofberg, President, Medco Containment Services, at FDA public hearing, p. 43, October 20, 1995.

7. ''Assesment of the Impact of Pharmacy Benefit Managers,'' HCFA–95–023/PK, September 30, 1996.

8. *See Pfizer, Inc.* v. *PCS Health Sys., Inc.*, No. 126154/95 (N.Y. Sup. Ct. October 27, 1995).

9. Testimony by Richard Jay, Vice President of Corporate Pharmacy Services, FHP, Inc., and representing the Group Health Association of America (GHAA), at FDA public hearing, p. 14, October 20, 1995. (This association is currently called the American Association of Health Plans (AAHP).)

[1] A formulary is a list of drug products. An open formulary includes all (or nearly all) available products yielding a minimal amount of formulary restrictiveness. A closed formulary is a limited list of drugs approved for use or covered under the drug plan.

[2] A preferred product list is sometimes called a ''managed'' formulary because, even though product use is unrestricted, incentives exist to increase utilization of the ''preferred'' products. Insurers and their clients often benefit financially from the use of preferred products through rebates from manufacturers and reduced drug costs.

[3] Disease management directs product use and patient behaviors to minimize the total cost of illness and improve medical and pharmaceutical care.

[4] Prior authorization is a mechanism to restrict the use of services by requiring advance approval before coverage is granted.

[5] Interchange programs direct treatment choices to preferred products at the point of dispensing or product use.

[6] Utilization review interventions change patterns of product use by contacting the clinician who ordered the product. Utilization review may be retrospective or prospective at the point of dispensing or product use. Educational tools may be included.

[7] An HMO decisionmaker represented either the chief executive or head pharmacy services.

10. Testimony by Stephen Stefano, Vice President and General Manager, Health Management Division, Glaxo Wellcome, at FDA public hearing, October 19, 1995, p. 22; and complaints directed to DDMAC by other drug sponsors.

11. Brown, J. G., ''Experiences of Health Maintenance Organizations with Pharmacy Benefit Management Companies,'' Department of Health and Human Services Office of Inspector General, Office of Evaluation and Inspections, Boston Regional Office; OEI–01–95–00110; April 1997.

12. *See Pfizer, Inc.* v. *PCS Health Sys., Inc.*, No. 126154/95 (N.Y. Sup. Ct. October 27, 1995) (Pfizer Complaint).

13. *See Pfizer, Inc.* v. *PCS Health Sys., Inc.*, No 126154/95, at 5–11 (N.Y. Sup. Ct. November 21, 1995) (Pfizer's supplemental memorandum).

14. Brown, J. G., ''Experiences of Health Maintenance Organizations with Pharmacy Benefit Management Companies,'' Department of Health and Human Services Office of Inspector General, Office of Evaluation and Inspections, Boston Regional Office; OEI–01–95–00110; April 1997.

15. Testimony by Stephen Stefano, Vice President and General Manager, Health Management Division, Glaxo Wellcome, at FDA public hearing, October 19, 1995, p. 21–22; and a complaint directed to DDMAC by another pharmaceutical sponsor.

V. Comments

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above).Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 29, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–85 Filed 1–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–66]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20420–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Demolition/Disposition Application.

OMB Control Number: 2577–0075.

Description of the need for the information and proposed use: Housing Agencies (HAs) are required to submit this information to HUD to request permission to demolish or sell all or a portion of a development (i.e., dwelling units, non-dwelling property or vacant land) owned and operated by a HA. The specific information requested in the application is based on requirements of the statute, Section 18 of the United States Housing Act of 1937, as amended, and specifically identified in 24 CFR Part 970 of the regulation. The Department uses the information submitted to determine whether, and under what circumstances, to permit a HA to demolish or sell all or a portion of a public housing development. Since there is no handbook on demolition/disposition of public housing, in the past, the only resource available to HAs for guidance on preparation of the application has been the regulation.

Agency form numbers, if applicable: HUD–52860.

Members of affected public: State, Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 120 respondents, on occasion, 16 hours average per response, 1,920 total reporting burden hours.

Status of the proposed information collection: Revision, new format.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 24, 1997.

Elinor Bacon,

Deputy Assistant Secretary for Public Housing Investments.

BILLING CODE 4210–33–M

Demolition / Disposition Application

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-YYYY (exp. mm/dd/yy)

Public reporting burden for this collection of information is estimated to average x.xx hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Do not send this form to the above address.

(NB: The new Paperwork Reduction Act requires additional information to be included here. Please see Gloria Diggs or Kay Weaver for details.)

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Section 1: General Information

1. Name of PHA:
2. Date of Application: (mm/dd/yyyy)
3. Address of PHA No. & Street: | City: | State: | Zip code:
4. Phone No. of PHA: | Fax No: | E:mail Address:
5. Executive Director's Name:
   Phone No: | Fax No: | E:mail Address:
6. Primary Contact's Name:
   Phone No: | Fax No: | E:mail Address:

Section 2: Long-Term Possible Impact of Proposed Action

Performance Funding Subsidy (PFS)

In FY _____, this HA received $_____ per unit in PFS funds.

The HA realizes that after this activity takes place, PFS will decrease by $_____ /year. (number of units proposed X subsidy per unit)

Comprehensive Grant Program (CGP)

In FY _____, this HA received $_____ per unit in CGP funds.

The HA realizes that after this activity takes place, CGP funding will decrease approximately by $_____ /year.

Section 3: Board Resolution and Environmental Review 24 CFR 970

1. Has the board approved the submission of this application? ☐ Yes ☐ No If "no," **attach explanation and reference it as Section 2, line 1.**
2. If "yes," the board resolution number ☐
3. Date of the board resolution ☐
4. Has the HA contacted the HUD Field Office to initiate the environmental review? ☐ Yes ☐ No If "no," why not?
5. I certify that all information contained in the application is true as for the date of this application.

Name of Executive Director _____

Signature X _____ Date _____

Provide attachments as needed. All attachments must reference the Section and line number to which they apply.

form **HUD-52860**(10/21/97)
ref. 24 CFR 970

Summary of Units to be Demolished/Disposed of where more than one development is included in the application.

Development No. & Name	0 - Bdrm Units	1 - Bdrm Units	2 - Bdrm Units	3 - Bdrm Units	4 & 4+ Units	Total Units	Resid'ntl. Bldg.	NonResid. Bldg.	Total Bldgs.	Acres Disposed
Totals										

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Section 4 thru 9 must be completed for each development in the application. If more than one development is included in the application, reproduce these pages for each development and provide a summary in the table provided on page 2.

Develpoment Number:

Section 4: Description of Property 24 CFR 970.8

1. Name of the Development				2. Development Number

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3. Date of Full Availability (mm/dd/yyyy)	4. No. of Residential Buildings	5. No. of Non-Residential Buildings	6. Development Type
			☐ Scattered Site ☐ Contiguous Site

7. Number of Building Types					8. Number of Types of Structures		
Single FamilyHouses	Duplexes	3-Plexes	4-Plexes	Other (explain)	Row House Units	Walk-Up Units	High Rise Units

9. Existing Unit Distribution	FamilyUnits	ElderlyUnits	Total Units Being Used for Non-Dwelling Purposes	Total Units in Development
0 Bdrm				
1 Bdrm				
2 Bdrms				
3 Bdrms				
4 or more Bdrms				
Total *				

10. Total Acres of the Development

* Enter in Section 6, line 4c.

Section 5: Description of Proposed Action by Project 24 CFR 970.8

1. Check one

☐ Complete Demolition ☐ Partial Demolition ☐ Disposition Only ☐ Demolition and Disposition

2. By Unit Type		Units to be Demolished Only	Units to be Disposed of Only
0 Bdrm	Elderly		
0 Bdrm	Family		
1 Bdrm	Elderly		
1 Bdrm	Family		
2 Bdrms	Elderly		
2 Bdrms	Family		
3 Bdrms	Family		
4 or more Bdrms	Family		
Totals *			

* Enter in Section 6, line 4a or b.

3. By Building Type	Buildings to be Demolished Only	Buildings to be Disposed of Only
Residential Buildings		
Non-Residential Buildings		
Total Buildings		

4. Acres included in Proposed Disposition

5. Site Map (**provide an attachment and reference it as Section 5, line 5**)

6. If this is a Disposition Application, estimate of Project Debt $

7. If application is a **partial** demolition/disposition of the **development**, provide the address, building numbers, and name of each building to be demolished or disposed of (**provide an attachment and reference it as Section 5, line 7**).

8. In the case of disposition of vacant land, provide the legal description of each parcel of land (**provide an attachment and reference it as Section 5, line 8**).

9. **If disposition**, what is the appraised value determined by an independent appraisal? **(include a copy of the appraisal and reference it as Section 5, line 9)** $

10. Which of the following describe the proposed disposition? (check all that apply)

A. ☐ Disposition at Fair Market Value via Public Sale B. ☐ Negoiated Sale C. ☐ Sale at Less than Fair Market Value

If B and/or C are checked, **provide a justification and reference it as Section 5, line 10**. (see instructions).

11. Calculation of Net Proceeds:

Estimated Sales Price	minus	Debt	minus	Cost & Fees	equals	Estimate Net Proceeds
$	-	$	-	$	=	$

12. How will the Net Proceeds be used? (**provide an attachment and reference it as Section 5, line 11**)

13. When will a contract for Disposition be executed? By _____ (mm/yyyy) Or _____ (number of months) after HUD approval

Provide attachments as needed. All attachments must reference the Section and line number to which they apply.

form **HUD-52860**(10/21/97)
ref. 24 CFR 970

14. **If Demolition**, what is the estimated cost of demolition? $
(Include professional fees, hazardous waste removal, building and site improvement, demolition, and seeding and soddng of land. Do not include relocation costs or site improvements such as landscaping, playgraound, retaining walls, streets, sidewalks, etc.)

15. When will a contract for Demolition be executed? By _____ (mm/yyyy) Or _____ (number of months) after HUD approval

16. Calendar year of Demolition/Disposition if doing in one year:

17. If Demolition/Disposition is phased, complete a TimeTable for each year.
If more than four years are proposed, **provide an attachment and reference it as Section 5, line 17.**

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Phase	Calendar Year of Contract	Year of Years

Elderly Units	No.	Family Units	No.	Totals
0 Bdrm		0 Bdrm		
1 Bdrm		1 Bdrm		
2 Bdrms		2 Bdrms		
		3 Bdrms		
		4 or more Bdrms		

Phase	Calendar Year of Contract	Year of Years

Elderly Units	No.	Family Units	No.	Totals
0 Bdrm		0 Bdrm		
1 Bdrm		1 Bdrm		
2 Bdrms		2 Bdrms		
		3 Bdrms		
		4 or more Bdrms		

Phase	Calendar Year of Contract	Year of Years

Elderly Units	No.	Family Units	No.	Totals
0 Bdrm		0 Bdrm		
1 Bdrm		1 Bdrm		
2 Bdrms		2 Bdrms		
		3 Bdrms		
		4 or more Bdrms		

Phase	Calendar Year of Contract	Year of Years

Elderly Units	No.	Family Units	No.	Totals
0 Bdrm		0 Bdrm		
1 Bdrm		1 Bdrm		
2 Bdrms		2 Bdrms		
		3 Bdrms		
		4 or more Bdrms		

Section 6: Justification for Demolition and/or Disposition 24 CFR 970

1. Check all that apply and **provide an attachment and reference it as Section 6, line 1** to support all applicable conditions.

Demolition

☐ 970.6(a) In the case of demolition of all or a portion of project, the project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes **and** no reasonable program of modifications, is feasible to return the project or portion of the project to useful life. The Department generally shall not consider a program of modifications to be reasonable if the costs of such program exceed 90 percent of total development cost (TDC). Major problems indicative of obsolescence are:

☐ 970.6(a)(1) As to physical condition: Structural deficiencies (e.g., settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), substantial deterioration (e.g., severe termite damage or damage caused by extreme weather conditions), or other design or site problems (e.g., severe erosion or flooding);

☐ 970.6(a)(2) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with part 50 of this title, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use;

☐ 970.6(a)(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

☐ 970.6(b) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (e.g., to reduce project density to permit better access by emergency, fire, or rescue services).

Disposition

☐ 970.7(a) Retention is not in the best interests of the tenants and the PHA because at least one to the following criteria is met:

☐ 970.7(a)(1) Developmental changes in the area surrounding the project (e.g., density, or industrial or commercial development) adversely affect the health or safety of the tenants or the feasible operation of the project by the PHA;

☐ 970.7(a)(2) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. A PHA must be able to demonstrate to the satisfaction of HUD that the additional units are being provided in connection with the disposition of the property;

☐ 970.7(a)(3) there are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the PHA and that are not inconsistent with other provisions of the Act. As and example, if the property meets any of the criteria for demolition under 970.6, it may be disposed of under this criterion (970.7(a)(3)), subject to conditions that HUD may impose (e.g., demolition to follow disposition in order to ensure abatement of a threat to safety or health).

☐ 970.7(b) In the case of disposition of property other than dwelling units (1) the property is determined by HUD to be excess to the needs of the project (after EIOP), or (2) the disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project

2. **Total Development Cost (TDC) Calculation**

Based on HUD Notice _____ For Locallity _____

If justification is based upon obsolesence of the units/buildings, complete the applicable calculationbelow for the unit proposed for demolition for each project.

	No. of Units	times	TDC per Unit	equals	TDC
0 - Bdrm Detached & SemiDetached		x		=	
0 - Bdrm Row Delling		x		=	
0 - Bdrm Walk-Up		x		=	
0 - Bdrm Elevator		x		=	
1 - Bdrm Detached & SemiDetached		x		=	
1 - Bdrm Row Delling		x		=	
1 - Bdrm Walk-Up		x		=	
1 - Bdrm Elevator		x		=	
2 - Bdrms Detached & SemiDetached		x		=	
2 - Bdrms Row Dwelling		x		=	
2 - Bdrms Walk-Up		x		=	
2 - Bdrms Elevator		x		=	
3 - Bdrms Detached & SemiDetached		x		=	
3 - Bdrms Row Delling		x		=	
3 - Bdrms Walk-Up		x		=	
3 - Bdrms Elevator		x		=	
4 - Bdrms Detached & SemiDetached		x		=	
4 - Bdrms Row Delling		x		=	
4 - Bdrms Walk-Up		x		=	
4 - Bdrms Elevator		x		=	
5 - Bdrms Detached & SemiDetached		x		=	
5 - Bdrms Row Delling		x		=	
5 - Bdrms Walk-Up		x		=	
5 - Bdrms Elevator		x		=	
6 - Bdrms Detached & SemiDetached		x		=	
6 - Bdrms Row Delling		x		=	
6 - Bdrms Walk-Up		x		=	
6 - Bdrms Elevator		x		=	
Total				=	$

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3. Estimated Cost of Rehabilitation.

Provide an attachment showing cost breakdown and reference it as Section 6, line 3 . $ _____

4. How many of the following units are occupied at the time of application submission?

a. Units proposed for **demolition** _____ (No.) of the _____ units (copy number from Section 5, line 2) designated for demolition are occupied.

b. Units proposed for **disposition** _____ (No.) of the _____ units (copy number from Section 5, line 2) designated for disposition are occupied.

c. Units **remaining** after demolition/disposition

_____ (total existing units; copy from Section 4, line 9) minus _____ (from 4a.) minus _____ (from 4b.) = _____ remaining units.

How many of the remaining unist are occupied? _____

If any occupied units are listed in a or b, complete Section 7, line 1.

Occupancy

5. Occupancy Information as of the date of the application.

	Occupied Units	Units Vacant for less than 12 months	Units Vacant for 12 or more months	Total Vacant Units	Total Units Occupied and Vacant
0 - Bdrm					
1 - Bdrm					
2 - Bdrms					
3 - Bdrms					
4 - Bdrms					
5 - Bdrms					
6 - Bdrms					
Totals					

Section 7: Relocation 24 CFR 970

1. How many **individuals** will be effected by this action? ☐
2. How will counseling and advisory services be provided? **Provide an attachment explaining and reference it as Section 7, line 2 .**
3. What housing resources are expected to used for relocation?
   ☐ Other Public Housing ☐ Section 8 ☐ Other **(Provide an attachment explaining and reference it as Section 7, line 3 .)**

	Per Unit Cost	x	No. of Units	=	Total
4. Estimated cost of counseling and advisory services	$			=	
5. Estimated cost of moving expenses	$			=	
6. Total cost of relocation expenses					$

Draft

7. What sources of funding will be used to pay relocation purposes?
   ☐ Operating Funds ☐ Comp Grant ☐ CIAP ☐ HOPE VI ☐ Other **(Provide an attachment explaining and reference it as Section 7, line 7 .)**
8. Has the HA provided residents with a **general information notice** advising them of the possible affects of proposed action?
   Provide an attachment explaining and reference it as Section 7, line 8 .
9. How days in advance of actual relocation will the HA issue a **notice of eligibility** to each family to be affected by the relocation? ☐
10. Does the HA ensure that no demolition will take place before residents are relocated from those units being demolished?
    Provide an attachment explaining and reference it as Section 7, line 10 .
11. Has the executive director provided a certification of compliance with Uniform Relocation Act?
    Provide an attachment explaining and reference it as Section 7, line 11 .

Section 8: Resident Consultation 24 CFR 970

1. Is there a resident organization at the development? ☐ Yes ☐ No
   Provide an attachment explaining and reference it as Section 8, line 1 .
2. Is there a PHA-wide resident organization? ☐ Yes ☐ No
   Provide an attachment explaining and reference it as Section 8, line 2 .
3. Were written comments received from any resident or resident organization? ☐ Yes ☐ No
   Provide an attachment explaining the HA's response/evaluation to each and reference it as Section 8, line 3 .

Section 9: Section 412 Offer of Sale 24 CFR 970

1. Did the HA provide an offer of sale to the resident organization(s) at the developments? ☐ Yes ☐ No
   If "yes," provide documentation of offer and response or certification of non-response and reference it as Section 9, line 1 .
2. If no organization existed, did the HA provide opportunity to form a resident organization? ☐ Yes ☐ No
   If "no," provide an explaination and reference it as Section 9, line 2 .
3. Is the HA exercising any of the exceptions to the offer of sale requirement permitted by 24 CFR 970.13(a)(2)? ☐ Yes ☐ No
   If "yes," which of the following exceptions apply? **Check all that apply and provide an attachment explaining and reference it as Section 9, line 3 .**

☐ 970.13(a)(2) (i) The PHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents.

☐ 970.13(a)(2) (ii) The local government has condemned the property proposed for demolition.

☐ 970.13(a)(2) (iii) A local government agency has determined and notified the PHA that units must be demolished to allow access to fire and emergency equipment.

☐ 970.13(a)(2) (iv) The PHA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long term viability of the development or the PHA (but in no case should this be used cumulatively to avoid Section 412 requirements).

☐ 970.13(a)(2) (v) A public body has requested to acquire vacant land that is less than two acres in order to build or expand its services (e.g., a local government wishes to use the land to build or establish a police substation).

☐ 970.13(a)(2) (vi) PHA seeks disposition outside the public housing program to privately finance or otherwise develop a facility to benefit low-income families (e.g., day care center, administrative building, other types of low-income housing).

[FR Doc. 98–067 Filed 1–2–98; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–67]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* February 4, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 15, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Community Renaissance Fellows Program: Budget, Payment Voucher, Reporting.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0219.

Description of the Need for the Information and Its Proposed Use: The Community Renaissance Fellows Program initiative provides funding to the Public Housing Authorities (PHAs) to support 21 Fellows. Participating PHAs will submit budget information, drawdown funds electronically, and report on the expenditure of Federal funds, work activities, goals and progress in implementing the program. HUD will use the information to monitor the program and to ensure that grant funds are spent efficiently.

Form Number: HUD–52810, HUD–52811, and HUD–50080–CRFP.

Respondents: Individuals or Households.

Frequency of Submission: Quarterly, Semi-annually, and Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–52810	21		1		.15		4
HUD–52811	21		2		1		42
HUD–50080–CRFP	21		4		.25		21

Total Estimated Burden Hours: 67.

Status: Reinstatement, with changes.

Contact: Kartika Hammond, HUD, (202) 401–8812; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–65 Filed 1–2–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–68]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* February 4, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the

information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 15, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: American Housing Survey (AHS)—1998 Metropolitan Sample.

Office: Policy Development and Research.

OMB Approval Number: 2528–0016.

Description of the Need for the Information and Its Proposed Use: The 1998 AHS is a longitudinal study that collects current information on the quality, availability, and cost of housing in fifteen selected metropolitan areas. The study also provides information on demographic and other characteristics of the occupants. Federal and local government agencies use AHS data to evaluate housing issues.

Form Number: AHS–66(L), AHS–66(SP), AHS–68(L), and AHS–68(SP).

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	70,793		1		.58		41,010

Total Estimated Burden Hours: 41,010.

Status: Reinstatement, with changes.

Contact: Ronald Sepanik, HUD, (202) 708–1060 x334, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 15, 1997.

[FR Doc. 98–66 Filed 1–2–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3918–N–15]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of a Computer Matching Program between HUD and the Department of Education.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Education to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with the Department of Education's debtor files. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or the Department of Education for direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS' debtor file which contains delinquent debt information from the Departments of Agriculture, Education, Veterans Affairs, the Small Business Administration and judgment lien data from the Department of Justice, and verify that the loan is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government.

Authorized users do a prescreening of CAIVRS to determine a loan applicant's credit status with the Federal Government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective date:* Computer matching is expected to begin February 4, 1998 unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments due by: February 4, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW, Room 4178, Washington, DC 20410, telephone number (202) 708–2374. [This is not a toll-free number.]

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Adara Walton, Branch Chief, Student Receivables Division, Department of Education, Regional Office Building, 7th & D Streets, SW, Washington, DC 20202, telephone number (202) 708–4766. [This is not a toll-free number.]

Reporting

In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this Notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The matching program will be conducted pursuant to Pub. L. 100–503, ''The Computer Matching and Privacy Protection Act of 1988,'' as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives To Be Met by the Matching Program

The matching program will allow the Department of Education access to a system which permits prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to the Department of Education's debtor data for prescreening purposes.

Records To Be Matched

HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans—Delinquent/Default.

The Department of Education will provide HUD with debtor files contained in its system of records (Title IV Program File, 18–40–0024). HUD is maintaining the Department of Education's records only as a ministerial action on behalf of the Department of Education, not as part of HUD's HUD/DEPT–2 system of records. The Department of Education's data contain information on individuals who have defaulted on their guaranteed loans. The Department of Education will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for the Department of Education's data.

Notice Procedures

HUD and the Department of Education have separate notification procedures. When the Federal credit being sought is a HUD/FHA mortgage, HUD will notify individuals at the time of application (ensuring that routine use appears on the application form). The Department of Education will notify individuals at the time of application for Federal student loan programs that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the Department of Education will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, the Department of Education's Regional Office Code, Collection Agency Code, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register,** whichever is later, providing no comments are received which would result in a contrary determination.

Issued at Washington, DC, December 29, 1997.

Leslie H. Graham, Jr.,

Deputy Director, Office of Information Technology.

[FR Doc. 98–68 Filed 1–2–98; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–836329

Applicant: Don Blanton, Blanton & Associates, Inc., Austin, Texas.

Applicant requests authorization to conduct presence/absence surveys for the following species within the state of Texas:

Birds

northern aplomado falcon (*Falco femoralis septentrionalis*)
black-capped vireo (*Vireo atricapillus*)
golden-cheeked warbler (*Dendroica chrysoparia*)
red-cockaded woodpecker (*Picoides borealis*)
bald eagle (*Haliaeetus leucocephalus*)
Attwater's greater prairie chicken (*Tympanuchus cupido attwateri*)

Amphibian

Houston toad (*Bufo houstonensis*)

Mammals

ocelots (*Felis pardalis*)
jaguarundi (*Felis yagouaroundi cacomitli*)

Plants

Texas prairie dawn (*Hymenoxys texana*)
large-fruited sand verbena (*Abronia macrocarpa*)
Navasota ladies'-tresses (*Spiranthes parksii*)
Texas trailing phlox (*Phlox nivalis ssp. texensis*)
South Texas ragweed (*Ambrosia cheiranthifolia*)
Texas ayenia (*Ayenis limitaris*)
Walker's Manioc (*Manihot walkerae*)
ashy dogwood (*Thymophylla tephroleuca*)
Johnston's frankenia (*Frankenia johnstonii*)
Star cactus (*Astrophytum asterius*)
white bladderpod (*Lesquerella pallida*)

Permit No. PRT–836371

Applicant: Robert X. Barry, Barry M. Goldwater Air Force Range, Luke AFB, Arizona.

Applicant requests authorization to conduct presence/absence surveys for

the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) on the Barry M. Goldwater Air Force Range in Yuma, Maricopa, and Pima Counties, Arizona.

Permit No. PRT–819538

Applicant: Paul Sawyer, Bureau of Land Management, Phoenix, Arizona.

Applicant requests authorization to conduct presence/absence surveys for cactus ferruginous pygmy-owls (*Glaucidium brasilianum cactorum*) in Arizona.

Permit No. PRT–802956

Applicant: John O. Mills, Walcoff & Associates, White Sands Missile Range, New Mexico.

Applicant requests authorization to conduct presence/absence surveys for the following endangered/threatened species:

Mexican gray wolves (*Canis lupus*)
whooping cranes (*Grus americana*)
Arctic peregrine falcons (*Falco peregrinus tundrius*)
bald eagles (*Haliaeetus leucocephalus*)
black-footed ferrets (*Mustela nigripes*)
peregrine falcon (*Falco peregrinus*)
interior least terns (*Sterna antillarum*)
aplomado falcons (*Falco femoralis*)
southwestern willow flycatcher (*Empidonax traillii extimus*)
Mexican spotted owls (*Strix occidentalis lucida*)
piping plovers (*Charadrius melodus*)
Kuenzler hedgehog (*Echinocereus fendleri var. kuenzeri*)
Sneed pincushion cactus (*Coryphantha sneedii var. sneedii*)
Todsen's pennyroyal (*Hedeoma todsenii*)
Sacramento Mountains thistle (*Cirsium vinaceum*)

Permit No. PRT–837577

Applicant: Laura R. Duncan, SEC, Sedona, Arizona.

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) and peregrine falcon (*Falco peregrinus*) in Arizona and New Mexico.

Permit No. PRT–689914

Applicant: Donna J. Shaver, Padre Island National Seashore, Corpus Christi, Texas.

Applicant requests authorization to take necessary measures to protect naturally occurring sea turtle nests on all Texas beaches, not limited to but including the following species for scientific research and recovery purposes:

Kemp's ridley (*Lepidochelys kempii*)
hawksbill (*Eretmochelys imbricata*)
leatherback (*Dermochelys coriacea*)
loggerhead (*Caretta caretta*)
green (*Chelonia mydas*)

Permit No. PRT–835115

Applicant: Loretta A. Pressly, Corpus Christi, Texas.

Applicant requests authorization to conduct activities for scientific research and recovery purposes for the slender rush-pea (*Hoffmannseggia tenella*) in Corpus Christi, Texas.

Permit No. PRT–799099

Applicant: Dale W. Stahlecker, Santa Fe, New Mexico.

Applicant request authorization to conduct presence/absence surveys for, measure, weigh and band for bald eagles (*Haliaeetus leucocephalus*) in New Mexico.

DATES: Written comments on these permit applications must be received on or before February 4, 1998.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103.

Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Renee Lohoefener,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–77 Filed 1–2–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Ranching and Related Activities on El Coronado Ranch (1,920 Acres) and Associated Grazing Allotments (13,284 Acres)(PRT–837858), on West Turkey Creek, Cochise County, Arizona

ACTION: Notice.

SUMMARY: The El Coronado Ranch (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The Applicant has also requested unlisted-species provisions in an Implementing Agreement (Agreement) to cover species of concern found in the planning area. The Applicant has been assigned permit number PRT–837858. The requested permit, which is for a period of 25 years, would authorize incidental take of the endangered Yaqui chub (*Gila purpurea*) and the threatened Yaqui catfish (*Ictalurus pricei*). The unlisted species provision provides for the issuance of further permits for the incidental take of species not presently listed under the Act, but which might become listed during the term of the proposed permit. The unlisted species covered by the Habitat Conservation Plan is the Yaqui form of longfin dace (*Agosia chrysogaster*). The proposed take is on the 1,920 acres of private land and would occur from ranching and related activities on the El Coronado Ranch, Cochise County, Arizona. The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application.

A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10© of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before February 4, 1998.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Doug Duncan, Tucson Suboffice, Arizona

Ecological Services Field Office, 300 West Congress, Room 4D, Tucson, Arizona 85701 (520–670–4860), or Angie Brooks, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021, (602–640–2720; Fax 602–640–2730). Documents will be available for public inspection by written request, by appointment only, during normal business hours (7:30 to 4:30), U.S. Fish and Wildlife Service, Tucson or Phoenix, Arizona. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Phoenix, Arizona (see address above). Please refer to permit number PRT–837858 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Doug Duncan at the above Tucson Suboffice.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of threatened and endangered species such as the Yaqui catfish and Yaqui chub. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The EA considers the environmental consequences of two alternatives, including the proposed action. Three other alternatives were explored, but were rejected as unworkable. The proposed action alternative is issuance of the incidental take permit and implementation of the HCP as submitted by the Applicant. The HCP provides for a strategy to conserve the listed and unlisted Plan Species and to restore watershed health in the West Turkey Creek drainage. The HCP is designed to provide a net benefit to the Plan Species. The HCP has stipulations for monitoring of species populations and habitats and functioning of the HCP. The HCP also provides for funding the mitigation measures and monitoring. The Service specifically requests comment on the appropriateness of the ''No Surprises'' assurances contained in this application.

Applicant: El Coronado Ranch plans to pursue ranching and related activities on 1,920 acres of private land and 13,284 acres of leased grazing allotments. The anticipated incidental take will occur on ponds, ditches, and associated structures on private land. El Coronado Ranch is located in the West Turkey Creek watershed of the Chiricahua Mountains, Cochise County, Arizona.

Renne Lohoefener,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–078 Filed 1–2–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Industrial Minerals Surveys.

Current OMB approval number: 1032–0038.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonfuel mineral commodities. This information is published as Annual Reports, Mineral Industry Surveys, and in Mineral Commodity Summaries for use by Government agencies, industry, and the general public.

Bureau form numbers: Pending OMB information collection approval. (37 forms)

Frequency: Monthly, Quarterly, Semiannual, and Annual.

Description of respondents: Producers and consumers of Industrial Minerals.

Annual Responses: 15,162.

Annual burden hours: 10,203.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

K.W. Mlynarski,

Acting Chief Scientist, Minerals Information Team.

[FR Doc. 98–22 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection to be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of

appropriate automated electronic, mechanical, or other forms of information technology.

Title: Comprehensive Test Ban Treaty.

OMB approval number: 1028–0059.

Abstract: The information, required by the Comprehensive Test Ban Treaty (CTBT), will provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred. Respondents to the information collection request are U.S. nonfuel minerals producers.

Bureau form number: 9–3078.

Frequency: Annual.

Description of respondents: Companies that have conducted in the last calendar year, or that will conduct in the next calendar year, explosions with a total charge size of 300 tons of TNT-equivalent, or greater.

Annual responses: 12,370.

Annual burden hours: 3,092.5.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 98–23 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–035–1110–00]

Seasonal Closure of Public Lands, Medicine Lodge Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of seasonal closure of public land in Fremont, Jefferson, Madison, and Clark Counties in Idaho.

SUMMARY: This closure is made pursuant to the December 16, 1997, amendment of the Medicine Lodge Resource Management Plan. In addition to amending existing rights-of-way to Fremont and Jefferson Counties for the Egin-Hamer Road, the amendment establishes a permanent, seasonal closure to all-human-entry of certain public lands in Fremont, Jefferson, Madison, and Clark Counties. The closures do not apply to permittees controlling their livestock during periods of authorized use or while maintaining range improvements. Further, the closures do not apply to persons needing ingress and egress across public land while legally accessing their private lands. The usual, annual closure periods will be from January 1 through April 30 and January 1 through March 31, respectively, north and south of the Egin-Hamer Road. The lands affected are shown on Map 2 and Map 4 of the proposed amendment/EA distributed on October 10, 1997, and on the map attached to the Decision Record. These maps are hereby incorporated by reference. Generally, the closure boundaries follow existing roads.

DATES: *Effective date:* January 1, 1998.

ADDRESSES: Bureau of Land Management, Upper Snake River Districts, Medicine Lodge Resource Area, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Jeff Gardetto at the above address or at (208) 524–7545.

SUPPLEMENTARY INFORMATION: The authority for this closure is found in title 43 of the Code of Federal Regulations at 8364.1. Approximately 10 years ago, the Egin-Hamer Road, which runs through crucial, winter wildlife habitat, was closed in the winter to avoid disturbance to the wildlife'especially elk. The land use plan amendment process recently concluded was begun upon request by the Counties for BLM to consider removing the mandatory road closure and analyze alternative methods of protecting the elk and other big game while in their crucial winter habitat. The proposed amendment/environmental assessment contained the selected alternative which allows conditional removal of the automatic annual road closure. The conditions are that, (a) portions of the crucial habitat adjacent to the road are seasonally closed to all-human-entry and, (b) certain climate and elk occupancy limitations are met. The proposed amendment/EA was not protested; it was subjected to a planning consistency review by Idaho's Office of the Governor; and it is supported by the IDF&G.

Dated: December 16, 1997.

Joe Kraayenbrink,

Area Manager.

[FR Doc. 98–105 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 910 0777 30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: approval of minutes of the previous meetings, Election of Resource Advisory Council Officers, update on land sales-exchanges-trades, Standards and Guidelines, Columbia River Basin Draft Environmental Impact Statement, Battle Mountain Field Office Fire Management Plan Amendment, Bureau of Land Management water rights and policy in Nevada, Off Highway Vehicle Use, Wild Horse Relocation Proposal, Military Airspace, Road Standards, Bureau of Land Management Appraisal Process and determination of the subject matter for future meetings

All meetings are open the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the District manager at the Elko District Office, 3900 East Idaho Street, Elko, Nevada, 89801, telephone (702) 753–0200.

DATES, TIMES: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Office, 3900 East Idaho Street, Elko, Nevada, 89801; January 23, 1998, starting at 9:00 a.m.; public comments will be at 11:00 a.m. and 3:00 p.m.; tentative adjournment 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: December 22, 1997.

Helen Hankins,

District Manager, Elko.

[FR Doc. 98–48 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–922–08–1310–00–P; MTM 81595]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease MTM 81595, Beaverhead County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16–⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: December 24, 1997.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 98–104 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 3 N., R. 26 E.,—Dependent resurvey and subdivision of section 33, (Group 1238) accepted November 5, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Bishop Resource Area.

T. 37 N., R. 5 W.,—Supplemental plat of the SE¼ of section 13 and the W½ of section 24, accepted November 13, 1997, to meet certain administrative needs of the BLM, Redding Resource Area.

San Bernardino Meridian, California

T. 1 N., R. 20 W.,—Dependent resurvey and metes-and-bounds survey, (Group 1111) accepted November 17, 1997, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open file in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: December 23, 1997.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 98–038 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service, Interior

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of Information Collection Solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Report of Sales and Royalty Remittance (OMB Control Number 1010–0022, Form MMS–2014), which expires on May 31, 1998.

FORM: MMS–2014, Report of Sales and Royalty Remittance.

DATES: Written comments should be received on or before March 6, 1998.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is David__Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis__C__Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, including Form MMS–2014, which expires May 31, 1998. We are requesting OMB approval for a three year extension of this existing collection authority. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for the collection of royalties from lessees producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws.

MMS performs the royalty management functions for the Secretary. When a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the United States or Indian tribe or allottee a share (royalty) of the full value received for the minerals taken from leased lands. We use an automated fiscal accounting system, the Auditing and Financial System (AFS), to account for revenues collected from Federal and Indian leases. The Report of Sales and Royalty Remittance, Form MMS–2014, is the only document used for reporting royalties and other lease-related transactions to MMS. AFS relies on data

reported by payors on Form MMS–2014 for the majority of its processing. In addition to accounting for royalties reported by payors, AFS, using Form MMS–2014 information, performs numerous other functions. These functions include monthly distribution of mineral revenues to State, Indian, and General Treasury accounts; providing royalty accounting and statistical information to States, Indians, and others who have a need for such information; and identifying under reporting and nonreporting so MMS can promptly collect revenues. Sales and royalty information gathered through AFS is compared with production data collected by an MMS automated production accounting system, the Production Accounting and Auditing System (PAAS). This AFS/PAAS comparison of reported sales with reported production provides MMS with the ability to verify that the proper royalties are being collected.

MMS counts monthly payor responses by line item. Each line represents one reporting transaction. Approximately 274,000 lines are submitted each month by about 2,000 payors. Payors include about 1,750 oil and gas companies plus about 250 solid mineral companies. The total number of payors changes monthly as old wells cease production, new wells are brought into production, mines cease or increase production, or selling arrangements change. We estimate that on the average 7 minutes is needed to manually complete each line. Average time includes data assembly, value and royalty calculations, entering data on the form, and mailing. The total time involved varies considerably from a small company reporting only one or two leases to a large company with a multipage report. For those companies with equipment enabling them to report using electronic media, including electronic data interchange, diskettes and tape, the time to generate and submit the data is estimated to be less than 3 minutes per line. About 20 percent of total lines will be prepared and submitted manually, an estimated 67,000 lines per month in FY 1997. The remaining 80 percent of total lines will be submitted via electronic media, about 208,000 lines per month. We also estimate that each payor will spend 10 hours on related recordkeeping for this collection. We estimate that the total annual burden for this information collection is 155,400 hours.

Dated: December 29, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–120 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

Title: Designation of Royalty Payment Responsibility.

OMB Control Number: 1010–0107.

Comments: This collection of information has been submitted to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e-Mail address is David—Guzy@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

DATES: Written comments should be received on or before February 4, 1998.

SUMMARY: The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Pub. L. 104–185, as corrected by Pub. L. 104–200, establishes the owners of operating rights and/or lease record title (who are jointly defined as ''lessees'' under RSFA) as responsible for making royalty and related payments on a Federal lease. Currently, it is common for a payor rather than a lessee to make royalty and related payments on a Federal lease. When a payor pays royalties on a Federal lease on behalf of a lessee, RSFA requires that the lessee certify to MMS in writing that a particular payor has been designated by the lessee to make such royalty and related payments to MMS on behalf of the lessee. RSFA made this payor designation requirement effective for lease production beginning September 1, 1996. We may require some payors to provide us information regarding the lessees on whose behalf they are paying if we need to inform those lessees that they must certify to MMS in writing their respective payors as their designees. We are asking payors and lessees to provide data required under RSFA so that we can fully implement the Act.

Description of Respondents: Federal lessees and payors.

Frequency of Response: As necessary.

Bureau Form Number: MMS–4425.

Estimated Reporting and Recordkeeping Burden: 1 hour.

Annual Responses: 24,000.

Annual Burden Hours: 24,000 hours.

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: December 9, 1997.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–122 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

Title: Training and Outreach Evaluation Questionnaires

Comments: This collection of information has been submitted to the Office of Management and Budget for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying

you, members of the public and affected agencies, of this collection of information and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e-Mail address is David__Guzy@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

DATES: Written comments should be received on or before February 4, 1998.

SUMMARY: The Royalty Management Program (RMP) provides training and outreach sessions to its constituents to facilitate their compliance with laws and regulations and to ensure that constituents are well informed. During the last few minutes of each training or outreach session, RMP asks participants to complete and return evaluation questionnaires. Participant response is voluntary. We use the feedback from these questionnaires to enhance future training and outreach sessions and to improve RMP's overall service.

Description of Respondents: Oil and gas and solid minerals reporters, individual Indian minerals owners, Indian tribes, State and tribal auditors, Federal Government financial and systems contractors, and Federal Government employees.

Frequency of Response: At the end of training/outreach sessions.

Estimated Reporting and Recordkeeping Burden: 6 minutes.

Annual Responses: 1,260 responses.

Annual Burden Hours: 126 hours.

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 19, 1997.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 98–123 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

Title: Application for the Purchase of Royalty Oil.

Comments: This collection of information has been submitted to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public, and affected agencies of this collection of information and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e-Mail address is David__Guzy@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

DATES: Written comments should be received on or before February 4, 1998.

SUMMARY: The Secretary of the Interior is authorized to sell royalty oil accruing to the United States from Federal oil and gas leases. ''Royalty oil'' is crude oil produced from leased Federal lands, both onshore and offshore, in instances in which the Secretary exercises the option to accept a lessee's royalty payment in oil rather than in money. When the Secretary determines that small refiners do not have access to adequate supplies of oil, the Secretary may dispose of any oil taken as royalty by conducting a sale of such oil, or by allocating it to eligible refiners. The Application for the Purchase of Royalty Oil, Form MMS–4070, must be submitted by interested purchasers whenever a sale is held. Information collected is used to determine the applicant's eligibility to purchase royalty oil and also provides a basis for the allocation of available oil among qualified refiners.

Description of Respondents: Eligible refiners interested in purchasing royalty oil.

Frequency of Response: When a royalty oil sale is conducted.

Estimated Reporting and Recordkeeping Burden: 1.25 hours.

Annual Responses: 20.

Annual Burden Hours: 25 hours.

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Date: December 1, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–125 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved collection of information (OMB Control Number 1010–0006).

SUMMARY: As required by the Paperwork Reduction Act of 1995 (Act), the Department of the Interior has submitted the collection of information discussed below to the Office of Management and Budget (OMB) for approval. The Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by February 4, 1998.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0006), 725 17th Street, NW, Washington, D.C. 20503.

Send a copy of your comments to the Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the supporting statement and collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.

Form Numbers: MMS–2028, OCS Mineral Lessee's and Operator's Bond and Act of Suretyship; MMS–2028A, OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond and Act of Suretyship.

Abstract: The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The MMS uses the information collected under Part 256 to determine if applicants are qualified to hold leases in the OCS. For example, MMS uses the information to: (a) verify the qualifications of a bidder on an OCS lease sale; (b) develop the semiannual List of Restricted Joint Bidders that identifies parties which are ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA; (c) ensure the qualification of assignees; (d) document that a leasehold or geographical subdivision has been surrendered by the record title holder, and (e) verify that lessees have adequate bonding coverage. If MMS did not collect the information, we would be unable to comply with the mandates of the OCSLA and the EPCA.

The individual responses to Calls for Information are the only information collected involving the protection of confidentiality. The MMS will protect specific individual replies from disclosure as proprietary information in accordance with section 26 of the OCSLA and 30 CFR 256.10(d). No items of a sensitive nature are collected. Responses are required to obtain or retain a benefit.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting and number of responses vary for each section and are mostly on occasion or annual (see chart below). There are no recordkeeping requirements in 30 CFR part 256.

Estimated Annual Reporting and Recordkeeping Hour Burden: 17,856 total burden hours, averaging approximately 137 hours per respondent (see chart below).

BURDEN BREAKDOWN

Citation 30 CFR, Part 256	Reporting requirement	Annual No. of responses	Burden per response	Annual burden hours
Subparts A, E, H, L, M	None	Not applicable		0
Subparts B, D, F	Public notice and comment process through the **Federal Register**.	Exempt as defined in 5 CFR 1320.3(h)(4)		0
Subpart C	Reports from Federal agencies	Exempt as defined in 5 CFR 1320.3(c)(4)		0
Various Subparts: 256.37; 256.53; 256.68; 256.70; 256.71; 256.72; 256.73.	Request approval for various operations or submit plans or applications.	Burden included with other approved collections in 30 CFR Part 250		0
Subpart G: 256.41; 256.43	Submit qualification of bidders for joint bids and statement of production.	200 responses	4.5 hours	900
256.46	Submit bids	2,000 bids	1 hour	2,000
256.47(c)	File agreement to accept joint lease on tie bids.	1 agreement	4 hours	4
256.47(e)(1), (e)(3)	Request for reconsideration of bid rejection	Exempt as defined in 5 CFR 1320.3(h)(9)		0
256.47; 256.50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases).	629 leases	1 hour	629
Subpart I	Provide bonding document certifications, etc.	Exempt as defined in 5 CFR 1320.3(h)(1)		0
Form MMS–2028	OCS Mineral Lessee's and Operator Bond and Act of Suretyship.	205 forms	.25 hour	[1] 51
Form MMS–2028A	OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond and Act of Suretyship.	120 forms	.25 hour	30
256.53(c), (d), (f)	Demonstrate ability to carry out present and future financial obligations and/or request reduction in amount of supplemental bond required.	150 submissions	.25 hour	37.5

BURDEN BREAKDOWN—Continued

Citation 30 CFR, Part 256	Reporting requirement	Annual No. of responses	Burden per response	Annual burden hours
256.55(b)	Notify MMS of action filed alleging lessee, surety, or guarantor are insolvent or bankrupt.	1 notice	.5 hour	.5
256.56	Provide plan to fund lease-specific abandonment account and related information.	3 submissions	8 hours	24
256.57	Provide third-party guarantee, related notices, and annual update.	10 submissions	.5 hour	5
256.58(a)	Request termination of period of liability and cancellation of bond.	50 requests	.5 hour	25
Subpart J 256.62; 256.64; 256.67.	File application for assignment or transfer	2,275 applications	5 hours	11,375
256.64(a)(7)	File required instruments creating or transferring working intrest, etc, for record purposes.	500 filings	.5 hour	250
256.64(a)(8)	Submit non-required documents for record purposes.	Voluntary, non-required submissions of documents the lessee wants MMS to file with the lease.		0
Subpart K 256.76	File written request for relinquishment	505 relinquishments	5 hours	2,525
Total Reporting		6,649		17,856

[1] Rounded.

Estimated Annual Reporting and Recordkeeping Cost Burden: $420,875 for transfer application fees (approximately 2,275 applications x $185 fee) and $50,000 for non-required documents filing fees (approximately 2,000 requests x $25 fee).

Comments: Section 3506 (c)(2)(A) of the Paperwork Reduction Act requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful, (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, (c) enhance the quality, usefulness, and clarity of the information to be collected, and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments February 4, 1998.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated October 30, 1997.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–126 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Memorandum of Understanding (MOU) Between the Minerals Management Service and the United States Coast Guard

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: Minerals Management Service (MMS) and the United States Coast Guard (USCG) are updating their MOU concerning responsibilities for offshore facilities. The update is necessary to add responsibilities associated with floating facilities, the Oil Pollution Act (OPA), and civil penalties.

DATES: MMS and USCG will consider all comments received by March 6, 1998. We will begin reviewing comments at that time and may not fully consider comments we receive after March 6, 1998.

ADDRESSES: Mail or hand-carry comments to the Department of Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, MMS at (703) 787–1147 or LCDR Stephen Kantz, USCG at (202) 267–0505.

SUPPLEMENTARY INFORMATION: In August, 1989 the MMS and the USCG signed an MOU that outlined responsibilities associated with facilities located on the Outer Continental Shelf (OCS). The purpose was to minimize duplication, and to promote consistent regulation of these facilities. The use of floating facilities, and responsibilities assigned by OPA created by need to update the MOU. Therefore, the MMS and USCG are coordinating an update of the 1989 MOU to add responsibilities for:

- Floating facilities;
- OPA; and
- Civil penalities.

For floating facilities, we plan to use jointly approved third party verification agents to conduct the joint reviews specified in Table C of the MOU.

We are working to ensure that the MOU is a workable document that we will update whenever necessary. MMS is publishing this request for comment on behalf of both MMS and the USCG. Please send comments on the MOU (Appendix A) to the address listed in the addresses section of this notice.

Also, please comment on whether you believe that the MMS and USCG should exchange other responsibilities to improve efficiency. For example, would it be more efficient if MMS assumed the remaining USCG responsibilities for fixed facilities? We are considering all options to improve customer service under the guidelines of the National Performance Review.

Dated: December 29, 1997.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

Appendix A—Memorandum of Understanding between the Minerals Management Service and the United States Coast Guard

I. Purpose

This Memorandum of Understanding (MOU) defines the responsibilities of the Minerals Management Service (MMS) and the United States Coast Guard (USCG). The jurisdictional area covered by this MOU is the Outer Continental Shelf (OCS) except for oil-spill preparedness and response functions that are seaward of the coast line. An MOU, dated February 3, 1994, among the Departments of Transportation and the Interior, and the Environmental Protection Agency established jurisdictional responsibilities for facilities located both seaward and landward of the coast line.

This MOU will minimize duplication and promote consistent regulation of facilities in the offshore. This MOU does not apply to deepwater ports as licensed by the Secretary of Transportation under the Deepwater Port Act of 1974, as amended.

II. Definition

For purposes of this MOU, the following definitions apply:

Act—The OCS Lands Act (OCSLA) of 1953 (43 U.S.C. 1331 *et seq.*), as amended by the OCSLA amendments of 1978 (Pub. L. 95–372).

Coast Line—The line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, as defined by the Submerged Lands Act (43 U.S.C. 1301 (c)).

Mobile Offshore Drilling Unit (MODU)—A vessel capable of engaging in drilling operations for exploring or exploiting subsea resources of oil, gas, or minerals. An MODU is also classified as a facility when engaged in drilling or downhole operations.

OCS—The submerged lands which are subject to the Act.

OSC Activity—Any activity in the OCS associated with exploration, development, production, transporting, or processing of OCS mineral resources including but not limited to oil and gas.

OCS Facility—Any artificial island, and installation or other device permanently or temporarily attached to the sea bed, erected for the purpose of exploring for, developing, or producing resources from the OCS. This term does not include ships or vessels on the waters above the OCS used for construction or conveyance in support of OCS activities, or in uses of these waters unrelated to OCS activities. The following are types of OCS facilities:

1. Fixed OCS Facility—A bottom founded OCS facility permanently attached to the seabed or subsoil of the OCS, including platforms, guyed towers, articulated gravity platforms, and other structures. This definition also includes gravel and ice islands and caisson retained islands engaged in OCS activities used for drilling, production, or both.

2. Floating OCS Facility—A buoyant OCS facility securely and substantially moored so that it cannot be moved without a special effort. This term includes tension leg platforms, spars, and permanently moored semisubmersibles or shipshape hulls but does not include MODUs solely engaged in drilling activities.

3. *OCS Terminal*—Any facility or vessel located on the OCS which is designated for use as a port or terminal for transferring OCS mineral resources or hydrocarbons from other sources to or from a vessel. This includes OCS facilities and their associated pipelines licensed by the Secretary of Transportation under the Deepwater Port Act of 1974.

OPA—The Oil Pollution Act of 1990 (Pub. L. 101–380).

Person—A natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

Production Facility—Any OCS facility designated by the lessee of an OCS lease for the purpose of producing, transporting, processing, or supporting the production of the mineral resources. This definition also includes gravel and caisson retained islands engaged in any OCS activities even though they may be used for purposes other than producing, transporting, processing, or supporting the production of OCS mineral resources.

Regional Director (RD)—The MMS officer delegated the responsibility and authority for a region within MMS. The USCG referrals for violations occurring in a particular MMS Region would be made to that MMS Region's RD.

Regional Supervisor (RS)—The MMS officer (or the authorized representative) in charge of operations with a region.

Vessel—Every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water. This term does not include atmospheric or pressure vessels used for containing liquids or gases.

Violation—Failure to comply with the OCSLA, with any regulations, or the terms or provisions of leases, licenses, permits, or rights-of-way issued under the OCSLA.

III. Responsibilities.

The responsibilities in section III are organized as follows:

- Table A lists MODUs;
- Table B lists fixed facilities; and
- Table C lists floating systems.

	MMS	USCG
A. MODUs:		
1. Design and construction		1
2. Structural integrity & modification & repair requirements		2
3. Stability & buoyancy in transit and operation		3
4. General arrangement		4
5. Cranes, booms, elevators, handling equipment (includes BOP handling)		5
6. Electrical system design and equipment & classified area designations		6
7. Permanently installed boilers, pressure vessels, piping, & machinery not covered by MMS		7
8. Mooring systems design, rating, & compatibility—not site-specific		8
9. Helicopter deck installations, including refueling facilities and operations		9
10. Pollution prevention systems (33 CFR 151–156)		10
11. Firefighting for systems under USCG authority		11
12. Structural inspection		12
13. Safe welding and burning procedures on structural members		13
14. Transferring materials and personnel by crane or other—on or off facility		14
15. Well-control equipment—surface and subsurface	15	
16. Safety systems required by MMS	16	
17. Emergency shutdown systems	17	
18. H2S equipment and control, gas detection systems, worker protection (not fire related)	18	
19. Subsea completions	19	
20. Gas detection systems	20	
21. Containment systems for overflow	21	
22. Well or production related pressure vessels and piping	22	
23. Pollution prevention and equipment (not vessel transfers)		23
24. Administrates a shut down of a facility	24	

	MMS	USCG
B. Fixed facilities:		
1. Fire protection—structural (quarters, bulkheads, decks, escape routes, testing & material classification; fire detection, control & extinguishing systems; equipment & helicopter deck & refueling facilities. Fire fighting for structural systems not in #2 below		1
2. Fire protection systems (deluge & sprinkler in well bay areas, detectors, and fire loop in wellhead production area and quarters)	2	
3. Dehydration equipment and gas compressor units used in production	3	
4. Occupational health and workplace safety		4
5. Evacuation procedures and escape routes		5
6. Lifesaving systems and equipment		6
7. Ventilation system requirements		7
8. General alarms		8
9. Personnel protection equipment (not H2S)		9
10. Living quarters		10
11. Communications		11
12. Navigation & obstruction lights an sound signals		12
13. Review design, fabrication, and installation	13	
14. Verify site specific considerations	14	
15. Well-control equipment—surface and subsurface	15	
16. Safety systems	16	
17. Emergency shutdown system	17	
18. Wellhead, flowline, pipeline, & well test equipment includes safety valves & pressure sensors	18	
19. H2S equipment and control, gas detection systems, worker protection (not fire-related)	19	
20. Piping systems (production and related) includes incoming and departing	20	
21. Pumps used to transfer liquids within the production systems & into pipes	21	
22. Odorant treatment of gas piped into enclosures	22	
23. Subsea completions	23	
24. Gas-detection systems (drilling, production, gas-transmission or equipment)	24	
25. Sale and metering equipment for production of oil, gas & sulphur	25	
26. Containment systems for overflow from drilling and production equipment	26	
27. Vessels (pressure, atmospheric, & fired) and piping-drilling and production	27	
28. Well-head and platform removal	28	
29. Drilling, workover, completion, well-servicing (includes well-control)	29	
30. Pollution prevention and equipment (not vessel transfers)	30	
31. Safe welding, burning and hot tapping	31	
32. Pipeline operations—associated with the facility	32	
33. Emergency egress procedures (includes lifesaving & emergency equipment)		33
34. Explosive, radioactive & flammable (not hydrocarbon) material handling, transferring & stowage (& other HAZMATS)		34
35. Petroleum and other product transfer (to & from a vessel)		35
36. Vehicle and vessel operations		36
37. Diving operations and equipment		37
38. Administrates a shut down of a facility	38	
39. Investigation lead for collisions, deaths, injuries		39
40. Structural integrity, modification, and repair requirements	40	
41. Electrical system design and equipment	41	
42. Engine exhaust insulation and spark arrestors	42	
43. Material handling equipment (including cranes and booms)	43	

C. Floating OCS Systems

Table C lists the responsibilities for floating OCS systems:

MMS	MMS/USCG	USCG
Production equipment (including risers & turret).	Design of turret hull interface & fabrication of turret & turret hull interface.	
Fire detection—production & drilling areas	System interfaces for non-independent fire detection and fire extinguishing systems.	Fire Protection & Response For All Other Areas
Fire extinguishing—well bay gas &/or H2S detection in all areas.		Fire Detection—Remainder of Vessel/Facility.
Site specific considerations (including geotechnics.	TLP tendons & mooring systems of other floating production systems.	
TLP foundations	Hull structure for TLP, SPAR, & hybrid	Hull structure-shipshape FPS Accommodations-all types Structural fire protection for all types.
	Hazardous areas & general arrangement.	
	Design Environmental Conditions (DEC) Station keeping—DP vessels.	Stability for all types.
	Design operating conditions	
	Non-production machinery/electrical systems..	
		Lifesaving equipment [MODU or tankship requirements].
		Helicopter facilities (MODU regulations).

TLP—Tension leg platform. DP—Dynamically Positioned.

IV. Civil Penalties

A. The USCG reports violations of OCSLA statutes or regulations which may result in civil penalty action to MMS by using the Compliance Review Form, MMS–129. The USCG will investigate and document OCSLA based violation cases according to the procedures in 33 CFR 140.40 with the following clarification:

1. The cognizant Officer in Charge, Marine Inspection (OCMI) provides the violator written notice of the violation and establishes a reasonable time for the violator to correct the violation. However, a violation that constitutes a threat of serious, irreparable, or immediate harm does not need a time for correction before the OCMI proceeds with a civil penalty recommendation. For violations which do not constitute a threat of serious, irreparable, or immediate harm, the OCMI may consult the MMS RD to establish reasonable corrective times, particularly on matters in which MMS has expertise or knowledge of industry practice.

2. If the appropriate time to file an appeal has past, and the violator has not filed an appeal with the appropriate USCG official, pursuant to 43 USC 1248(a), the OCMI provides the MMS Regional Civil Penalty Coordinator with the following information:

I. The case file, which consists of a summary of the investigation and a USCG determination of the regulations violated.

ii. A description of the seriousness of violation and any incidents actually associated with the violation.

iii. If requested, additional information concerning the merits of a civil penalty action. All physical evidence remains with the USCG, but available to MMS upon request.

3. If the violator files an appeal, the USCG will forward the case to MMS after the USCG Hearing Officer issues a final decision on the appeal.

4. Upon receipt of the violation report, the MMS Regional Civil Penalty Coordinator will appoint a Reviewing Officer (RO) who will process the report in accordance with the MMS OCS Criminal/Civil Penalties Program Guidebook.

5. Notification of the MMS RO's decision regarding the civil penalty assessment, collection, compromise, or dismissal shall be provided to the OCMI originating the violation report.

V. Pollution responsibilities

A. Certificates of Financial Responsibility (COFR)

1. The MMS issues Certificates of Financial Responsibility (COFR) for all facilities seaward of the coast line. The MMS COFR ensures that lessees possess adequate oil spill financial responsibility for the clean up and damages from oil discharges resulting from oil exploration and production facilities and the associated pipelines.

2. The USCG issues COFR for vessels and floating OCS facilities which store oil. This COFR is in addition to the MMS COFR and addresses the operators financial responsibility for the clean up and damages from oil discharges resulting from non-well related sources and produced oil store on board the floating OCS facility.

B. Oil Spill Preparedness and Response Planning

1. The MMS, for all facilities seaward of the coast line, requires that responsible parties maintain approved Oil Spill Response Plan (OSRP) consistent with the area contingency plan (ACP); ensures that response personnel receive training; and that response equipment is inspected. The MMS may require unannounced oil spill response drills. The MMS RS will notify the Federal On Scene Coordinator (FOSC) of drills to coordinate participation, and avoid conflict or duplication.

2. The USCG Captain of the Port serves as the pre-designated FOSC in accordance with the national Contingency Plan. The cognizant FOCS will also jointly approve OSRPs for floating OCS facilities which store oil. Participation in MMS drills will be at the discretion of the FOSC. The FOSC will advise the MMS RS of spill response drills and activities occurring offshore.

C. Spill Response

1. All spills are required to be reported to the NRC. The NRC provides notification to the appropriate agencies and state offices. Additionally, offshore facility owners or operators are required to report spills over one barrel to the MMS RS.

2. The FOSC will direct and monitor federal, state, and private actions, consult with affected trustees, and determine removal completion. The MMS RS will direct measures to abate sources of pollution from an offshore facility.

VI. Exchanging Services and Personnel

To the extent its own operations and resources permit, each Agency will provide the other Agency with assistance, technical advice, and support, including transportation, if requested. Exchange of services and personnel is non-reimbursable (except for pollution removal funding authorizations for incident specific fund access). The assistance may extend to areas beyond the OCS where one Agency's expertise will benefit the other Agency in applying and enforcing its safety regulations.

VII. Other Cooperative Functions

A. Both agencies will exchange data and study results, participate in research and development projects and exchange early drafts of rulemaking notices to avoid duplicative or conflicting requirements.

B. Both Agencies will review current standards, regulations, and directives and will propose revisions to them necessary in keeping with the provision of this MOU.

C. Both Agencies will review reporting and data collection requirements imposed on operators of OCS facilities and, where feasible, eliminate or minimize duplicate reporting and data collection requirements.

VIII. Implementing this MOU

A. Each Agency will review its internal procedures, and where appropriate, will revise them to accommodate the provisions of this MOU. Each Agency will also designate in writing one senior official who will be responsible for coordinating and implementing the provisions of this MOU.

B. Each agency will designate regional officials to be responsible for coordinating and implementing the provisions of this MOU in their respective regions.

C. The USCG—MMS MOU concerning regulation of activities and facilities in the OSC, dated August 29, 1990, is canceled on the effective date of this agreement.

D. The MOU between the Department of the Interior and the Department of Transportation regarding responsibilities under the National Oil and Hazardous Substances Pollution Contingency Plan, dated August 16, 1971, is canceled on the effective date of this agreement.

E. If new technology (or new uses of current technology) require a change to this MOU, the MMS regional office and appropriate USCG district will work together to solve the situation. The MMS regional office and the USCG district will notify their respective headquarters office of the change. If the MMS regional office and the USCG district office can't solve the situation, it will be elevated to MMS and USCG headquarters. The new policy will become part of a revised MOU the next time the MOU is revised.

IX. Savings Provision

Nothing in this MOU alters, amends, or affects in any way the statutory authority of MMS or the USCG.

X. Effective Date

This MOS is effective upon signature. Both parties may amend it by mutual agreement and either agency may terminate it with a 30-day written notice.

Signed at Washington, D.C. this

Commandant, U.S. Coast Guard, Department of Transportation.

Director, Minerals Management Service, Department of the Interior.

[FR Doc. 98–9 Filed 1–2–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights; Certification of the State of Maine Accessibility Regulations Under the Americans with Disabilities Act

AGENCY: Department of Justice.

ACTION: Notice of certification.

SUMMARY: The Department of Justice has certified that the Maine Human Rights

Act, 5 MRSA § 4553 *et seq.*, as implemented by the Maine Accessibility Regulations, meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA).

DATE: January 5, 1998.

ADDRESSES: Inquiries may be addressed to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

SUPPLEMENTARY INFORMATION:

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 CFR 36.601 *et seq.* Certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated July 21, 1995, the Maine Human Rights Commission requested that the Department of Justice (Department) certify that the Maine Human Rights Act, 5 MRSA section 4553 *et seq.*, as implemented by the Maine Accessibility Regulations (together, the Maine law), meets or exceeds the new construction and alterations requirements of title III of the ADA.

The Department analyzed the Maine law, and made a preliminary determination that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter, dated September 23, 1997, the Department notified the Maine Human Rights Commission of its preliminary determination of equivalency.

On October 2, 1997, the Department published notices in the **Federal Register** announcing its preliminary determination of equivalency and requesting public comments thereon. The period for submission of written comments ended on December 1, 1997. In addition, the Department held public hearings in Augusta, Maine on October 17, 1997, and in Washington, DC on December 2, 1997.

Three individuals submitted comments. Commenters were disability-rights advocates and an architect. The Department has analyzed all of the submitted comments and has consulted with the U.S. Architectural and Transportation Barriers Compliance Board.

Two of the comments supported certification of the Maine law. One comment, while not opposing certification of the Maine law, inquired whether the Maine law's coverage of churches (if the building or facility is open to the public for any reason) is different from the ADA. Because coverage of churches is neither required nor prohibited by the ADA, such coverage does not preclude certification.

Based on these comments, the Department has determined that the Maine law is equivalent to the new construction and alterations requirements of title III of the ADA. Therefore, the Department has informed the submitting official of its decision to certify the Maine law.

Effect of Certification

The certification determination is limited to the version of the Maine law that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the Maine law that are not addressed by the ADA Standards for Accessible Design.

Finally, certification does not apply to variances or waivers granted under the Maine law. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Maine law for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Dated: December 12, 1997.

Isabelle Katz Pinzler,

Acting Assistant Attorney General for Civil Rights.

[FR Doc. 98–149 Filed 1–2–98; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–27]

Hemp Products Research Company; Denial of Applications

On June 17, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued two Orders to Show Cause to Hemp Products Research Company (Respondent), of Bellevue, Nebraska, notifying it of an opportunity to show cause as to why DEA should not deny its applications for DEA Certificates of Registration as a manufacturer of marijuana under 21 U.S.C. 823(a), and as a researcher in the cultivation of marijuana under 21 U.S.C. 823(f), for reason that its registration would be inconsistent with the public interest. Respondent requested a hearing on the issues raised by the Orders to Show Cause and the matter was docketed before Administrative Law Judge Gail A. Randall.

On August 26, 1997, the Government filed a Motion for Summary Disposition seeking a recommendation from the Administrative Law Judge that the applications be denied without convening a hearing. Thereafter, on September 17, 1997, Respondent submitted a prehearing statement which included its response to the Government's motion. On October 8, 1997, Judge Randall issued her Opinion and Recommended Ruling, concluding that summary disposition is appropriate in this matter, and therefore granting the Government's motion and recommending that Respondent's applications for registration be denied. Neither party filed exceptions to her opinion, and on November 21, 1997, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent has two pending applications for registration with DEA. Respondent submitted an application dated March 14, 1995, for registration

with DEA as a researcher in Schedule I, listing the Administrative Drug Code Number for marijuana. In addition, Respondent listed on its application an address in Bellevue, Nebraska. In Respondent's letter transmitting its prehearing statement, the President of Respondent indicated that this was his home address, but that he was moving to a new home in O'Neill, Nebraska. Respondent admitted in its prehearing statement that the address listed on its application is not the location where it intends to conduct research in the cultivation of marijuana. Further, in its research protocol, required pursuant to 21 U.S.C. 823(f) and 21 CFR 1301.18, under the heading ''Location Where The Research Will Be Conducted,'' Respondent states that ''[t]his study is based on farms '' in 20 states, and that ''[b]iochemical and textile analysis will be performed by [Respondent] in contractual industrial laboratories.'' However, Respondent fails to specifically identify the location(s) where it intends to conduct its research.

In its second application, dated May 18, 1995, Respondent seeks registration as a Schedule I manufacturer, also listing on this application the Administrative Code Number for marijuana. Respondent indicated on its application that it wants to manufacture marijuana for industrial purposes. Like with the researcher application, Respondent admitted that the address listed on the manufacturer application is not the location where Respondent intends to manufacture marijuana. Instead, Respondent has stated that it ''is seeking approval of approximately 360,000 acres for industrial hemp production in 18 states at this time.'' Respondent ''intends to cultivate itself, and to subcontract out, the cultivation, harvest and processing of low THC industrial varieties of Cannabis hemp stalk, seed, and waste materials * * *.'' Respondent intends, at harvest, to separate the leaf, flower, and other waste from the stalk and seed of the Cannabis sativa L. plant, and to use the hemp stalk for textile analysis. Respondent further intends to then use the hemp seeds to grow new Cannabis sativa L. plants.

Correspondence between DEA and Respondent prior to the issuance of the Orders to Show Cause indicate that Respondent was advised that a separate registration is required for each location where marijuana will be manufactured and that there are certain security requirements for manufacturing locations which must be inspected prior to the issuance of any registration.

The Government, in its Motion for Summary Disposition, argues that summary disposition is appropriate in this proceeding since there is no dispute that Respondent has failed to comply with the application requirements for registration with DEA as a manufacturer and as a researcher of a controlled substance. First, the Government argues that Respondent has failed to submit separate applications for each location where it intends to manufacturer marijuana as required by 21 U.S.C. 822 and 21 CFR 1301.12. In its response, Respondent contends that feral industrial hemp is a ''non-drug'' with no potential for abuse and therefore it is unreasonable to require a separate registration for each location where it intends to manufacture. Next, the Government argues that Respondent has failed to disclose the location(s) where it intends to conduct research on marijuana and to submit separate applications for those locations as required by 21 U.S.C. 822 and 21 CFR 1301.12 and 1301.18(a)(2)(v). Respondent argues that it has not yet acquired a research facility, and that it would be ''economically foolish'' to obtain laboratory space without first receiving a DEA registration. Finally, the Government asserts that Respondent has failed, or refused, to allow DEA to conduct on-site inspections of any location where it intends to manufacture or conduct research, thereby precluding DEA from determining whether Respondent is in compliance with security requirements. Respondent contends that it has provided DEA with a list of a number of manufacturing locations, but that DEA has never asked to conduct on-site inspections at any of these locations.

The first question is whether Respondent intends to manufacture or conduct research on marijuana. Respondent states that it does not want ''anything whatsoever to do with 'marijuana' or 'marihuana'. As stated in applications and communications, interest is based solely on the use of industrial hemp for the production of bioplastics, biofuels, cloth and paper.'' In addition, Respondent asserts that it is intending to deal with a ''non-drug'' since it has a very low concentration of delta-9-tetrahydrocannabinol (THC). As Judge Randall noted, marijuana is defined in 21 U.S.C. 802(16) as:

> [A]ll parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil and cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

Further, 21 U.S.C. 802(15) defines manufacture as ''the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin * * *.''

As noted previously, Respondent intends to process a substance that originates from the Cannabis sativa L. plant, by separating at harvest, the stalk and seed materials from the leaf, flower and other waste material, and then using the seeds to grow new Cannabis sativa L. plants. The Acting Deputy Administrator agrees with Judge Randall that ''[s]ince the definition of marihuana specifically includes all parts of the plant, except the mature stalks, the Respondent proposes to 'process' the Cannabis sativa L. plant to reach the hemp component of that plant.'' In addition, Respondent's use of the seeds to grow new Cannabis sativa L. plants also falls within the statutory definitions of the manufacture of marijuana. Therefore, the Acting Deputy Administrator concludes that Respondent is proposing to engage in the manufacture and research of marijuana. As to Respondent's assertion that the substance that it intends to be involved with is a ''non-drug'' due to its low concentration of THC, the Acting Deputy Administrator concludes that the statutory definition of marijuana does not address the degree of THC concentration. Therefore, regardless of the level of THC concentration of the plants, Respondent's proposed activities fall within the statutory definitions of the manufacture of marijuana.

Pursuant to 21 U.S.C. 822(a), ''[e]very person who manufactures or distributes any controlled substance * * * or who proposes to engage in the manufacture or distribution of any controlled substance * * * shall obtain annually a registration issued by the Attorney General * * *.''

Since Respondent intends to manufacture marijuana, a Schedule I controlled substance, it is required to obtain a DEA registration. Further, 21 U.S.C. 822(e) states that ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances. . . .'' Respondent has submitted only one application for registration to manufacture marijuana, and Respondent has admitted that it does not intend to manufacture marijuana at the address

listed on the application. Instead, Respondent has indicated that it intends to manufacture marijuana on farms in a number of different states, however it has not submitted applications for registration for these locations. Therefore, since Respondent's manufacturer application fails to identify the principal place(s) of business where it intends to manufacture marijuana, it does not comply with 21 U.S.C. 822.

Regarding Respondent's application to conduct research, pursuant to 21 U.S.C. 823(f), DEA is authorized to register ''practitioners'' to conduct research with controlled substances. ''Practitioner'' is defined in 21 U.S.C. 802(21) as:

> [A] physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

Therefore, state authorization to conduct research is a prerequisite to DEA registration. See also 21 U.S.C. 823(f). Like with its manufacturer application, Respondent's researcher application lists an address where Respondent has conceded that it has no intention of conducting research. Instead, in its research protocol, Respondent merely lists 20 states from which it intends to obtain hemp, and acknowledges that it has not yet obtained laboratory space. Because Respondent has not identified the specific location(s) where it intends to conduct its research on marijuana, DEA cannot determine whether Respondent is authorized to do so in the jurisdiction(s) where the proposed research will take place. Therefore, the Acting Deputy Administrator concurs with Judge Randall's conclusion that ''DEA lacks the authority under 21 U.S.C. 823(f) to register the Respondent as a researcher.''

It is well settled that where there is no material question of fact involved, or when the facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *Gilbert Ross, M.D.*, 61 FR 8664 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993); *Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

In this case, there does appear to be some dispute as to whether or not Respondent refused to allow DEA to conduct on-site inspections of the locations where it is proposing to manufacture or conduct research on marijuana. However, the Acting Deputy Administrator finds it unnecessary to reach this issue, since as Judge Randall found, it is undisputed that ''(1) the Respondent has failed to submit separate manufacturing [applications] for each proposed manufacturing site; (2) the address on the pending manufacturing application is not a proposed manufacturing site; and (3) the Respondent has failed to identify the location where it intends to do research with a controlled substance.'' Therefore, Judge Randall concluded that Respondent ''has not complied with the statutory and regulatory requirements pertaining to the content of its applications[,] * * * that there are no relevant factual matters in dispute concerning the information lacking in the Respondent's applications[,] * * * [and] that the DEA lacks the authority to grant the Respondent's currently pending, incomplete applications for DEA Certificates of Registration.''

As a result, Judge Randall granted the Government's Motion for Summary Disposition and recommended that Respondent's applications for registration be denied. The Acting Deputy Administrator concurs with Judge Randall's conclusions. DEA is precluded by statute to issue Respondent a manufacturer registration at a location where Respondent does not intend to manufacture a controlled substance which would authorize Respondent to manufacture marijuana at different locations in a number of states. Further, since Respondent has failed to specifically identify the state(s) where it intends to conduct its research on marijuana, DEA cannot determine whether Respondent is properly authorized by the state(s) to conduct such research, and therefore, DEA is precluded by statute from issuing Respondent a researcher registration.

Consequently, the Acting Deputy Administrator concludes that Respondent's applications for registration cannot be granted. The Acting Deputy Administrator agrees with Judge Randall that since ''the current applications [are] so defective that the DEA lack[s] authority to grant them in their current state . . . it [is] unnecessary to make any further findings or conclusions concerning any of the other issues raised by the parties about the propriety of granting or denying the Respondent's applications.''

In her November 21, 1997 letter transmitting the record to the Acting Deputy Administrator, Judge Randall noted that Respondent had filed with her office several exhibits including ''hemp paper, fiber, hurds and stalks (whole and chipped).'' Judge Randall asked to be advised whether the Acting Deputy Administrator ''would like for these items to be destroyed or retrieved for [his] viewing.'' In light of the conclusions made in this matter, the Acting Deputy Administrator finds it unnecessary to view these exhibits.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that the applications dated March 14, 1995, and May 18, 1995, submitted by Hemp Products Research Company, for DEA Certificates of Registration as a researcher and as a manufacturer, be, and they hereby are, denied. This order is effective February 4, 1998.

Dated: December 22, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 98–024 Filed 1–2–98; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 97–170]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Automated Analysis Corporation, 2805 South Industrial, Suite 100, Ann Arbor, Michigan 48104–6767, has applied for an exclusive copyright license for computer software entitled ''Structural Acoustics Optimization (SAOpt) Software.'' NASA received assignment of the copyright on September 18, 1997, from Lockheed Martin Aeronautical Systems Company. Written objections to the prospective grant of a license should be sent to Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center.

DATES: Responses to this notice must be received by March 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–0001, telephone (757) 864–3230.

Dated: December 22, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–133 Filed 1–2–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 97–172]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Dataforce Development Corporation of Scotts Valley, California 95067–7425, has applied for a partially exclusive patent license to practice the inventions described and claimed in U.S. Patent Numbers 5,426,512 and 5,629,780, both entitled ''Image Data Compression Having Minimum Perceptual Error,'' for which United States Patents were issued on June 20, 1995 and May 13, 1997, respectively, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William Sheehan, Patent Attorney, Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035, telephone (650) 604–5104.

Dated: December 22, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–136 Filed 1–2–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–171]

Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Vacuum Arc Technologies, Inc. of Scottsboro, Alabama, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,380,415, entitled ''Vacuum Vapor Deposition,'' and the invention described in NASA Case No. MFS–30,119–1, for ''Enhanced Vacuum Arc Vapor Deposition Electrode,'' which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Marshall Space Flight Center.

DATES: Responses to this notice must be received by March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Huntsville, Alabama 35812, telephone (205) 544–0021, fax (205) 544–0258.

Dated: December 22, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–135 Filed 1–2–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

DATES: Wednesday, January 21, 1998, 9:00 a.m. to 9:00 p.m. and Thursday, January 22, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting site will be: The Atlantic City Convention Center, Room 302, 2001 Kirkman Blvd., Atlantic City, NJ 08401. Written comments can be sent to the Commission at 800 North Capitol Street, N.W., Suite 450, Washington, D.C. 20002.

STATUS: The meeting will be open to the public both days. However, the meeting will adjourn in the afternoon for approximately six hours on January 21st while the Commission conducts its first two site visits. Additionally, the meeting will adjourn on January 22nd before the Commission conducts the meeting's final site visit.

SUMMARY: At its first on-site meeting the National Gambling Impact Study Commission, established under Pub. L. 104–169, dated August 3, 1996, will hear presentations from invited panels of speakers, conduct site visits, receive public comment, and conduct its normal meeting business.

CONTACT PERSONS: For further information contact Amy Ricketts at (202) 523–8217 or write to 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The meeting agenda will include presentations from Federal, State, and local officials; testimony from invited panels of speakers on the social and economic impact of gambling; testimony from an expert panel on pathological gambling; site visits to the Atlantic City Rescue Mission, Trump Taj Mahal Casino, and boardwalk area; normal meeting business; and an open forum period for public comment.

An open forum for public participation will be held from 7:00 p.m. to 9:00 p.m. on January 21 on issues relevant to the Commission's work. Anyone wishing to make an oral presentation at the meeting must contact Mr. Tim Bidwill by telephone only at (202) 523–8217 no later than 5:00 p.m., January 16, 1998. No requests will be accepted before 9:00 a.m. (EST) the day this notice appears in the **Federal Register**.

Open forum participants will be asked to provide name, organization (if applicable), address, and telephone number. No requests will be accepted via mail, facsimile, e-mail, or voice mail. A waiting list will be compiled once the allotted number of slots becomes filled. Oral presentations will be limited to three (3) minutes per speaker. If this is not enough time to complete comments, please restrict to three minutes a summary of your comments and bring a typed copy of full comments to file with the Commission. Persons speaking at the forum are requested, but not required, to supply twenty (20) copies of their written statements to the registration desk prior to the evening session on January 21. Members of the public, on the waiting list or otherwise, are always invited to send written comments to the Commission at any time. However, if individuals wish to have their written comments placed into the official record of the meeting, the Commission must receive them by February 11, 1998. Each speaker is kindly asked to be prepared prior to their presentation; to refrain from any use of profanity, vulgar language, or obscene signage; to refrain from making any comments or disrupting sounds during the presentation of another speaker; and to remain seated. If visual aids are necessary during the course of a speaker's presentation, each speaker is responsible for providing the equipment to run the visual aid.

Nancy Mohr Kennedy,

Executive Director.

[FR Doc. 98–89 Filed 1–2–98; 8:45 am]

BILLING CODE 6802–ET–P

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Revisions to Systems of Records; New Systems

AGENCY: National Science Foundation.

ACTION: Notice of four revised systems of records and three new systems.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 522a), the National Science Foundation is providing notice of revisions to seven existing systems of records, the planned creation of four new systems of records, and the deletion of one system of records. These changes reflect the additional information to be gathered via project reporting on projects funded by NSF. The primary purpose of this additional information is to enable NSF to identify outcomes of projects funded under NSF awards for use in management evaluation and for reporting to the Administration and Congress, especially under the Government Performance and Results Act, 5 U.S.C. 306 and 39 U.S.C. 2801–2805. NSF also revised the system notice to make them consistent among these related systems. All revised system notices are reprinted in their entirety.

The seven revised systems are—NSF–8, ''Employee Grievance Files''; NSF–12, ''Fellowship and Other Awards''; NSF–18, ''Integrated Personnel System (IPERS)''; NSF–26, ''Personnel Security''; NSF–50, ''Principal Investigator/Proposal File and Associated Records''; NSF–51, ''Reviewer/Proposal File and Associated Records''; and NSF–54, ''Reviewer/Fellowship and Other Awards File and Associated Records.'' Both NSF–12 and NSF–50 systems include records maintained by NSF as a result of applications for financial support and subsequent evaluation of applicants and their proposals. Systems 12 contains records on fellowship applicants and on nominees for fellowships by an institution on behalf of the nominee, and on nominees for other awards. Fellowship awards are usually administered by the applicant or nominee's home institution. System 50 contains records on research and other proposals jointly submitted by individual applicants (principal investigators) and their home academic or other institutions. NSF makes awards to these institutions under which the individual applicants serve as principal investigators. Systems 8, 18, and 26 have been revised to more adequately describe the systems and update the ''routine uses.''

The new systems and NSF–64, ''Project Participant File'', which will contain information on participants who do work under NSF–funded projects, other than principal investigators or project directors covered by the existing NSF–50; NSF–60, ''NSF Photo Identification Card Systems'' which will contain information on employees and contractors who work in the building and have a need for access; NSF–68, ''Project Results Information Base'', which will contain responses to the expanded project reporting system to be implemented by the Foundation; and NSF–69, ''Education and Training Records Files'', which will consolidate records on NSF education and training programs into an evaluation and research database.

NSF–9, ''Employee Locator Record Card'' is being deleted. The records described therein are covered by OPM/Govt-1.

In accordance with the requirements of the Privacy Act, NSF has provided a report on the proposed systems of records to the Office of Management and Budget; the Chairman, Senate Committee on Governmental Affairs; and the Chairman, House Committee on Government Reform and Oversight.

EFFECTIVE DATE: Sections 552a(e)(4) and (11) of Title 5 of the U.S. Code provide the public thirty days to comment on the routine uses of systems of records. The altered routine uses in this notice will take effect on February 4, 1998, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments should be submitted to the NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, Room 485, Arlington, Virginia 22230.

Dated: December 30, 1997.

Herman G. Fleming,

NSF Privacy Act Officer.

NSF–8

NSF SYSTEM NAME:

Employee Grievance Files.

SYSTEM LOCATION:

National Science Foundation, Division of Human Resource Management, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain all records pertaining to the administrative grievance system for non-bargaining unit employees and the negotiated grievance and arbitration procedures for employees in the bargaining unit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Part 771—Agency Administrative Grievance System, 5 U.S.C. 1302, 3301, 3302, and 7301.

PURPOSE OF THE SYSTEM:

Records are used in the processing and documentation of grievance actions taken either by the Office or by agencies against employees in accord with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. The Office of Personnel Management for routine examinations and audits conducted.
2. A member of Congress regarding the status of an appeal, complaint, or grievance if the Congressman is acting on the basis of a request from the individual involved.
3. EEOC investigators and EEO counselors and investigators have access during the conduct of investigations.
4. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.
5. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.
6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Alphabetically by the last name of employee.

SAFEGUARDS:

Building employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

RETENTION AND DISPOSAL:

Four years after close of case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Human Resource Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information from the employee, supervisor hearing examiner, witnesses, and others providing input to the particular case.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

NSF–12

SYSTEM NAME:

Fellowships and Other Awards.

SYSTEM LOCATION:

Numerous files are maintained in paper, microfiche, or electronic form by individual offices and programs at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Others are maintained by NSF contractors, currently Oak Ridge Associated Universities, PO Box 3010, Oak Ridge, Tennessee 37831–2010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying or nominated for and/or receiving NSF support, either individually or through an academic institution, including fellowships or awards of various types.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on type of fellowship or award. Normally the information includes personal information supplied with the application or nomination; reference reports; transcripts and Graduate Record Examination scores to the extent required during the application process; abstracts; evaluations and recommendations, review records and selection process results; administrative data and correspondence accumulating during fellows' tenure; and other related materials. There is a cumulative index of all persons applying for or receiving NSF Graduate and NATO fellowships.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1869, 1870, 1880, 1881a and 20 U.S.C. 3915.

PURPOSE OF THE SYSTEM:

This system enables program offices to maintain appropriate files and investigatory material in evaluating applications or nominations for fellowships or other awards. NSF employees may access the system to make decisions regarding which proposals to fund or awards to make, and to carry out other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information from the system may be merged with other computer files in order to carry out statistical studies. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staffs. The contractors are subject to the provisions of the Privacy Act. The results of such studies are statistical in nature and do not identify individuals.

2. Disclosure of information from the system may be made to qualified reviewers for their opinion and evaluation of applicants or nominees as part of the application review process; and to other Government agencies needing data regarding applicants or nominees as part of the application review process, or in order to coordinate programs.

3. Information (such as name, Social Security Number, field of study, and other information directly relating to the fellowship, review status including the agency's decision, year of first award, tenure pattern, start time, whether receiving international travel allowance or a mentoring assistantship) is given to the applicant, nominating, or grantee institution, or an institution the applicant, nominee, or fellow or awardee is attending or planning to attend or employed by for purposes of facilitating review or award decisions or administering fellowships or awards. Notice of the agency's decision may be given to nominators.

4. In the case of fellows or awardees receiving stipends directly from the Government, information is transmitted to the Department of Treasury for preparation of checks or electronic fund transfer authorizations.

5. Fellows' or awardees' name, home institution, and field of study may be released for public information/affairs purposes including press releases.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. Information from the system may be given to contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties. The contractors are subject to the provisions of the Privacy Act.

8. Information from the system may be given to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

9. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

10. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

11. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders. Some records are maintained

electronically or on microfiche, including records kept by NSF contractors. Original application materials are kept at NSF.

RETRIEVABILITY:

Alphabetically by applicant or nominee name.

SAFEGUARDS:

Building is locked during non-business hours. Records at NSF are kept in rooms that are locked during non-business hours. Records maintained by NSF contractors are kept in similar rooms and some records are locked in cabinets. Records maintained in electronic form are password protected.

RETENTION AND DISPOSAL:

Files are maintained in accordance with approved record retention schedules. For example, fellowship application files for awardees are kept for 10 years after completion of fellowship or award, then destroyed, while unsuccessful fellowship application files are destroyed after three years; files of recipients of the Waterman Award and National Medal of Science are permanent and eventually retired to the National Archives; those of non-recipients are destroyed after five years.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

Contact the NSF Privacy Act Officer in accordance with procedures found at 45 CFR Part 613. You can expedite your request if you identify the fellowship or award program about which you are interested. For example, indicate whether you applied for or received a ''Graduate Fellowship'' or a ''Faculty Fellowship in Science'' as opposed to merely saying you want a copy of your fellowship.

RECORD ACCESS PROCEDURE:

See ''Notification'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information supplied by or for individuals applying for, nominated for, or receiving support; references; the Education Testing Service; educational institutions supplying transcripts; review records and administrative data developed during selection process and award tenure.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material that would identify references, reviewers, or other persons supplying evaluations of applicants or nominees for fellowships or other awards (and where applicable, their proposals) have been exempted at 5 CFR 613 pursuant to 5 U.S.C. 552a(k)(5).

NSF–18

SYSTEM NAME:

Integrated Personnel System (IPERS).

SYSTEM LOCATION:

National Science Foundation, Division of Human Resource Management, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NSF employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals personal particular including such items as appointment and position information, organization and job identification information, education, and salary data. Personal information such as name, home address and phone number of employee and of the employee's designated emergency contact person is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347 and other Executive Orders.

PURPOSE OF THE SYSTEM:

Creates documentation for the Official Personnel Folder (OPF).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in OPM's System, OPM/Govt–1, ''General Personnel Records,'' are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically on the agency's internal LAN.

RETRIEVABILITY:

Employee's LAN ID or last name.

SAFEGUARDS:

A LAN and IPERS' password are necessary to access the computer.

RETENTION AND DISPOSAL:

Records are maintained indefinitely as part of the history file of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Human Resource Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

RECORD ACCESS PROCEDURE:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

Information for this system of records is extracted from the employee Official Personnel Records.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

NSF–26

SYSTEM NAME:

Personnel Security.

SYSTEM LOCATION:

National Science Foundation, Division of Human Resource Management, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF employees, IPA's, Visiting Scientists, and NSF Contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include: adjudication files, databases, card files and file folders. Information in these records include employee name, clearance level, date of clearance, investigative report, investigation and security clearance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Foundation's Personnel Security Program was established pursuant to Executive Orders 10450, 123656, and 12968, Title 5 U.S.C. sections 3301, 7312, 7531, and 7532.

PURPOSE OF SYSTEM:

The information is used track information on personnel security clearances, and investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Security Officers of other Federal agencies.

2. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

3. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

4. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

5. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, in a computerized electronic database (NSF LAN), in a WORD file and Cardex file.

RETRIEVABILITY:

Records are retrieved alphabetically by last name of employee.

SAFEGUARDS:

Building employes security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

RETENTION AND DISPOSAL:

Destroyed 2 years after separation of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Officer, NSF, Division of Human Resource Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

RECORD ACCESS PROCEDURE:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

From the individual and OPM investigations.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT.

None.

NSF–50

SYSTEM NAME:

Principal Investigator/Proposal File and Associated Records.

SYSTEM LOCATION:

Numerous files are maintained by individual NSF offices and programs at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Some records are kept electronically.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request or have previously requested and/or received support from the National Science Foundation, either individually or through an academic or other institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

The names of principal investigators and other identifying information, addresses of principal investigators, demographic data, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material. Other related material includes, for example, committee or panel discussion summaries and comments on the proposal or the proposers from peer reviewers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

This system enables program offices to maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding which proposal to fund, and to carry out other authorized internal duties. Information on principal investigators is also entered in System 51, ''Reviewer/Proposal File and Associated Records'', a subsystem of this system, to be used as a source of potential candidates to serve as reviewers as part of the merit review process, or for inclusion on a panel of advisory committee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure of information from the system may be made to qualified reviewers for their opinion and evaluation of applicants and their proposals as part of the application review process; and to other Government agencies needing information regarding applicants or nominees as part of the application review process, or in order to coordinate programs.

2. Information from the system may be provided to the applicant or grantee institution to provide or obtain data regarding the application review process or award decisions, or administering grant awards.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Information from the system may be disclosed to contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties in pursuit of the purposes described above.

5. The contractors are subject to the provisions of the Privacy Act. Information from the system may be merged with other computer files in order to carry out statistical studies or otherwise assist NSF with program management, evaluation, and reporting. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staffs. Disclosures are made only after scrutiny of research protocols and with appropriate controls. The results of such studies are statistical in nature and do not identify individuals.

6. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

7. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

8. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

9. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained electronically or in paper files, depending on the individual program office.

RETRIEVABILITY:

Information can be retrieved electronically using an applicant's name or identifying number. An individual's name may be used to manually access material in alphabetized paper files.

SAFEGUARDS:

Building is locked during non-business hours. Records are kept in rooms that are locked during non-business hours. Records maintained in electronic form are password protected.

RETENTION AND DISPOSAL:

Files are maintained in accordance with approved record retention schedules. Awarded proposals are transferred to the Federal Records Center for permanent retention. Declined proposals are destroyed five years after they are closed out.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES;

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information is obtained from the principal investigator, academic institution or other applicant, peer reviewers, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material that would identify reviewers or other persons supplying evaluations of NSF applicants and their proposals have been exempted at 5 CFR 613 pursuant to 5 U.S.C. 552a(k)(5).

NSF–51

SYSTEM NAME:

Reviewer/Proposal File and Associated Records.

SYSTEM LOCATION:

Numerous files are maintained by individual NSF offices and programs at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Records are also kept electronically.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reviewers who evaluate Foundation applicants and their proposals, either by submitting comments through the mail or serving on review panels or site visit teams.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ''Reviewer/Proposal File and Associated Records'' system is a subsystem of the ''Principal Investigator/Proposal File and Associated Records'' system (NSF–50), and contains the reviewer's name, proposal title and its identifying number, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

This system enables program offices to reference specific reviewers and maintain appropriate files for use in evaluating applications for grants or other support. NSF employees may access the system to help select reviewers as part of the merit review process, and to carry out other authorized internal duties.

ROUTINE USES OF RECORD MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of information in this system may be made to:

1. Federal government agencies needing names of potential reviewers and specialists in particular fields.

2. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties. The contractors are subject to the provisions of the Privacy Act.

3. The Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

4. Another Federal agencies, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

5. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained electronically or in paper files, depending on the individual program office.

RETRIEVABILITY:

Information can be accessed from the electronic database by addressing data contained in the database, including individual reviewer names. An individual's name may be used to manually access material in alphabetized paper files.

SAFEGUARDS:

Building is locked during non-business hours. Records are kept in rooms that are locked during non-business hours. Records maintained in electronic form are password protected.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual reviewers, suggestions from other reviewers, the ''Principal Investigator/Proposal File'' (NSF–50), other applicants for NSF funding or other members of the research community, and from NSF program officers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material which would identify reviewers or other persons supplying evaluations of NSF applicants and their proposals have been exempted at 5 CFR 613.6 pursuant to 5 U.S.C. 552a(k)(5).

NSF–54

SYSTEM NAME:

Reviewer/Fellowships and Other Awards File and Associated Records.

SYSTEM LOCATION:

Records are maintained by individual NSF offices and programs at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Some Fellowship reviewer records are maintained by contractor, currently: Oak Ridge Associated Universities, PO Box 3010, Oak Ridge, Tennessee 37831–2010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reviewers who evaluate Foundation fellowship or other applications or nominations, either by submitting comments through the mail or serving on review panels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Th ''Reviewer/Fellowships, and Other Awards File and Associated Records'' system is a subsystem of the ''Fellowships and Other Awards'' system (NSF–12), and contains the reviewer's name, nominator or applicant's name and identifying number, and other related material. Information supplied by potential reviewers includes their affiliation, contact information, educational degrees, and research experiences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1869, 1870, 1880, 1881a and 20 U.S.C. 3915.

PURPOSE OF THE SYSTEM:

This system enables the NSF program offices and contractors to reference specific reviewers and maintain appropriate files for use in evaluating applications for fellowships, awards and other support. NSF employees and contractors may access the system to help select reviews as part of the merit process and to carry out other authorized internal duties.

ROUTINE USED OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure of information in this system may be made to:

1. Federal government agencies needing names of potential reviewers and specialities in particular fields.

2. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties. The contractors are subject to the provisions of the Privacy Act.

3. Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

4. Another Federal Agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

5. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record as collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee his/her official capacity; (c) as NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) and United States, when NSF determines that litigation is likely to affect the Agency.

6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the systems are maintained electronically or in paper files. Certain Fellowship records are maintained electronically by the contractor, currently: Oak Ridge Associated Universities, Oak Ridge, Tennessee. Some information may be maintained in paper copy.

RETRIEVABILITY:

Information can be accessed from the electronic database by addressing data contained in the database, including individual reviewer names. An individual's name may be used manually access material alphabetized paper files.

SAFEGUARDS:

Records containing personal information are maintained in secured file cabinets or in password protected electronic files.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR Part 613.

RECORD ACCESS PROCEDURE:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Informaiton is obtained from the individual reviewers, suggestions from other reviewers, applicants for NSF

funding or other members of the research community, public documents such as American Men and Women in Science, and from NSF program officers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material that would identify references, reviewers, or other persons supplying evaluations of applicants or nominees for fellowships or other awards (and where applicable, their proposals) have been exempted at 5 CFR 613 pursuant to 5 U.S.C. 552a(k)(5).

NSF–64

SYSTEM NAME:

Project Participant File.

SYSTEM LOCATION:

Central electronic data system of the National Science Foundation. Excerpts may be extracted or printed and held in separate files maintained by individual NSF offices and programs. National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual participants who do work under NSF-supported projects, other than principal investigators or project directors. Includes, for example, other investigators, post-doctoral associates, graduate and undergraduate assistants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information gathered primarily through reporting on funded projects about those who are supported by NSF awards or otherwise involved in projects supported by NSF awards. The information is electronic and retrievable by various forms of search, most likely by name of individual and award number. The information includes: name; project identity or identities; involvement in project—nature and description of involvement, level of effort, whether financially supported by NSF; tracking data—social security number and date of birth; and demographic data—information on gender, race/ethnicity, disability status, and citizenship. Submission of tracking and demographic data is voluntary. The individual participant may report ''Do not wish to provide''.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

Supplements other information gathered via project reporting on projects funded by NSF. The primary purpose is to enable NSF to identify outcomes of projects funded under NSF awards for management evaluation and for reporting to the Administration and Congress, especially under the Government Performance and Results Act, 5 U.S.C. 306 and 39 U.S.C. 2801–2805. Information on participants will normally be aggregated, usually statistically, to identify outcomes of NSF programs. On occasion non-sensitive information might be used to identify persons who have achieved distinction in science, engineering, education, or the like (for example, by award of a prize) as beneficiaries of NSF support.

The information in the system may also be used secondarily for compatible purposes including to:

- Identify and contact scientists, engineers, or educators who may be interested in applying for support, in attending a scientific or similar meeting, in applying for a position, or in taking advantage of some similar opportunity;
- Identify and contact possible candidates to serve as reviewers in the peer review system or for inclusion on a panel or advisory committee (information from this system may be entered in the NSF's reviewer databases, NSF–51 and NSF–54, for this purpose);
- Supply the same information in connection with a later interaction between the individual and NSF—as, for example, when a former graduate student who worked on an NSF-supported project now applies for an NSF award directly. (NSF supplies the information electronically so that the individual need not reenter the same information. The individual can correct or update the information supplies.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

An individual participant's name; the identify of any project on which the participant worked; and information on the nature and extent of the individual's involvement, level of effort, and NSF support may be publicly released.

Tracking and demographic data pertaining to any individual may be released only to:

1. Contractors who perform a service to or work on or under a contract with the Federal government in pursuit of a purpose described above. Individuals will be given access only if needed for their specific job. The contractors are subject to the provisions of the Privacy Act.

2. A Federal agency so that it can identify and contract persons who might be interested in a scientific, technical, or educational program, meeting, vacancy, or similar opportunity.

3. A Federal agency, or a researcher with appropriate scholarly credentials, to use the data for scholarly studies or for Federal program management, evaluation, or reporting only after scrutiny of research protocols and with appropriate controls. Information from this system may be merged with other computer files to complete such studies or evaluations. The results of such studies or evaluations are statistical in nature and do not identify individuals.

4. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

5. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary storage is in centralized electronic data tables. Extracts or paper printouts may be maintained in computers or paper files in individual program offices.

RETRIEVABILITY:

Information can be retrieved electronically using participant names or social security numbers.

SAFEGUARDS:

NSF employees, contractors, advisers, and so on will have access only after entering the NSF data system using a personal identifier and password only as needed for their specific assignments. Principal investigators will have access only to information about their own awards, and only after identifying themselves using a personal identifier and personal identification number. Even then, they will not have access through this system to tracking and demographic data on individual participants other than themselves.

Persons covered by the system will have access only to information about themselves. Normally they will get such access after identifying themselves

using a personal identifier and personal identification number.

RETENTION AND DISPOSAL:

The file is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

Persons covered by the system may obtain electronic access to information about themselves. Normally they will get such access after identifying themselves using a personal identifier and personal identification number. Or see ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

Persons covered by the system, having obtained electronic access as described above, may update or correct certain information directly, using the electronic system. They may notify NSF if they believe any other information is incorrect or inaccurate, using the electronic system. Or see ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information other than tracking and demographic data is entered by the principal investigator on the relevant award. Tracking and demographic data is obtained either by having the individual participant enter it directly (preferred) or by having the principal investigator enter it on the participant's behalf.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–66

SYSTEM NAME:

NSF Photo Identification Card System.

SYSTEM LOCATION:

National Science Foundation, Division of Human Resource Management, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF Employees and NSF Contractors who work in the building and have a need for an ID pass.

CATEGORIES OF RECORDS IN THE SYSTEM:

Digital photograph, LAN ID, name, social security number, proximity card number, signature, date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of Photo Id cards is 44 U.S.C. 3101 and 42 U.S.C. 1870. Other authorities include: Presidential Order dated June 28, 1995, subject: ''Upgrading Security at Federal Facilities.'' The report establishes ''agency photo ID for all personnel displayed at all times'' as a minimum standard for Level IV facilities. NSF has been designated as a Level IV facility.

PURPOSE OF SYSTEM:

The information is used for producing identification cards used for access to the building as well as for building security, to identify the bearer of the card as a Federal employee, and for tracking stolen or lost cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Security guards for verifying building access in cases of lost identification cards.

2. Individuals, as necessary, for tracking stolen or lost identification cards.

3. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

4. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, or other arrangement with or for the Federal government, as necessary to carry out their duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored locally on a stand-alone Personal Computer.

RETRIEVABILITY:

Records may be retrieved by LAN ID, name, social security number, proximity card number, date of birth and digital photograph.

SAFEGUARDS:

Information is controlled by password and in an area that is locked during non-business hours.

RETENTION AND DISPOSAL:

information is retained on all current employees and contractors. Employees and contractors separating return their Identification cards when they are no longer employed by the agency. Their records will be deleted in the IVIS 2000 System and the ID card, with photo, destroyed.

SYSTEM MANAGER AND ADDRESS:

Division Director, Human Resource Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification'' above.

RECORD SOURCE CATEGORIES:

See ''Notification'' above.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT OF 1974:

None.

NSF–68

SYSTEM NAME:

Project Results Information Base.

SYSTEM LOCATION:

Central electronic data system of the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Excerpts may be extracted or printed and held in separate files maintained by individual NSF offices and programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have received support from the National Science Foundation, either individually or through an academic or other institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ''Project Results Information Base'' system contains reports on results of projects funded by NSF. Project reports may include information on participants, major research activities and findings, research training, or educational and outreach activities, products such as publications produced,

contributions resulting from the research, and other related material. Most project reporting information will be available to the public under the Freedom of Information Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

The primary purpose of project reporting information is to enable NSF to identify outcomes of projects funded under NSF awards for program management, evaluation, and for reporting to the Administration and Congress, especially under the Government Performance and Results Act, 5 U.S.C. 306 and 39 U.S.C. 2801–2805.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information from the system may be provided to the applicant or grantee institution.

2. Disclosure may be to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Information from the system may be disclosed to contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government as necessary to carry out their duties in pursuit of the purposes described above. The contractors are subject to the provisions of the Privacy Act.

4. Information from the system may be merged with other computer files in order to carry out statistical studies or assist with program management, evaluation, and reporting. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staffs.

5. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining on the application of the Freedom of Information Act or Privacy Act to the records.

6. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

7. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

8. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary storage is in centralized electronic data tables or boxes. Extracts or paper printouts may be maintained in computers or paper files in individual program offices.

RETRIEVABILITY:

Information can be retrieved electronically using an awardee's name or identifying number.

SAFEGUARDS:

Building is locked during non-business hours. Records are kept in rooms that are locked during non-business hours. Records maintained in electronic form are password protected.

RETENTION AND DISPOSAL:

The file is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

Persons covered by the system may obtain electronic access to information about themselves. Normally they will get such access after identifying themselves using a personal identifier and personal identification number. Or see ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

Persons covered by the system, having obtained electronic access as described above, may update or correct certain information directly, using the electronic system. They may notify NSF if they believe any other information is incorrect or inaccurate, using the electronic system. Or see ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information obtained voluntarily from individual.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

NSF–69

SYSTEM NAME:

Education and Training Records.

SYSTEM LOCATION:

National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 and NSF-contractors who participate in collecting and cleaning data records (currently includes but not limited to), Abt Associates, Inc., 55 Wheeler Street, Cambridge, MA 20850–3129; COSMOS Corporation, 7475 Wisconsin Avenue, Suite 900, Bethesda, MD 20814; SRI International, 1611 North Kent Street, Arlington, VA, 22209; Quantum Research Corporation, 7315 Wisconsin Avenue, Suite 400W, Bethesda, MD 20814–3202; Urban Institute, 2100 M Street, NW, Washington, DC 20037; Westat, Inc., 1650 Research Boulevard, Rockville, MD 20850–3129.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system includes individuals who have studied or taught in the United States in a variety of pre-kindergarten through post-doctoral level educational or educational related institutions or participated in science, mathematics, or technology education projects funded by the National Science Foundation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records vary by program and may include name, mailing address, e-mail address, personal web url, Social Security Number, gender, disability status, birth date, citizenship, ethnicity/race, education history, education plans, grade point average, courses studied, standardized test scores, degree status, years of study, sources of financial support during study or participation in NSF-funded project, post-graduation plans, parents' education level, parents' occupation, post-project plans, discipline of major, degree year, matriculation year, graduation date,

academic accomplishments, mentoring activities, outreach activities, discipline of practice, teaching load, teaching history, military service history/status, media exposure, awards, honorary degrees, employment category.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1862, 1870, and 1885d; 20 U.S.C. 5422; Senate Reports 101–474, 102–107, and 102–356.

PURPOSE OF THE SYSTEM:

Information from this system may be used:

1. To provide a source of information on demographic and educational characteristics and employment plans of participants in NSF-funded educational projects, in compliance with Foundation responsibilities to monitor scientific and technical resources.

2. To provide indicators of the state of science and engineering education in the United States.

3. To report periodically on the participation of men and women by ethnicity, disability, educational level, and discipline.

4. To enable NSF to monitor the effectiveness of NSF-sponsored projects and identify outcomes of projects funded under NSF awards for management evaluation and for reporting to the Administration and Congress, especially under the Government Performance and Results Act, 5 U.S.C. 306 and 39 U.S.C. 2801–2805.

5. To create public use files (which contain no personally identifiable information) for research purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be released to:

1. Contractors, grantees, volunteers, advisers, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other assignment for the Federal Government in pursuit of a purpose described above. Such individuals will be given access only if needed for their specific job. The contractors are subject to the provisions of the Privacy Act.

2. A Federal agency or grantee so that it can identify and contact persons who might be interested in a scientific, technical, or educational program, meeting, vacancy, or similar opportunity.

3. A Federal agency, or a researcher with appropriate scholarly credentials, to use the data for scholarly studies or for Federal program management, evaluation, or reporting only after scrutiny of research protocols and with appropriate controls. Information from this system may be merged with other computer files to complete such studies or evaluations. The results of such studies or evaluations are statistical in nature and do not identify individuals.

4. The Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on application of the Freedom of Information Act or Privacy Act to the records.

5. Another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

6. Individuals selected by NSF to act as beta testers for preliminary versions of public use files.

7. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

8. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Some of the records are stored electronically, some are stored in paper format in file folders; and some are stored on microfiche.

RETRIEVABILITY:

Alphabetically by last name of individual or other personal identifiers.

SAFEGUARDS:

Data are kept in secured areas with access limited to authorized personnel. Questionnaires, in paper copy or in microfiche, are kept in locked cabinets. Records in electronic format are password protected. Published findings are in formats that preclude individual identification.

RETENTION AND DISPOSAL:

Records are cumulative and maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director, Research, Evaluation, and Communication, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with the procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information obtained from individuals and from grant recipients.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 98–090 Filed 1–2–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 178 to Facility Operating License No. DPR–39 and Amendment No. 165 to Facility Operating License No. DPR–48, issued to Commonwealth Edison Company (ComEd, the licensee), which revised the operating licenses and the Technical Specifications (TS) for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois. The amendments are effective as of the date of issuance and shall be implemented prior to Unit 2 entering Mode 4.

The amendments replace, in their entirety, the Zion Technical Specifications with a set based on NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants'' issued in April 1995, and on guidance provided in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132). The amendments also modify the licenses by relocating requirements from four license

conditions to the Technical Specifications and one license condition to the Updated Final Safety Analysis Report. Further, the amendments add a new license condition 2.C.(12) reflecting the licensee's commitments regarding relocation of Technical Specification and license condition requirements to licensee-controlled documents and add an Appendix D to the Facility Operating Licenses describing those commitments. In addition, the amendments revise Technical Specification 4.3.1.B.4.A.10 by identifying enhancements to the Combustion Engineering welded steam generator tube sleeve process described in Topical Report CEN–331–P, Revision 1–P.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, as set forth in the license amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action as it applies to the Improved Technical Specifications was published in the **Federal Register** on December 29, 1995 (60 FR 67366). No request for a hearing or petition for leave to intervene was filed following this notice. The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with this action as it applies to enhancements to the Combustion Engineering welded steam generator tube sleeve process described in Topical Report CEN–331–P, Revision 1–P was published in the **Federal Register** on November 6, 1996 (61 FR 57483). No request for a hearing or petition for leave to intervene was filed following this notice and no significant hazards consideration comments were received. The February 3, 1997, supplement provided Technical Specification pages reformatted in the Improved Technical Specification format. This supplement was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

For further details with respect to the action see (1) the application for amendment dated November 3,1995, as supplemented by letters dated November 22, 1995, March 15, 1996, April 30, 1996, May 8, 1996, May 17, 1996, May 21, 1996, June 6, 1996, July 5, 1996, July 17, 1996, September 13, 1996, September 20, 1996, November 1, 1996, December 11, 1996, January 2, 1997, February 3, 1997, two letters dated May 8, 1997, June 6, 1997, September 19, 1997, October 20, 1997, November 10, 1997, and November 28, 1997, (2) Amendment No. 178 to License No. DPR–39 and Amendment No.165 to License No. DPR–48, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. A copy of items (2) and (3) may be obtained upon request addresses to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects—III/IV.

Dated at Rockville, Maryland, this 19th day of December 1997.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–98 Filed 1–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Receipt of Amendment Application to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant Portsmouth, Ohio; Notice of Comment Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received an amendment application from the United States Enrichment Corporation (USEC) that may be significant pursuant to 10 CFR 76.45. Any interested party may submit written comments on the application for amendment for consideration by the staff. To be certain of consideration, comments must be received by the NRC within thirty (30) days of appearance of this notice in the **Federal Register**. Comments received after that will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before the due date.

Written comments on the amendment application should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 am and 4:15 pm on Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the commenter. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room and the Local Public Document Room. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments to petition the Commission requesting review of the Director's Decision on the amendment request.

For further details with respect to the action see the application for amendment. The application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: February 25, 1997.

Brief description of amendment: On February 25, 1997, USEC submitted a request to provide for an additional identified criticality accident case for the X–333 cascade building related to the previously approved increase in assay limit to 3 percent. The operation at increased assay creates conditions where the location of an inadvertent nuclear criticality event might be closer to the X–333 Area Control Room (ACR–1), thus producing higher potential doses to personnel at that location. It should be noted that this hypothetical accident case was identified by USEC after the NRC approved USEC's initial certificate application in November 1996. It should also be noted that the increase in the X–333 assay limit was approved by the NRC as part of initial certification of PORTS. For this hypothetical accident case, an estimate is made that personnel in ACR–1 could, under the conservative assumption that they remained in ACR–1 for 50 minutes despite the likely criticality alarm, receive a dose of 49 rem and not 0.005 rem as is currently indicated in the

Accident Analysis section of the PORTS Safety Analysis Report (SAR). Based on an initial review of the amendment request, the NRC staff feels that sufficiently adequate safety controls are currently in place at PORTS to prevent and mitigate this accident. Therefore, other than the proposed modification to the PORTS SAR, this amendment would likely not require any other changes to plant operations.

Certificate of Compliance No. GDP–2: Amendment will revise the Accident Analysis section of the SAR.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 22nd day of December 1997.

For the Nuclear Regulatory Commission.

William Kane,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–97 Filed 1–2–98; 8:45am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Office of Nuclear Reactor Regulation; Yankee Atomic Electric Company; Yankee Nuclear Power Station; Notice of Public Informational Meeting on the Facility License Termination Plan

An informational meeting on the Yankee Atomic Electric Company (YAEC) License Termination Plan (LTP) for the Yankee Nuclear Power Station will be held on Tuesday, January 13, 1998, starting at 7:00 p.m., in the Mohawk Valley Regional High School Auditorium. The school is located in Buckland, Massachusetts.

At the meeting, YAEC representatives will describe the LTP and site release criteria for the Yankee Nuclear Power Station. Then NRC staff will discuss the license termination process as prescribed by NRC regulations. Following this, the public will have an opportunity to question both the YAEC and the NRC staffs and to make comments. A court reporter will transcribe the meeting.

For further information contact Morton Fairtile, Mail Stop O11–B20, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Internet e-mail mbf@nrc.gov.

Dated at Rockville, Maryland, this 29th day of December.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–95 Filed 1–2–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–5008 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 2 to Regulatory Guide 5.62, ''Reporting of Safeguards Events.'' The guide is in Division 5, ''Materials and Plant Protection.'' This proposed revision is being developed to provide updated guidance for use by licensees in determining when and how safeguards events should be reported.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on Draft Regulatory Guide DG–5008. Comments may be accompanied by additional relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by February 28, 1998.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Printing, Graphics and Distribution Branch; or by fax at (301) 415–5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 16th day of December 1997.

For the Nuclear Regulatory Commission.

Joseph A. Murphy,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 98–96 Filed 1–2–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Rule 11Aa3–2 OMB Control No. 3235-new SEC File No. 270–439

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3401 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

- Rule 11Aa3–2 Filing and Amendment of National Market System Plans

Rule 11Aa3–2 provides that self-regulatory organizations (''SROs'') may, acting jointly, file a national market system plan or may propose an amendment to an effective national market system plan by submitting the

text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by Rule 11Aa3–2(b)(4) and (5). These record keeping requirements assist in Commission with monitoring SROs, national market system plans, and ensuring compliance with the rule.

There are nine SROs which are members of the Intermarket Trading System (''ITS''), the Consolidated Tape Association (''CTA''), the Consolidated Quote System (''CQS''), the Nasdaq Stock Market, Inc., (''Nasdaq''), or the Options Price Reporting Association (''OPRA''). Only ITS, CTA, CQS, Nasdaq, or OPRA submit filings pursuant to Rule 11Aa3–2 and only after an agreement is reached among member SROs. The staff estimates that there will be approximately six filings pursuant to Rule 11Aa3–2 is 33 annually. The total burden is approximately 20 hours annually, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for SROs is $10,000.

Written 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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Assocaited Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 7, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–42 Filed 1–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Extension:

Form SE, SEC File No. 270–289, OMB Control No. 3235–0327

Form ID, SEC File No. 270–291, OMB Control No. 3235–0328

Form ET, SEC File No. 270–290, OMB Control No. 3235–0329

Form TH, SEC File No. 270–377, OMB Control No. 3235–0425

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form SE is used by registrants filing electronically on EDGAR to submit paper copies of exhibits to the Commission in order to identify them. Form SE results in an estimated total annual reporting burden of 200 hours.

Form ID is used by electronic filers to obtain or change an identification number. For ID results in an estimated total annual reporting burden of 1,050 hours.

Form ET is used by electronic filers to submit a filing to the Commission on magnetic tape or diskette. Form ET results in an estimated total annual reporting burden of 30 hours.

Form TH is used by electronic filers to file electronic documents in paper pursuant to a temporary hardship exemption. Form TH results in an estimated total annual reporting burden of 66 hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: December 23, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–47 Filed 1–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39489; File No. SR–CBOE–97–11]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Change To Increase OEX Position and Exercise Limits, To Increase OEX Firm Facilitation Exemption, and To Increase OEX Index Hedge Exemption

December 24, 1997.

I. Introduction

On February 26, 1997, the Chicago Board Options Exchange, Inc. (''CBOE''or ''Exchange'') submitted to 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 amend Exchange Rule 24.4 to increase the position and exercise limits for options on the Standard & Poor's (''S&P'') 100 Stock Index (''OEX''), to increase the OEX firm facilitation exemption, and to increase the OEX index hedge exemption.

The proposed rule change appeared in the **Federal Register** on April 24, 1997.[3] No comments were received on the proposal. On August 13, 1997, the CBOE submitted Amendment No. 1 to the proposed rule change.[4] Amendment No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38525 (April 18, 1997) 62 FR 20046.

[4] *See* Letter from Timothy Thompson, Senior Attorney, CBOE, to Sharon Lawson, Division of Market Regulation (''Division''), Commission, dated August 7, 1997 (''Amendment No. 1''). In Amendment No. 1, the CBOE proposes to: (1) clarify several aspects of the proposal; (2) amend Interpretation .03 to Rule 24.4 to provide the Exchange with greater flexibility in collecting

2 was submitted by the CBOE on November 18, 1997.[5] On November 25, 1997, the CBOE submitted Amendment No. 3 to the proposed rule change.[6] Amendment No. 4 was submitted by the CBOE on December 23, 1997.[7] This order approves the CBOE's proposal. Also, Amendment Nos. 1, 2, 3, and 4 are approved on an accelerated basis.

II. Description of the Proposal

The CBOE proposes a number of revisions to Exchange Rule 24.4, the position limit rule for broad-based index options. Member firms have expressed to the CBOE their need for relief from the current OEX position and exercise limits, which, prior to the split of the underlying Index,[8] had not increased since 1987.[9] At that time, position limits were increased to 25,000 contracts with no more than 15,000 contracts in the near term series. As a result of the split of the underlying Index, position and exercise limits were doubled to 50,000 and 30,000 contracts, respectively, to permit market participants to maintain their existing level of investment in OEX options.[10] For the reasons discussed below, the Exchange is proposing that the OEX position limits be raised to 150,000 contracts with no more that 100,000 contracts in the near term series.[11]

Although OEX volume is less now than it was in 1987, according to the CBOE, OEX still enjoys larger average daily trading volume than any other index option and open interest has remained consistently high.[12] In addition, the Exchange believes that a significant reason why volume has declined in OEX in the last couple of years is because large customers and member firms have been unable to complete large volume transactions in OEX due to position limit constraints.

TABLE 1.—AVERAGE DAILY VOLUME DURING EXPIRATION WEEK AND OPEN INTEREST ON EXPIRATION FRIDAY

Month/year	OEX (Volume/open interest)
September 1992.	377,554 contracts/1 million.
September 1993.	332,467 contracts/1 million.
September 1994.	423,589 contracts/1.3 million.
March 1995.	521,891 contracts/1.4 million.
December 1995.	301,118 contracts/1.23 million.
July 1996	479,577 contracts/1.08 million.
December 1996.	314,949 contracts/1.2 million.

Institutions often use index-related derivative products to hedge the risks associated with holding diversified equity portfolios. Because of position limit concerns, the Exchange believes that many of these customers and firms use financially-equivalent index futures products to the competitive disadvantage of the options exchanges. The Exchange believes that restrictive position limits have hampered the ability of customers to utilize these options to their potential. The Exchange also believes the increase will afford the investing public, as well as CBOE members and member firms, a greater opportunity and more flexibility to use OEX options for their hedging needs.

At the same time, the CBOE does not believe that the higher limit will increase any potential for market disruption. Even with the increase, the at limit position as a percentage of the capitalization of the OEX will remain small.[13] In addition, the Exchange notes that a number of equity options have a position limit of 25,000 contracts but have significantly less average trading volume than the OEX.

TABLE 2.—PERCENTAGE OF CAPITALIZATION REPRESENTED BY AN AT LIMIT POSITION

Position limit	Market value (650 index level)	OEX Capitalization (as of July 1996)	At limit position as a percentage of capitalization
15,000 contracts	$975,000,000	2.1 trillion	0.046
25,000 contracts	1,625,000,000	2.1 trillion	0.077
50,000 contracts	3,250,000,000	2.1 trillion	0.15
75,000 contracts	4,875,000,000	2.1 trillion	0.23

hedging information relating to OEX, S&P 500 Index Option (''SPX'') or any current or future index products; and (3) delete Interpretation .04 to Rule 24.4 relating to additional margin requirements.

[5] *See* Letter from Timothy Thompson, Senior Attorney, CBOE, to Sharon Lawson, Division, Commission, dated November 14, 1997 (''Amendment No. 2''). In Amendment No. 2, the CBOE proposes to add a new Interpretation .04 to Rule 24.4, which consists of a slightly revised version of Interpretation .04 that the Exchange has proposed to delete in Amendment No. 1. Amendment No. 2 also revises the OEX reporting requirement procedures to reflect the requested increase in the standard OEX position limit to 150,000 contracts. *See* File Nos. SR–CBOE–97–11 and SR–CBOE–97–48.

[6] *See* Letter from Patricia L. Cerny, Director, Department of Market Regulation, CBOE, to Sharon Lawson, Division, Commission, dated November 21, 1997 (''Amendment No. 3''). In Amendment No. 3, the CBOE proposes to double the requested increases in OEX position and exercise limits to 150,000 and 100,000 contracts, respectively, to reflect the Commission's recent approval of the CBOE's request to double the OEX position and exercise limits in connection with the split of the underlying Index. *See* Securities Exchange Act Release No. 39338 (November 19, 1997) (order approving File No. SR–CBOE–97–48).

[7] *See* Letter from Timothy H. Thompson, Senior Attorney, CBOE, to Debbie Flynn, Division, Commission, dated December 17, 1997 (''Amendment No. 4''). In Amendment No. 4, the CBOE proposes to amend Interpretation .03 to Rule 24.4 by increasing to 65,000 contracts the ''trigger'' for OEX reporting requirements to correspond to the 65,000 trigger for margin requirements of Interpretation .04 to Rule 24.4 proposed in Amendment No. 2. The CBOE also proposes to add a sentence to Interpretation .03 to clarify that the Exchange may specify other index options subject to the reporting requirements set forth in Interpretation .03 to Rule 24.4.

[8] *See supra* note 6.

[9] *See* Securities Exchange Act Release No. 24556 (June 5, 1987) 52 FR 22695 (June 15, 1987) (approval order increasing the position limits on the OEX from 15,000 contracts to 25,000 contracts) (File Nos. SR–CBOE–85–25 and SR–CBOE–87–26).

[10] *See supra* note 6.

[11] The Exchange's original filing requested increases in position and exercise limits to 75,000 and 50,000 contracts, respectively. In Amendment No. 3, the CBOE amended its earlier proposal to reflect the Commission's recent approval of the CBOE's request to double OEX exercise and position limits in connection with the splitting of the Index underlying OEX options. *See supra* note 6.

[12] *See* Table 1.

[13] See Table 2.

As a result of changing the base limit, the OEX firm facilitation exemption amount will change as well.[14] Currently, according to Interpretation .06 of Exchange Rule 4.11, the firm facilitation exemption for a broad-based index (other than SPX) is two times the standard limit. Therefore, the OEX firm facilitation exemption will be 300,000 contracts if the OEX base limit proposal is approved.

The Exchange also proposes to increase the OEX index hedge exemption from 150,000 contracts [15] to 300,000 contracts. The index hedge exemption is in addition to the standard limit and other exemptions available under Exchange rules, interpretations, and policies. The index hedge exemption is applicable to the unhedged value of the qualified portfolio as determined by the calculation set forth in Interpretation .01 of Exchange Rule 24.4. The Exchange believes that, as with the increase in the base limit, the increase in the index hedge exemption will make OEX a more valuable tool for investors to hedge their portfolios.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [16] and the rules and regulations thereunder applicable to a national securities exchange.[17] Specifically, because the increased OEX index option standard limit and exemptions will enhance the depth and liquidity of the market for both members and investors in general, the Commission believes that this rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [18] in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

A. Increase OEX Position and Exercise Limits

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations [19] and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

The Commission has been careful to balance two competing concerns when considering an Exchange's position and exercise limits. First, the Commission has recognized that the limits must be sufficiently low to prevent investors from disrupting the underlying cash market. Second, at the same time, the Commission has realized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[20]

The Commission believes that the proposed increase in OEX position limits to 150,000 contracts will expand the depth and liquidity of the OEX market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. As previously noted by the Commission, markets with active and deep trading interest, as well as with broad public ownership, are more difficult to manipulate or disrupt than less active and deep markets with smaller public floats. In this regard, the OEX is a broad-based, capitalization-weighted index consisting of 100 actively-traded and liquid stocks.

Moreover, the CBOE has adopted important safeguards that will allow it to monitor large unhedged positions (those in excess of 65,000 contracts) in order to identify instances of potential risk [21] and to assess additional margin or capital charges against the clearing firm, if necessary.[22] In this regard, the CBOE states that in the event of a large unhedged, potentially risky position, the Exchange will notify the clearing firm and assess the circumstances of the transactions, along with the firm's view of the exposure of the account, whether the account is approved and suitable for the strategies used, and whether additional margin has been collected. The monitoring of unhedged or underhedged accounts in excess of 65,000 contracts in this manner should provide the CBOE with the information necessary to determine whether additional margin or capital charges should be imposed in light of the risks associated with a large underhedged OEX option position in accordance with Interpretation .04 to Exchange Rule 24.4.

Accordingly, given the size and breadth of the OEX, along with the new reporting requirement set forth in Interpretation .03 to Exchange Rule 24.4 and the new margin and clearing firm requirements set forth in Interpretation .04 to Exchange Rule 24.4, the Commission believes that increasing the

[14] Under the firm facilitation exemption, a member firm may apply to the CBOE to receive and maintain for its proprietary account an exemption from the applicable standard position limit in non-multiply-listed Exchange options for the purpose of facilitating, pursuant to the provisions of Exchange Rule 6.74(b), (a) orders for its own customer (one that will have the resulting position carried with the firm) or (b) orders received from or on behalf of a customer for execution only against the member firm's proprietary account.

[15] The index hedge exemption for OEX options were doubled from 75,000 contracts to 150,000 contracts in connection with the recent reduction in value of the underlying Index. *See supra* note 6.

[16] 15 U.S.C. 78f(b).

[17] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously-established derivatives position.

[20] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978).

[21] Pursuant to Interpretation .03 to Exchange Rule 24.4, each member or member organization, other than an Exchange market-maker, that maintains a position in excess of 65,000 option contracts in OEX on the same-side of the market on behalf of its own account or for the account of a customer will report information as to whether those positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form required by the Exchange's Department of Market Regulation. *See* Amendment No. 4, *supra* note 7.

The Commission notes that Amendment No. 4 also proposes to clarify that the Exchange may specify other index options that my be subject to the reporting requirements of Interpretation .03 to Rule 24.4, as well as the limit at which the reporting requirements may be triggered. The proposed language refers to those index options previously approved by the Commission for which no specific reporting requirements have been established and required by the Commission. *See* Telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Deborah Flynn, Attorney, Division, Commission, on December 23, 1997. The Commission notes that proposed reporting requirements for any new or existing index options for which the Exchange desires large position limits would be submitted for Commission approval pursuant to the requirements of Rule 19(b).

[22] Under Interpretation 0.04 to Exchange Rule 24.4, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged SPX option position in excess of 45,000 contracts, or an under-hedged OEX option position in excess of 65,000 contracts, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, or the clearing firm carrying the account will be subject to capital charges to the extent of any margin deficiency resulting from the higher margin requirement. The Commission notes that Amendment No. 1 proposed to delete Interpretation .04, which was revised and reinstated in Amendment No. 2. *See* Amendment Nos. 1 and 2, *supra* notes 4–5.

OEX position limits to 150,000 contracts should not increase any manipulative concerns. Finally, the Exchange's surveillance program will continue to be applicable to the trading of OEX options and should detect and deter potential trading abuses arising from the increased position and exercise limits.

B. Increase OEX Firm Facilitation Exemption

The Commission believes that the proposed increase of the OEX firm facilitation exemption from 100,000 contracts to 300,000 contracts [23] will accommmodate the needs of investors as well as market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses.[24] The Commission also believes that the proposed rule change will further enhance the potential depth and liquidity of the options market as well as the underlying markets by providing Exchange members greater flexibility in executing large customer orders.

The CBOE's existing safeguards that apply to the current facilitation exemption will continue to serve to minimize any potential disruption or manipulation concerns. First, the facilitation firm must receive approval from the Exchange's Exemption Committee prior to executing facilitating trades.[25] Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange's Department of Market Regulation documentation reflecting the resulting hedging positions.[26] In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.[27] In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage.[28] The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the OEX options or on any underlying stock positions. Third, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them, as well as to notify promptly the Exchange of any material change in the exempted options position or the hedge.[29] Fourth, neither the member's nor the customer's order may be contingent on ''all or none'' or ''fill or kill'' instructions, and the orders may not be executed until Exchange Rule 6.74(b) (crossing order) procedures have been satisfied and crowd members have been given a reasonable time to participate in the trade.[30] Fifth, the facilitation firm may not increase the exempted option position once it is closed, unless approval from the CBOE is again received pursuant to a reapplication.[31] Lastly, violation of any of these provisions, absent reasonable justification or excuse, will result in the withdrawal of the facilitation exemption and may form the basis for subsequent denial of an application for a facilitation exemption.[32]

In summary, the Commission continues to believe that the safeguards built into the facilitation exemptive process will serve to minimize the potential for disruption and manipulation concerns, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. The Commission also believes that the CBOE has adequate surveillance procedures to surveil for compliance with the rule's requirements. Based on these reasons, the Commission believes that it is appropriate to increase the OEX firm facilitation exemption to 300,000 contracts.

C. Increase OEX Index Hedge Exemption

The Commission believes that the proposed increase of the OEX index hedge exemption from 150,000 contracts to 300,000 contracts in consistent with the Commission's approach to position and exercise limits and adequately balances the benefits derived from increased limits against concerns regarding the potential for market disruptions and manipulations.[33] Specifically, because any OEX options position in excess of the outstanding OEX position limit must be fully hedged in conformity with one of the enumerated hedge positions,[34] market disruption concerns are reduced. Moreover, to the extent that an OEX options position is hedged with a qualified stock portfolio, it should be more difficult to profit from any intermarket manipulation. The Commission also notes that the rule will continue to require that the underlying options positions cannot exceed the unhedged value of the qualified portfolio. Accordingly, the Commission does not believe that the proposed increase of the index hedge exemption for OEX options will disrupt the options or equity markets or materially increase the possibility of manipulation in the underlying securities or options.

The CBOE's existing safeguards that apply to the current OEX index hedge exemption will continue to serve to minimize any potential disruption or manipulation concerns. The Commission notes that these safeguards and procedures will apply to the OEX index hedge exemption as well as to all other broad-based index hedge exemptions permitted under CBOE rules. First, the account in which exempted option positions are held must receive prior Exchange approval for the hedge exemption as well as specify the maximum number of contracts which may be exempt.[35] In addition, the hedge exemption account must promptly provide to the CBOE any information requested concerning the qualified portfolio, as well as promptly notify the Exchange of any material change in the qualified portfolio which materially affects the unhedged value of the qualified portfolio.[36]

Second, positions included in a qualified portfolio which serve to secure an index hedge exemption may not also be used to secure any other position limit exemption granted by the Exchange, any other SRO, or any futures contract market.[37]

Third, any member or member organization that maintains a broad-based index option position in such member's or member organization's own account or in a customer account, and has reason to believe that such position is in excess of the applicable limit, must promptly take the action necessary to

[23] Pursuant to the CBOE's rules, the firm facilitation exemption for a broad-based index (other than SPX) is two times the standard limit. *See* Interpretation .06(a) to Exchange Rule 4.11.

[24] The Commission notes that the OEX firm facilitation exemption is in addition to the standard limit and other exemptions available under Exchange rules, interpretations, and policies.

[25] *See* Interpretation .06(a) to Exchange Rule 4.11.

[26] *See* Interpretation .06(d) to Exchange Rule 4.11.

[27] *See* Interpretation .06(e)(1) to Exchange Rule 4.11.

[28] *Id.*

[29] *See* Interpretations .06(b) and .06(e)(2) to Exchange Rule 4.11.

[30] *See* Interpretations .06(c)(1) and .06(c)(2) to Exchange Rule 4.11.

[31] *See* Interpretation .06(e)(3) to Exchange Rule 4.11.

[32] *See* Interpretation .06(f) to Exchange Rule 4.11.

[33] *See* Interpretation .01 to Exchange Rule 24.4.

[34] *See* Interpretation .01(f) to Exchange Rule 24.4.

[35] *See* Interpretation .01(a) to Exchange Rule 24.4.

[36] *See* Interpretations .02(a) and .01(g)(3) to Exchange Rule 24.4.

[37] *See* Interpretation .02(b) to Exchange Rule 24.4.

bring the position into compliance.[38] Failure to abide by this provision will be deemed to be a violation of Exchange Rules 4.11 and 24.4.[39]

Lastly, violation of any of the provisions of Exchange Rule 24.4 and the interpretations and policies thereunder, absent reasonable justification or excuse, will result in the withdrawal of the index hedge exemption and may form the basis for subsequent denial of an application for an index hedge exemption.[40]

Accordingly, the Commission continues to believe that the safeguards built into the index hedge exemptive process will serve to minimize the potential for disruption and manipulation, while at the same time benefiting market participants. The Commission also believes that the CBOE's surveillance procedures are sufficient to detect and deter trading abuses arising from the increased position and exercise limits associated with the increased index hedge exemption. Based on these reasons, the Commission believes that it is appropriate to increase OEX index hedge exemption to 300,000 contracts.[41]

The Commission finds good cause for approving proposed Amendment Nos. 1, 2, 3, and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 further clarifies the rationale underlying the Exchange's filing seeking increases in the OEX position and exercise limits. Amendment No. 1 also provides updated reporting requirements submitted at the request of Commission staff. With the exception of the proposed deletion of Interpretation .04 to Exchange Rule 24.4, the Commission believes that Amendment No. 1 raises no new regulatory issues. Regarding Interpretation. 04 to Exchange Rule 24.4, the Commission notes that Amendment No. 2 restores this provision, in a slightly revised form, to the CBOE's rules. As Amendment No. 2 merely reinstates this provision and updates the CBOE's reporting requirements to reflect the CBOE's request to double the OEX position and exercise limits in connection with the ''split'' of the underlying Index, the Commission believes that Amendment No. 2 raises no issues of regulatory concern. The Commission notes that Amendment No. 3 simply modifies the OEX position and exercise limits sought by the CBOE to reflect the Commission's recent approval of the Exchange's ''split'' of the underlying Index.[42] The Commission further notes that by increasing the ''trigger'' for reporting requirements from 45,000 contracts to 65,000 contracts, Amendment No. 4 merely provides consistency with the reporting requirement procedures and the margin requirement trigger level proposed in Amendment No. 2. Finally, the Commission notes that no comments were received on the publication of the original proposal and the increases being approved herein are equivalent on a dollar basis to those originally proposed. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act,[43] to approve Amendment Nos. 1, 2, 3, and 4 to CBOE's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, and 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–11 and should be submitted by January 26, 1998.

V. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–CBOE–97–11), including Amendment Nos. 1, 2, 3, and 4, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–45 Filed 1–2–98; 8:45 am]

BILLING CODE 8010–01–M

[38] *See* Interpretation .02(c) to Exchange Rule 24.4.

[39] *Id.*

[40] *See* Interpretation .02(d) to Exchange Rule 24.4. The hedge exemption account also must: (i) liquidate and establish options, stock positions or their equivalent, or other qualified portfolio products in an orderly fashion; (ii) not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; (iii) not initiate or liquidate a stock position or its equivalent with an equivalent index option position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index; and (iv) liquidate any options prior to, or contemporaneously with, a decrease in the hedge value of the qualified portfolio, which options would thereby be rendered excessive. *See* Interpretations .01(g)(1) and .01(g)(2) to Exchange Rule 24.4.

[41] The Commission notes that the OEX index hedge exemption is in addition to the standard limit and other exemptions available under Exchange rules, interpretations, and policies.

[42] *See* note 6, *supra*.

[43] 15 U.S.C. 78f(b)(5).

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39488; File No. SR–MSRB–97–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating To Fee for Copies of Form G–37/G–38 in Computer CD–ROM Format

December 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–11), to establish fees for copies of Form G–37/G–38 in computer CD–ROM format. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to establish a fee relating to the public dissemination, in computer CD–ROM format, of copies of Form G–37/G–38 submitted to the Board in each calendar quarter pursuant to

rule G–37, on political contributions and prohibitions on municipal securities business, and rule G–38, on consultants. The Board is establishing a price of $10.00 (plus delivery or postage charges and any applicable sales tax) for each CD–ROM containing copies of Form G–37/G–38 and a price of $11.50) plus delivery or postage charges and any applicable sales tax) for each such CD–ROM that is bundled with a CD–ROM containing the software necessary to access and read the forms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule G–37, on political contributions and prohibitions on municipal securities business, and rule G–38, on consultants, require brokers, dealers and municipal securities dealers (''dealers'') to send two copies of Form G–37/G–38 to the Board for each calendar quarter. The Board currently maintains one copy of each Form G–37/G–38 at its Public Access Facility in Alexandria, Virginia [1], where it is available to the public for review and photocopying.[2] The Board has previously stated its intention to seek to expand the access and services available to the public with respect to these forms.[3] The Board has begun posting copies of Form G–37/G–38 sent to the Board in recent quarters on the Boards Internet Web site (http://www.msrb.org), where members of the public may download such forms to their computers for review and printing. The Board does not currently charge a fee for such access.

In furtherance of the Board's stated intention of expanding access to Forms G–37/G–38, the Board will make Forms G–37/G–38 available to the public in computer CD–ROM format. The Board has successfully conducted testing with the writing of all second quarter 1997 and third quarter 1997 Forms G–37/G–38 received by the Board to computer CD–ROM in a format that will permit reading and printing using a commercially available document reader software program.[4] The Board expects to produce one or more CD–ROMs each quarter containing all Forms G–37/G–38 received from dealers for the preceding quarter.

The Board is establishing a price of $10.00 (plus delivery or postage charges and any applicable sales tax) for each CD–ROM containing copies of Form G–37/G–38 and a price of $11.50 (plus delivery or postage charges and any applicable sales tax) for each CD–ROM that is bundled with a CD–ROM containing the software necessary to access and read the forms on a computer.[5] The Board proposes to establish these CD–ROM fees to defray its cost of producing and disseminating the materials. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public. The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available at fair and reasonable prices, in furtherance of the objectives of rules G–37 and G–38.

2. Basis

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules shall:

> * * * be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that making Forms G–37/G–38 more widely available to the public on computer CD–ROM format will further the purpose and intent of rules G–37 and G–38 to ensure that the high standards and integrity of the municipal securities industry are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors and the public interest. The Board believes that the fees established for the CD–ROM materials are fair and reasonable in light of the costs associated with disseminating the information, and such materials will be available on reasonable and nondiscriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since the fees will apply equally to all persons.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing pursuant to Section 91(b)(3)(A) of the Act because the proposal is ''establishing or changing a due, fee or other charge.'' At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[1] The Board's Public Access Facility is located at 1640 King Street, Suite 300, Alexandria, Virginia 22314. Documents may be viewed from 9:00 a.m. to 4:30 p.m.

[2] The second copy of Form G–37/G–38 is maintained off-site for back-up purposes.

[3] File No. SR–MSRB–94–4 at page 2.

[4] The Board will be using Adobe Acrobat Reader, which currently is available free of charge on the Internet and available at a nominal cost on CD–ROM. The Board reserves the right to format its CD–ROM Form G–37/G–38 files for use with other software programs in the future.

[5] Once a user acquires a copy of the document reader software program, either in a one-time purchase from the Board bundled with a Form G–37/G–38 CD–ROM or from other commercially available sources, such user would not need to make future purchases from the Board of the higher-priced bundled package.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–11 and should be submitted by January 26, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 98–46 Filed 1–2–98; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Tariff-Rate Quota for Imports of Beef

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative, (USTR) is providing notice that USTR has determined that New Zealand, pursuant ot its request, is a participating country for purposes of the export certification program for imports of beef under the tariff-rate quota.

DATES: The action is effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Early, Senior Policy Advisory for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20508; telephone: (202) 395–9615.

SUPPLEMENTARY INFORMATION: The United States maintains a tariff-rate quota on imports of beef as part of its implementation of the Marrakesh Agreement Establishing the World Trade Organization. The in-quota quantity of that tariff-rate quota is allocated in part among a number of countries. As part of the administration of that tariff-rate quota, USTR provided, in 15 CFR part 2012, for the use of export certificates with respect to imports of beef from countries that have an allocation of the in-quota quantity. The export certificates apply only to those countries that USTR determines are participating countries for purposes of 15 CFR part 2012.

On December 19, 1997, USTR received a request and the necessary supporting information from the government of New Zealand to be considered as a participating country for purposes of the export certification program. Accordingly, USTR has determined that, effective January 1, 1998, New Zealand is a participating country for purposes of 15 CFR part 2012. As a result, effective on or after January 1, 1998, imports of beef from New Zealand will need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate. Imports exported prior to January 1, 1998, including exports currently warehoused, will not require a certificate. In order for the export certificate to be valid, it has to be used in the calendar year for which it is in effect.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97–34235 Filed 12–31–97; 9:11 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funds Availability for High Speed Non-Electric Passenger Locomotive Demonstration Program

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

ACTION: Notice of funds availability.

SUMMARY: FRA announces the availability of $3,000,000 in fiscal year 1998 to initiate the development and demonstration of a prototype, high-speed, non-electric passenger locomotive. Thereafter, depending upon appropriations in future years, up to an additional $17,000,000 may be available for this program.

Authority

The authority for this program is contained in the Department of Transportation and Related Agencies Appropriations Act for fiscal year 1998 (Pub.L. 105–66), dated October 27, 1997.

Eligible Participants

Only existing locomotive manufacturers with experience producing locomotives in revenue service in North America shall be considered as eligible applicants for this Federal assistance program. It is expected that this project will be awarded as a cooperative agreement. Other entities wishing to participate may subcontract with a qualified locomotive manufacturer/applicant.

Submission of Applications

Five (5) copies of each application should be submitted by February 27, 1998 to the following address: Robert L. Carpenter, Office of Acquisition & Grants Services, Federal Railroad Administration, Mail Stop 50, 400 7th St. S.W., Washington, DC 20590.

Points of Contact

Technical questions regarding this solicitation may be directed to: Robert J. McCown, Director, Technology Development, Federal Railroad Administration, Mail Stop 20, 400 7th St. S.W., Washington, DC 20590, TEL 202–632–3250, FAX 202–632–3854.

Requests for forms and administrative questions regarding this solicitation may be directed to: Robert L. Carpenter, Office of Acquisition & Grants Services, Federal Railroad Administration, Mail Stop 50, 400 7th St. S.W., Washington, DC 20590, TEL 202–632–3236, FAX 202–632–3846.

Purpose

FRA is seeking a qualified locomotive manufacturer to demonstrate an advanced technology high-speed non-electric locomotive capable of 125 mph sustained operations with the goal of ultimately being capable of 150 mph operations with acceleration characteristics approaching or equal to current high-speed electric locomotives. The locomotive shall also be capable of demonstrating enhanced performance using the energy storage element of the flywheel developed by the Advanced Locomotive Propulsion System (ALPS) project. As part of the Next Generation High Speed Rail Program, FRA has identified three critical technology areas where improved performance or reduced cost could enhance the viability of high-speed passenger rail service based on incremental improvements to existing rail infrastructure. These are non-electric locomotives, grade crossing risk mitigation, and advanced train control systems.

The development of lightweight, high power, non-electric motive power is critical to the introduction of passenger service at speeds above 90 mph in the United States. The cost of electrification is relatively expensive in all but the most densely utilized corridors. Further, locomotives based primarily on designs appropriate for freight applications are not practical for speeds above 100 mph, due to poor acceleration capability and weight, particularly unsprung mass, which is incompatible with sustained use on typical track structures because of the large forces generated at high speeds. For operations in territories

where operations are shared with freight, high power, lightweight locomotives are essential to the introduction of high-speed passenger operations.

The manufacturer/applicant selected as a result of this notice will provide a locomotive platform to demonstrate the prime mover and will be capable of demonstrating the prime mover and stored energy system acting in concert. The platform will include the basic locomotive structure and systems such as brakes, operating cab compartment, DC bus, power conditioning equipment, and the traction motors capable of delivering the power to the rail. The locomotive builder will work with the team currently working on the ALPS project to integrate the systems (supplied as Government Furnished Equipment) and provide the power management controls necessary to demonstrate appropriate acceleration and energy storage.

FRA is seeking a manufacturer with the experience and facilities needed to build a locomotive capable of high performance without the flywheel energy storage system and to later integrate the flywheel energy storage system onto this locomotive to permit even higher performance. Although the flywheel energy storage system will be provided as Government Furnished Equipment, close cooperation will be required between the locomotive manufacturer and the ALPS project team to assure smooth integration and successful demonstration of the flywheel energy storage system.

FRA recognizes that the current market conditions may not justify the development of high speed non-electric locomotives using solely private sector funds. However, FRA believes that if a successful prototype is developed which leads to a production high-speed non-electric locomotive, there is a high likelihood that a market will exist for a reasonable number of units. Based on the expected benefit of this market to the manufacturer selected under this solicitation, FRA expects that the manufacturer will be willing to share in a substantial proportion of the cost of this project. While the target cost sharing from the manufacturer is 50% of the overall project costs, the level of cost sharing is one of the criteria on which proposals will be evaluated. The application should describe the intended source(s) and commitment status of the applicant's cost sharing level. Cost sharing estimates should reflect the value of equipment to be furnished by the applicant.

Project Description

The manufacturer will develop and demonstrate a locomotive suitable for high speed passenger rail service on existing infrastructure. This development and demonstration will be conducted in two phases, which may be consecutive or concurrent as specified in the applicant's proposed project description.

Under the expected cooperative agreement arrangement FRA anticipates furnishing technical guidance and assistance as appropriate throughout the project.

Phase I

Develop and demonstrate a high speed non-electric locomotive capable of rapid acceleration and cruising speeds of 125 mph. The locomotive may utilize the Government furnished gas turbine engine and high speed generator or it may utilize alternate components supplied by the manufacturer. The traction power system of this locomotive should be capable of receiving both the power produced by the prime mover and the power expected from the ALPS developed flywheel energy storage system simultaneously for a period of several minutes, which will total approximately 8,000 hp.

The locomotive must supply standard 480-volt, 3-phase, head-end power to support train electrical requirements. If necessary, an auxiliary power generating system aboard the locomotive may be used to provide head-end power to permit all prime mover power to be used for traction.

The manufacturer will be responsible for all engineering, systems integration, program management, liaison with suppliers of furnished equipment and manufacturing/fabrication activities required to complete the project, including the design and development of a control system to manage the combined locomotive-flywheel demonstration in Phase II.

The Phase I locomotive will then be tested and demonstrated in service. Testing may be conducted at the Transportation Technology Center in Pueblo, Colorado or other locations. Service demonstrations may be conducted on one or more of the high speed rail corridors designated in section 1010 of the Intermodal Surface Transportation Efficiency Act of 1991 or on the Northeast or Empire Corridors. These service demonstrations may involve one or more types of passenger cars, some of which may be equipped with non-standard coupling systems associated with new high speed equipment becoming available in the United States. The manufacturer should indicate how this issue will be addressed. The manufacturer will be expected to prepare and conduct a test and demonstration plan and to conduct testing activities to evaluate the performance and revenue service suitability of the locomotive.

Phase II

The ALPS team is in the third year of a multi-year development effort to demonstrate a hybrid propulsion system. One component of ALPS is a lightweight, small 4,000 hp gas turbine engine which is already proven in service. Two new critical components are being pursued in the project: a high rotating speed, compact, high power motor/generator and a high energy flywheel. The FRA believes these technologies together with an innovative locomotive design can provide a marketable passenger locomotive to serve operations with speeds over 100 mph.

The first new technology to be demonstrated by the ALPS team is the high rotational speed, high power motor/generator which can be directly coupled to prime movers operating at up to 15,000 rpm, as well as to flywheels operating in the same speed range. At least two units of this type of motor/generator will be needed for a consist employing the full ALPS propulsion system: one for the prime mover and one for the flywheel portion of the system. The Allied Signal concept under development will be capable of producing up to 4000 hp of direct current electrical power with very high efficiencies.

The other enabling technology is a flywheel energy storage unit capable of storing 500 to 600 megajoules of energy, equivalent to up to 4000 hp for several minutes. The flywheel will rotate on the same shaft as the generator at 7500 to 15,000 rpm. The intent is to use the flywheel to double total maximum propulsion system power; reduce the size of the primary power plant required for reasonable acceleration; provide greater operating efficiency by using regenerated stored braking energy, and aid in leveling the turbine operating conditions which is expected to significantly improve overall turbine life, maintenance, and operating costs. Final designs for the ALPS systems are currently being developed.

Building on the efforts in Phase I, the manufacturer will integrate the energy storage flywheel system, and test and demonstrate the locomotive using the combination of prime mover and flywheel propulsion. The flywheel

system may be mounted in the locomotive carbody itself, or it may be located in a suitable trailing car. Regardless of the location of the flywheel system, the locomotive manufacturer will be responsible for system integration and installation. As part of this effort, the locomotive manufacturer will design and develop a power conversion and control system to manage the operation of the flywheel energy storage system and prime mover during idling, acceleration, cruising and braking and provide this system to the ALPS team for testing in advance of the installation of the flywheel energy storage system.

The manufacturer will be responsible for all engineering, systems integration, program management, liaison with suppliers of furnished equipment and manufacturing/fabrication activities required to complete the project.

The Phase II locomotive will then be tested and demonstrated. Testing may be conducted at the Transportation Technology Center in Pueblo, Colorado or other locations. The service demonstrations may be conducted on one or more high speed rail corridors designated in Section 1010 of the Intermodal Surface Transportation Efficiency Act of 1991. These service demonstrations may involve one or more types of passenger cars, some of which may be equipped with non-standard coupling systems associated with new high speed equipment becoming available in the United States. The manufacturer should indicate how this issue will be addressed. The manufacturer will be expected to prepare a test and demonstration plan and to conduct testing activities to evaluate the performance and revenue service suitability of the locomotive.

It is expected that the testing and demonstration period for Phases I and II will be approximately one year. After testing and demonstration under this project is complete, it is expected that any Government Furnished Equipment aboard the locomotive will remain aboard for further cooperative testing, demonstrations, and possible revenue service demonstrations.

Furnished Equipment and Information

Equipment directly purchased with Government funds will remain Government property at the completion of the project. Equipment furnished by the manufacturer/applicant or purchased at the expense of the manufacturer/applicant will remain the property of the applicant at the completion of the project.

The Government will make available at no cost for this project one Allied-Signal TF–40 or TF–50 (depending upon availability) gas turbine engine capable of delivering approximately 4000 hp using Number 2 Diesel Fuel.

On behalf of the Government, the ALPS team will make available at no cost for this project one high speed generator for use with the gas turbine engine and one energy storage flywheel coupled to a second high speed generator.

The use of the Government furnished gas turbine engine and associated high speed generator for the Phase I locomotive is at the option of the proposer. Alternative propulsion equipment may be proposed.

Note: A specifications package on all of these components is available from the FRA administrative contact at the address shown above under ''Points of Contact.''

The ALPS team is currently conducting a market needs survey for high speed non-electric locomotives. The results of this survey will be made available to the selected applicant.

Project Schedule

FRA desires to have the demonstration locomotive available as soon as possible, considering the availability schedule for the Furnished Equipment.

The Allied-Signal TF–40 gas turbine is currently a production item, an Allied Signal TF–50 gas turbine with enhanced performance is expected to become available by September, 1999. Depending on availability, either a TF–40 or TF–50 could be initially installed in the locomotive. The TF–50 is designed as an exact-fit replacement for the TF–40 and could be easily substituted when it becomes available. The first high speed generator is expected to be available for testing by the ALPS team September, 1998. The ALPS team will conduct extensive testing on a combination of the gas turbine and generator in cooperation with the locomotive manufacturer. The tested turbine-generator combination is expected to be available for installation by September, 1999.

For Phase II, the second high speed generator and the flywheel energy storage system are expected to available by for installation by October, 1999. The locomotive manufacturer must provide an inverter and control system linking the DC bus to the high speed generator to the ALPS team for testing by March, 1999.

The manufacturer shall use these expected availability dates in preparation of their proposed schedule, which will be considered in the evaluation of the proposal.

Performance and Design Issues

To be successful, the locomotive system must be able to meet the broad range of high-speed passenger locomotive requirements, such as high acceleration, high top speed, high availability, high reliability and maintainability, while remaining economical to purchase and operate.

Perhaps the most challenging goal is the ability of the non-electric locomotive to provide accelerating capabilities similar to those of existing electric locomotives. This corresponds to an acceleration from 0 to 125 MPH in approximately 5 minutes pulling a four car train. In addition, the weight and particularly the forces induced into the track structure at high speeds must be minimized, especially under conditions of high cant deficiency. These locomotives will routinely operate on track shared with freight trains and the ability to tolerate track irregularities at high speeds without causing significant track damage is critical. In order to accomplish these goals the locomotive integrator needs to show particular capability in the design of axles, trucks, and car bodies appropriate for high speed operations. Of particular interest will be the methods of supporting the high power traction motors and braking systems.

In addition, the locomotive must be aerodynamically designed to reduce air resistance and to minimize noise. The cabs should be compatible with the state of the art in terms of train control technology and working environment. Finally, the locomotive must comply or at a minimum must be adaptable to comply with the most recent crash energy management strategies as called for under the proposed FRA Tier II passenger equipment standards.

Specific Performance Targets

These specific performance targets outline the desirable characteristics of the prototype locomotive. They are not absolutes; the degree to which these performance targets are met or exceeded will be an evaluation factor for proposals.

General: The locomotive shall be suitable for revenue service demonstration. It shall comply with all FRA, Environmental Protection Agency, Association of American Railroads (AAR) and other relevant industry and government requirements regarding safety and performance for all locomotives operating in the United States, including but not limited to those for occupant protection, braking, noise and exhaust emissions. The locomotive shall be equipped with

standard radio and train control equipment suitable for high speed operation along the intended demonstration corridors.

The following targets apply to both Phase I and Phase II vehicles:

Consist: For planning purposes, performance targets assume a single locomotive pulling four passenger cars each weighing 55 tons. The locomotive may also be used with a streamlined cab car or with one locomotive at each end and eight cars (1–8–1) or in other configurations. Recognizing that characteristics other than coach weight, such as aerodynamics and braking capability, will affect the performance of the train, the proposer may assume that the four cars are of the Amfleet Type II for performance estimation purposes.

Weight: The target maximum weight for the fully-fueled locomotive is 200,000 pounds. The target maximum unsprung weight is 6,000 pounds per axle.

Clearance: The locomotive shall be sized such that it complies with the clearance diagram for the Northeast Corridor at all expected speeds and operating conditions.

Crash-worthiness: The locomotive should meet or it should be possible to modify it at reasonable expense to meet FRA Tier II passenger equipment crash-worthiness requirements (as published in FRA PCSS–1, Notice #2 in Volume 62, Number 184 of the **Federal Register** dated Tuesday, September 23, 1997.) These requirements call for a total train crash energy management design. Tier II calls for specific energy absorption levels in the power car and anti-climb devices. In addition, all vehicles in the train must be designed to stay upright and in-line as a goal in any accident.

Range: The locomotive should be capable of a 1000 mile round trip over average trackage with an average number of stops (the Northeast Corridor between Washington, DC and New York may be used for reference) un-refueled with a 15% fuel reserve remaining.

Cant Deficiency: The locomotive must be capable of safe operation at cant deficiencies up to 9 inches, and preferably up to 12 inches.

Track Conditions: The locomotive shall be capable of safely operating at track speed on all classes of track, including proposed Class 7 and 8 high-speed tracks as well as Class 1 yard track. The locomotive shall be capable of safely negotiating curves up to 20 degrees for operations in yards.

Coupling to Other Trains: It must be possible to couple this locomotive to other trains in order to move it throughout the rail system. In this configuration, the locomotives air (friction) brakes should be fully functional and be controllable by the lead locomotive.

The following performance targets apply to the Phase I locomotive using the four car consist described above:

Acceleration: From a standing start to 125 mph in five minutes or less at sea-level and 105 degrees Fahrenheit ambient air temperature.

Maximum Speed: 125 mph with a 10 mph headwind on a 0.1% ascending grade at sea-level and 105 degrees Fahrenheit ambient air temperature.

The following performance targets apply to the Phase II locomotive using the four car consist described above:

Acceleration: From a standing start to 150 mph in four minutes or less at sea-level and 105 degrees Fahrenheit ambient air temperature.

Maximum Speed: 150 mph with a 10 mph headwind on a 0.1% ascending grade at sea-level and 105 degrees Fahrenheit ambient air temperature.

Design Issues

The following issues must be considered in the design of the locomotive. Rather than setting specific targets, proposers should address the features and capabilities of their locomotive platform as it is proposed for this project.

Braking System: In addition to complying with FRA minimum regulatory requirements, the braking system should be adequate to permit safe operation in normal revenue service at the intended Phase I and Phase II speeds without resulting in unreasonably high brake wear rates, temperatures or maintenance requirements. The proposer should address how adequate fail-safe braking performance will be assured using only four cars attached to a single locomotive at intended Phase I and Phase II speeds. The braking capability of fully loaded Amfleet Type II cars may be assumed for determining braking performance.

Environment: The locomotive should be capable of being started and operated with minimal degradation in performance over the entire range of temperatures and weather conditions reasonably expected to be encountered in the continental United States.

Crosswinds: The locomotive should be capable of operating at high cant deficiency in strong crosswinds from the worst case direction without risk of rollover and without exceeding the Northeast Corridor clearance envelope.

Multiple Unit Operation: The design of the locomotive's control system should not preclude future modification to permit powered multiple unit operation under single-point control in combination with other conventional or high-speed locomotives, or with additional units of the same make and model. The manufacturer should indicate the multiple unit operational capabilities of the proposed prototype and the general suitability of the prototype for modification to be fully capable of multiple unit operation.

Cab Configuration: The cab should include seating for two engine men and at least one additional seat for observers. All controls and displays should be designed for easy access and visibility. Seat comfort, noise level, vibration level, and climate control should be suitable for comfortable operation for long periods of time without the need for ear protection.

Coupling Issues: The testing and service demonstration may involve one or more types of passenger cars, some of which may have non-standard coupling systems. The manufacturer should indicate how this issue will be addressed.

External Power: In certain areas, it is desirable that a locomotive be capable of operating on standard third-rail DC (650 Volts) power at lower speeds (up to 50–80 mph). The proposer should indicate the feasibility of adding this capability to the prototype locomotive.

Evaluation Criteria

Applications will be evaluated by the FRA technical staff on the following criteria which may not be weighted equally:

- Ability of the locomotive manufacturer to successfully complete project. It is expected that the manufacturer has available or will expect to have available in the near future a locomotive platform on which to base the high speed demonstrator design. Further, the manufacturer must have the capability to manage the technical and programmatic aspects of the project and the resources to share in the cost of the project. Specifically, the manufacturer's organizational capabilities will be evaluated in terms of technical capability, administrative capability, management capability, available facilities, personnel capabilities, financial resources, relationships and experience with the railroad industry and experience as a supplier of locomotives.

In order for an application to be considered further, the applicant must demonstrate adequate capabilities set forth in the preceding paragraph. Applicants failing to meet these requirements will not be considered further.

- Suitability of the proposed locomotive for revenue service

demonstration and eventual development into a marketable product: FRA intends that this project will lay the groundwork which will eventually lead to the marketable production high speed non-electric passenger locomotive. The degree to which the proposed work effort will lead to the a marketable locomotive and this unit's expected suitability for the target market will be evaluated, including the expected performance and expected initial and life-cycle cost.

- Meeting of performance targets: The degree to which the proposed locomotive is capable of meeting the performance targets outlined herein will be evaluated.
- Design issues: The adequacy with which the applicant addresses the design issues outlined herein will be evaluated.
- Test and Demonstration: The applicant's demonstrated experience in conducting locomotive test and demonstration programs along with a brief outline of a potential test and demonstration program, especially with regard to issues of in-service demonstration on the railroad system and potential liability, and the outlined test program's likelihood of accurately characterizing the performance, reliability, maintainability, and operating cost of the prototype locomotive will be evaluated.
- Schedule: FRA desires to have the locomotive available as soon as possible while considering the expected availability dates for any Government Furnished Equipment to be used.
- Overall project cost and proportion of cost the locomotive manufacturer/applicant is willing to share with the Government.

Content of Applications

In general, an application should address all of the evaluation criteria outlined herein. Further, the cost and technical portions of the application should be separated such that the technical and cost merits of the application can be evaluated separately.

Technical

The technical portion of the application should be 50 pages or less and shall contain the following information:

1. Standard Form (SF) 424 (Rev. 4/92)—Application for Federal Assistance.
2. An executive summary of the proposed project not exceeding two pages in length.
3. A description of the applicant's qualifications to complete the project, including a description of the proposed organizational team members and their individual qualifications.
4. Description of the locomotive platform on which the high-speed demonstration locomotive is to be based and a description of its suitability for high-speed use with regard to the requirements outlined in this solicitation.
5. Description of the proposed work to design and fabricate the high-speed demonstration locomotive and the expected performance of the locomotive for both Phase I and Phase II. Description of how the design issues herein will be addressed.
6. Brief outline of a potential test and demonstration program, including duration and provisions for maintaining and repairing the locomotive during testing and demonstration. The applicant should describe its own test facilities as well as its experience working with and ability to coordinate and cooperate with Amtrak, the Transportation Technology Center, railroads and other relevant parties, as well as the means by which liability issues will be addressed during the test and demonstration phase.
7. A proposed schedule for the entire project.
8. A description of how the project will comply with the Buy American Act (41 U.S.C. 10a–10c) and the domestic content restrictions set forth in Section 331 of the 1998 DOT Appropriations Act.

Cost

The cost portion of the application shall contain a cost estimate for the proposed effort sufficiently detailed by element of cost for a meaningful evaluation. The estimate shall be summarized in an easily readable format and broken down for each year of the proposed work, and shall include-the following information:

1. A breakdown of estimated labor costs by category and quantity (to the person-year level is sufficient), materials costs, significant special tooling costs (if any), travel expenses and other costs sufficient to evaluate the expected level of effort in project. Technical alternatives must be separately priced.
2. Complete breakdown of any major subcontracts.
3. The description of the nature and magnitude of costs the applicant is willing to bear (cost sharing), including a certification that the applicant has secured the appropriate cost share funding levels and identifying the source(s) of funding.
4. An estimate of the cost of a production version of both Phase I and Phase II locomotives expressed in 1998 dollars, assuming an initial order for 25 units. This estimate should separately state the locomotive manufacturer's un-reimbursed development costs associated with this project and an explanation of how this estimate was derived.
5. Standard Form (SF) 424A (Rev. 4/92)—Budget Information—Non-Construction Programs.
6. Certifications and Assurances—Packet includes certifications for—
   (a) Debarment/Suspension/Ineligibility
   (b) Drug-free Work Place
   (c) Lobbying
   (d) Indirect Costs
   (e) SF 424B (Rev. 4/92) Assurances—Non-Construction
7. Submission of a Minority Business Enterprise/Disadvantaged Business Enterprise program description in compliance with 49 CFR Part 23.
8. Identification of cognizant (Federal or non-Federal) audit agency and date of last audit, or advise if never audited. Include name, address, telephone and point of contact.
9. Identification of (a) authorized negotiators for your organization and (b) the official(s) with authority to legally bind your organization to the terms of the Cooperative Agreement. Include name(s), address, and telephone numbers.

Dated: December 26, 1997.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–82 Filed 1–2–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9513

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 Form 9513, Self Assessment—SES Candidate Development Program.

DATES: Written comments should be received on or before March 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Self Assessment—SES Candidate Development Program.

OMB Number: 1545–1368.

Form Number: Form 9513.

Abstract: Form 9513 is used to collect information from applicants for the Senior Executive Service Candidate Development Program. The form provides additional information to be used by executive panels to rate and rank applicants against the criteria (leadership competencies) for selection into the program.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal government.

Estimated Number of Responses: 500.

Estimated Time Per Response: 4 hours.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 22, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–2 Filed 1–2–98; 8:45am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9514

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 Form 9514, Supervisor Assessment—SES Candidate Development Program.

DATES: Written comments should be received on or before March 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Supervisor Assessment—SES Candidate Development Program.

OMB Number: 1545–1369.

Form Number: Form 9514.

Abstract: Form 9514 is used to collect information from supervisors of applicants for the Senior Executive Service Candidate Development Program. The form provides additional information to be used by executive panels to rate and rank applicants against the criteria (leadership competencies) for selection into the program.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal government.

Estimated Number of Responses: 500.

Estimated Time Per Response: 4 hours.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 22, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3 Filed 1–2–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9452

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9452, Filing Assistance Program (Do you have to file a tax return?).

DATES: Written comments should be received on or before March 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Filing Assistance Program (Do you have to file a tax return?).

OMB Number: 1545–1316.

Form Number: Form 9452.

Abstract: Form 9452 aids individuals in determining whether it is necessary to file a Federal tax return. Form 9452 will not be collected by the IRS; it is to be used by individuals at their discretion. Form 9452 is used by the Service's taxpayer assistance programs. It is also available on the Internet, and it is distributed in an annual mailout to taxpayers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 1,650,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 825,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 23, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–006 Filed 1–2–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1075

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 Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies.

DATES: Written comments should be received on or before March 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Information Security Guidelines for Federal, State and Local Agencies.

OMB Number: 1545–0962.

Form Number: Publication 1075.

Abstract: Section 6103(p) of the Internal Revenue Code requires the Internal Revenue Service to provide periodic reports to Congress describing safeguard procedures utilized by agencies which receive information from the IRS to protect the confidentiality of the information. This Code section also requires that these agencies furnish reports to the IRS describing their safeguards.

Current Actions: The following changes were made.

The new publication went to a two column format rather than three. This has increased the number of pages but has made it easier to read. Organizationally, chapters have been rearranged to give a consistent flow of the information being imparted. A section was included under ''reporting requirements'' that asks the receiving agencies to give a more detailed description of their computer security and to require their employees to go through a certification/recertification process to ensure that they understand the confidentiality of tax return information prior to having contact. The number of exhibits has been increased to assist the agency with its safeguard program.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 5,100.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 25,500.

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: December 22, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–7 Filed 1–2–98; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 63, No. 2

Monday, January 5, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 971009242-7308-02; I.D. 091997B]

RIN 0648-AJ14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 15; OMB Control Numbers

Correction

In rule document 97–33887 beginning on page 67714, in the issue of Tuesday, December 30, 1997, make the following corrections:

On page 67715, in the first column, in the **DATES** setion:

a. In the fifth line, ''1998'' should read ''1997''.

b. In the sixth line, ''1997'' should read ''1998''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–92–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 97–33658, beginning on page 67634, in the issue of Monday, December 29, 1997, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-808-000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 97–33832, beginning on page 67855, in the issue of Tuesday, December 30, 1997, make the following correction:

On page 67859, in the third column, in the fifth line from the bottom, ''[Docket No. ER98-2774-000]'' should read ''[Docket No. ER96-2774-000]''.

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

Correction

In proposed rule document 97–33935 beginning on page 68468, in the issue of Wednesday, December 31, 1997, make the following correction:

On page 68468, in first column, in the **DATES** section, in the second paragraph, in the second line, ''January 21, 1998'' should read ''March 10, 1998'' and, in the tenth line, ''January 30, 1998'' should read ''April 9, 1998''.

BILLING CODE 1505–01–D

federal register

Monday
January 5, 1998

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 413, 440, 441, and 489

Medicare and Medicaid Programs, Surety Bond and Capitalization Reqirements for Home Health Agencies; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413, 440, 441, and 489

[HCFA–1152–FC]

RIN 0938–AI31

Medicare and Medicaid Programs; Surety Bond and Capitalization Requirements for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: The Balanced Budget Act of 1997 (BBA '97) requires each home health agency (HHA) to secure a surety bond in order to participate in the Medicare and Medicaid programs. This requirement applies to all participating Medicare and Medicaid HHAs, regardless of the date their participation began. This final rule with comment period requires that each HHA participating in Medicare must obtain from an acceptable authorized Surety a surety bond that is the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicare program, as reflected in the HHA's most recently accepted cost report. The BBA '97 also requires that provider agreements be amended to incorporate the surety bond requirement; this rule deems such agreements to be amended accordingly. The BBA '97 prohibits payment to a State for home health services under Medicaid unless the HHA has furnished the State with a surety bond that meets Medicare requirements. This final rule with comment period requires that, in order to participate in Medicaid, each HHA must obtain from an acceptable authorized Surety, a surety bond that is the greater of $50,000 or 15 percent of the annual Medicaid payments made to the HHA by the Medicaid agency for home health services for which Federal Financial Participation (FFP) is available.

In addition to the surety bond requirement, an HHA entering the Medicare or Medicaid program on or after January 1, 1998 must demonstrate that it actually has available sufficient capital to start and operate the HHA for the first 3 months. Undercapitalized providers represent a threat to the quality of patient care.

DATES: *Effective Date:* January 1, 1998.

Comment Period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 6, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1152–FC, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 00 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

In commenting, please refer to file code HCFA–1152–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Ralph Goldberg (410) 786–4870 (Medicare Surety Bond Provision); John Eppinger (410) 786–4518 (Medicare Capitalization Provision); Mary Linda Morgan (410) 786–2011 (Medicaid Provisions).

SUPPLEMENTARY INFORMATION: On September 15, 1997, the Department of Health and Human Services (HHS) issued a press release announcing that HHS was halting Medicare certification of new home health agencies (HHAs) and, during the interim, would be developing new regulations to fight home health fraud and abuse. In this final rule with comment period we implement the statutory requirement in the Balanced Budget Act of 1997 (BBA '97), (Public Law 105–33), enacted August 5, 1997, that requires an HHA to post a surety bond as a condition of its approval as a Medicare provider or Medicaid provider of home health services. Also, on the basis of authority found in sections 1861(o)(8), 1866(b)(2), and 1891(b), of the Social Security Act (the Act), we institute a requirement that a new HHA, under the terms of its provider agreement, must have enough funds on hand to operate for the first 3 months. The purpose of both requirements is to establish the financial stability of home health providers. The discussion below deals with both provisions.

I. Background: Surety Bonds

Home health agencies (HHAs) that meet certain requirements are approved to be paid for medical and other services furnished to Medicare and Medicaid beneficiaries. Section 1861(o) of the Social Security Act (Act) defines the term ''home health agency'' under the Medicare program and thereby establishes certain conditions and requirements that an HHA must meet in order to participate in Medicare. As a Medicare participating provider of services, HHAs also must comply with applicable requirements for provider agreements and supplier approval located in our regulations at 42 CFR part 489.

Sections 1902(a)(10)(D) and 1905(a)(7) of the Act provide for the coverage of home health services as medical assistance under an approved State Medicaid plan. Implementing regulations for these statutory provisions are located at 42 CFR 440.70 and 441.15. Section 440.70(d) specifies that a home health agency under Medicaid is an agency that meets the requirements for participating in Medicare. Section 441.15 specifies State plan requirements for home health services.

Section 4312(b)(1) of BBA '97 amended section 1861(o) of the Act to require each HHA, on a continuing basis, to furnish us with a surety bond in a form we have specified and in an amount that is not less than $50,000. The BBA '97 provides for a waiver of this requirement, which we discuss below. This provision is to be implemented effective for services furnished to Medicare beneficiaries on or after January 1, 1998. However, our regulations do not currently contain such a requirement. This change affects our regulations at 42 CFR part 489. Section 4312(b)(2) of BBA '97 amended the definition of ''reasonable cost'' in section 1861(v)(1)(H) of the Act to provide that the cost of a surety bond is not included as an allowable Medicare cost. This change affects our regulations at 42 CFR part 413, subpart F, which concern specific categories of Medicare costs.

Section 4724(b) of BBA '97 also amended section 1903(i) of the Act by adding a new paragraph (18) to prohibit Federal financial participation (FFP) in payments under Medicaid for home health services unless the HHA provides the State Medicaid agency, on a continuing basis, a surety bond in a form that we have specified for Medicare participation and in an amount that is not less than $50,000 or some other comparable surety bond under State law. This change affects our regulation at 42 CFR Part 441.

II. Surety Bond Requirements for HHAs Under Medicare

A. Scope of Requirement

In general, every HHA that participates or that seeks to participate in the Medicare program must obtain a surety bond. The surety bond must name the HHA as Principal, HCFA as Obligee, and the surety company as Surety. The statute permits us to waive the requirement of a surety bond in the case of an agency or organization that provides a comparable surety bond under State law. We are not, as a general matter, implementing the full scope of this waiver authority at this time, because we are still considering what standards and criteria would be appropriate to implement such a waiver. If a State has a comparable bond requirement, we can waive the Medicare bond requirement with respect to those HHAs that furnish us with a bond in compliance with that State's law. At the moment, we are only aware that Florida has a bond requirement which is for $50,000, whereas our requirement begins at $50,000 and is higher under certain circumstances. We believe that this is consistent with the intent of the Congress that established $50,000 as the minimum amount of the bond. Although we have been apprised that other States are considering legislation, we are not aware that any of this legislation has been enacted into law. As a result, we are seeking public comment on what States currently require in order for HHAs to be in compliance with State law. We are also seeking public comment with respect to comparable experiences in the private sector on the establishment of surety bond requirements for HHAs. In addition, we are seeking public comment on the impact of our not choosing to waive the Medicaid bond required in the case of an agency or organization that provides a comparable surety bond under State law. We are, however, waiving the requirement for an HHA operated by a Federal, State, local, or tribal government agency if, during the preceding 5 years, the HHA has not incurred long-term unpaid debts owed to us based on unrecovered Medicare overpayments or on unpaid civil money penalties or assessments, and none of its claims have had to be referred by us to the Department of Justice or the General Accounting Office because of nonpayment. A government-operated HHA that does not qualify for waiver must submit a surety bond.

We are waiving the surety bond requirement for government-operated HHAs only to the extent such HHAs have a good history of paying their Medicare debts. Our anecdotal experience suggests that such HHAs timely pay their Medicare debts. The basis for this waiver is principally that because government-operated HHAs are a component of government, and because a government has the power to tax, it is unlikely such HHAs will be unable to pay their Medicare debts. Thus, government-operated HHAs, by their public nature, furnish a comparable or greater guarantee of payment as would be afforded us by a surety bond issued by a private surety company. Nevertheless, government-operated HHAs with a poor history of paying their Medicare debts, if there are any such HHAs, are subject to the surety bond requirement. We solicit comments on appropriate criteria we may use for waiving other HHAs from the requirement to purchase a surety bond.

B. Relationship to Provider Agreements

Section 4312(f)(2) of BBA '97 specifies that the surety bond requirement must be incorporated into existing Medicare provider agreements by January 1, 1998. Inasmuch as this mandate would require the modification of over 10,000 HHA provider agreements by the January 1, 1998 deadline, we are implementing these modifications by this rule. Therefore, this rule deems such agreements to be modified so as to incorporate the surety bond requirement effective January 1, 1998.

We will verify that each HHA has obtained a bond in the correct amount and that the bond otherwise conforms to the specifications we establish. If an HHA fails to timely file a surety bond that meets the requirements of our rules, we may terminate a participating HHA's existing provider agreement or refuse to enter into a provider agreement with an HHA that seeks to participate in Medicare. The surety bond requirement will be incorporated into participating HHAs' existing provider agreements and all new HHA provider agreements effective January 1, 1998.

C. What Constitutes a Surety Bond

The ''surety bond'' in this final rule with comment period is an instrument obtained by an HHA from a surety company in which the surety company, acting as Surety, guarantees that it will be responsible for unrecovered debts owed to us by an HHA.

We are requiring that the bond be obtained from a company that has been issued a Certificate of Authority by the U. S. Department of Treasury (which has issued generally applicable regulations governing the surety bond industry with respect to Federal agencies, thereby creating a well-regulated market). Such companies are listed in the Department of Treasury's Circular Number 570 ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.'' We limit the purchase of a bond from a company listed on the Department of Treasury's list of approved companies that have been issued a ''Certificate of Authority'' to ensure that a Surety we rely on meets certain minimum standards. Also, the company must not have been determined by us to be an unauthorized surety for the Medicare program.

We will determine a surety company to be unauthorized if:

- The surety company fails to furnish us, upon request, timely confirmation of the issuance of, and the validity and accuracy of information appearing on, a surety bond.
- The surety company fails to pay us timely after we have presented to the surety a proper claim for payment and sufficient evidence to establish the surety company's liability on the bond.
- The surety company, by other similar action, furnishes us with good cause to determine that the company is not acceptable as a surety for the Medicare program.

A determination that a surety company is not an authorized source for surety bond for Medicare will be effective immediately upon publishing a notice of the determination in the **Federal Register** and remains in effect until we publish a notice of reinstatement in the **Federal Register**. However, any such determination does not affect any surety bond issued by the surety company to an HHA before the effective date of the determination.

If a Surety is determined to be an unauthorized surety company, we will also determine whether and how such a determination will affect HHAs that have obtained a current bond from the now unauthorized company. We may require that HHAs obtain replacement bonds. A determination by us that a surety company is an unauthorized surety company for the purposes of this rule is not a debarment, suspension, or exclusion for the purposes of Executive Order 12549.

D. Surety Company Obligations

The surety company must guarantee to pay us, up to the face amount of the bond, the full amount of any unpaid Medicare overpayment, plus accrued interest, based on payments we made to the HHA during the term of the bond. Also, the surety company must guarantee to pay us, up to the face amount of the bond, the full amount of

any unpaid civil money penalty or assessment we have imposed on the HHA during the term of the bond based on an authority under Title XI, Title XVIII, or Title XXI of the Act, plus any accrued interest. When the term of the surety bond expires, the Surety remains liable for any claims that are not timely paid that have been or will be identified based on Medicare payments made during the term of the bond and for civil money penalties or assessments that were determined during the term of the bond and are not timely paid. We will demand payment from a Surety when the Surety becomes liable under a bond even if we have available to us alternative legal means to pursue collection of the monies due us.

Additional requirements for obtaining a surety bond are addressed in order to specify the conditions under which the surety company becomes liable to us.

E. HHA Surety Bond Purchase Requirements

Except for an HHA operated by a Federal, State, local, or tribal government agency determined by us to meet the waiver criteria for this requirement, every other participating HHA must submit to us by February 27, 1998 a surety bond that is effective beginning January 1, 1998 through the end of the HHA's current fiscal year. Thereafter, a participating HHA must submit to us, on an annual basis, a new surety bond to be effective for the HHA's fiscal year. The HHA must submit the bond to us not later than 30 days before the start of the fiscal year. (For an HHA whose fiscal year begins February 1, 1998 or March 1, 1998 the submission of the second bond would not be due until March 31, 1998.) We require each HHA to obtain a new surety bond each year in lieu of a multiple-year bond or continuous bond. We believe neither a multi-year bond nor a continuous bond gives the Medicare Trust Funds the level of protection of a one-year bond. In addition, a one-year bond makes it easier to administratively tie a particular bond with a particular year's Medicare payments. Also, if the Surety's liability is renewed each year up to the limit of the surety bond, any penalties and assessments have a greater opportunity of being repaid by the HHA. If a one-year bond is required, it is easier to link the Surety's liability with a particular term of the bond and the fiscal year.

An HHA that seeks to participate in Medicare for the first time must submit a surety bond to us with its enrollment application (form HCFA–855, OMB approval number 0938–0685) but no later than the completion date of its certification survey. An HHA that seeks to become a participating HHA through the purchase or other transfer of the ownership interest of a participating HHA must also ensure that the surety bond is effective from the date of the purchase or transfer of the ownership interest.

For an HHA that undergoes a change of ownership, the 15 percent is computed on the basis of Medicare payments made by us to the HHA for the most recently accepted cost report.

F. Amount of Surety Bond

We are establishing a flat rate to determine the amount of the bond that will be used in combination with a $50,000 minimum bond. The flat rate is related to the volume of business a HHA does with Medicare. The bond amount is the maximum amount for which a surety company would be liable to HCFA. The flat rate is generally 15 percent of the annual amount paid to the HHA by the Medicare program as reflected in the HHA's most recently accepted cost report. However, if an HHA's payments have increased or decreased by 25 percent for the first 6 months of the HHA's current fiscal year, we will determine the amount of the bond required for the next fiscal year based on such payments and notify the HHA of the required bond amount based on the annualized amount of such payments. In either case, the amount of the surety bond and the premium paid by the HHA for the surety bond are directly tied to the amount of Medicare payments received by the HHA.

We believe a bond amount tied to 15 percent of an HHA's Medicare payments is needed to ensure that we will recover on most uncollectible overpayments. In 1993, Medicare overpayments were 4 percent of total Medicare payments made to all HHAs. In 1996, Medicare overpayments had grown to 7 percent of total Medicare payments made to all HHAs. Thus, the industry-wide ratio of overpayments to payments has risen dramatically (nearly doubling). Also, although the industry percentage was only 7 percent in 1996, the overpayments of a particular HHA, as a percentage of that HHA's Medicare payments could greatly exceed the percentage of overpayments of all HHAs.

We also believe that generally the 15 percent is a reasonable percentage on which to base the amount of the bond, since it would not be too high as to be a barrier for small companies, yet high enough to provide the Trust Funds with a reasonable ability to recover debts owed to the program. In determining this percentage amount, we consulted with an insurance industry trade group.

For HHAs currently participating in Medicare, the amount of the initial surety bond (i.e., the bond effective from January 1, 1998) is to be based on the HHA's most recently accepted cost report. For an HHA that seeks to participate in the Medicare program on or after January 1, 1998 and purchases the assets or ownership interest of a participating (or formerly participating) HHA, the amount of the initial surety bond will be based on the total amount of Medicare payments to the participating (or formerly participating) HHA in the most recently accepted cost report. For an HHA that seeks to participate in the Medicare program on or after January 1, 1998 and has not purchased the assets or ownership interest of a participating (or formerly participating) HHA, the amount of the initial surety bond will be $50,000. The amount of each subsequent surety bond will be based on the annual total amount of Medicare payments made to the HHA in the most recently accepted cost report.

If an HHA's overpayment for the most recently accepted cost report exceeds 15 percent of annual payments, Medicare may require the HHA to secure a bond up to or equal to the amount of the overpayment, provided the amount of the bond is not less than $50,000.

G. Cost of Surety Bonds

We have been advised by surety industry sources that well-operated and sufficiently capitalized companies can expect to incur costs, on average, of approximately $10 per thousand dollars of the face amount of the bond. Thus, on average, a $50,000 bond will cost an HHA approximately $500. As noted earlier, under section 4312(b)(2) of BBA§'97 the cost of surety bonds is not to be reimbursed by Medicare. The costs associated with obtaining surety bonds is further discussed in the regulatory impact analysis section of this preamble.

III. Surety Bond Requirements Under Medicaid

Section 4724(b) of BBA '97 amended section 1903(i) of the Act to prohibit Federal Financial Participation (FFP) to a State for home health services under Medicaid unless the home health agency furnishing the services provides the State with a surety bond that meets the requirement established by section 1861(o)(7) of the Act. This provision is effective for services furnished on or after January 1, 1998. This change affects our regulations at 42 CFR part 441.

In general, every HHA that participates or that seeks to participate in the Medicaid program must obtain a surety bond. The statute requires that the Medicaid surety bond must be in the form specified by the Secretary for surety bonds under the Medicare program. Therefore, in general, the requirements for surety bonds for HHAs in the Medicare program, discussed in section II of this preamble, also apply to HHAs participating in the Medicaid program. However, certain differences between the Medicare and Medicaid programs require that the surety bond requirement be tailored to fit the Medicaid program. Medicare reimbursement for services furnished by participating HHAs is provided through fiscal intermediaries based on claims submitted directly to HCFA. Payment for home health services under Medicaid is made to the HHA by the State Medicaid agency. The State Medicaid agency submits a quarterly expenditure report to HCFA in order to claim Federal matching funds, usually at the 50 percent rate, for home health services provided under Medicaid by participating HHAs.

In general, we are adopting for the Medicaid program the surety bond requirements set forth in the Medicare program, as provided for under the BBA '97. Appropriate changes are made to establish that the HHA participating in the Medicaid program must submit the surety bond to the State Medicaid agency, rather than HCFA, and that the State Medicaid agency must take the applicable actions with regard to compliance with the statutory and regulatory requirements in order to receive FFP for home health services. For these reasons, we are allowing the State Medicaid agency to specify any other requirements for the HHA that it deems necessary to ensure that it receives a surety bond from an authorized surety company. Surety bonds must be submitted to the Medicaid agency by February 27, 1998, and carry an effective date of January 1, 1998. The term of the bond must be 1 year and the amount of the bond must be $50,000 or 15 percent of the amount paid to the HHA by the State Medicaid program for the most recent annual period for which data are available, whichever is greater. As in Medicare, the Medicaid agency may require a bond greater than 15 percent of annual payments if the HHA's overpayments exceed that percentage of payments.

The Medicaid agency, rather than HCFA, is the obligee for surety bonds required under the Medicaid program. We are specifying that each State will make the determination that a surety company has met a condition to cause it to be unauthorized for Medicaid purposes in its State. Since each State will be making this determination, we are allowing the State to establish its own requirements for notifying the HHAs and the public that a surety company is not authorized for Medicaid purposes in the State. Each State is provided the flexibility to set the annual period for which bonds in their State will apply.

The surety bond under Medicaid is for unpaid overpayments only, not for civil money penalties or assessments, as is the case under Medicare. Civil money penalties against HHAs are not authorized under the Medicaid statute and neither HCFA nor the States can impose assessments to HHAs similar to those assessments imposed by HCFA under Medicare.

IV. Capitalization Requirements for HHAs

A. Background

One potential difficulty with many small businesses is that they are often undercapitalized. That is, they do not have adequate capital, or up-front funds, with which to operate the business pending development of an adequate and reliable stream of revenue.

Even under ideal conditions, a business must incur costs before any revenues are realized. Costs of planning and organizing the business are incurred before any services can be rendered or goods can be sold. Afterwards, once the business has begun to operate, there is a period of time when services are rendered or goods are sold before any revenues from these activities actually will begin to flow into the business. Until that happens, the business must have other funds available to operate in order to pay employee salaries, to pay rent, to pay costs of heat, light and power, and so forth.

Under less than ideal conditions, the need for adequate up-front operating funds is even more critical. For example, the demand for the services or goods may not be as great as anticipated; a temporary (or longer) downturn in the market may depress sales; the normal turn-around in billing and receiving payment may be longer than anticipated; or particular customers may lag in paying for goods and services.

New HHAs generally are small businesses and have the same need for adequate capitalization as have other small businesses which are just starting. As with other small businesses, a lack of funds in reserve to operate the business until a stream of revenues can be established can seriously threaten the viability of the business. In addition, for new HHAs, which are in business to render patient care services, any condition threatening the viability of the new business can adversely affect the quality of care to their patients and, in turn, the health and safety of those patients. That is, if lack of funds forces an HHA to close its business, to reduce staff, or to skimp on patient care services because it lacks sufficient capital to pay for the services, the overall well-being of the HHA's patients could be compromised. In fact, there could be the risk of serious ill effects as a result of patients not receiving adequate services.

The level of services provided to an HHA's patients is of serious concern to us for the following reason. The process by which an HHA participates in the Medicare program is one that involves a survey by HHS or an accrediting organization. This survey is essentially a snapshot of the agency's activities. For a new agency that is undercapitalized, it may be unable to sustain the level of services it is able to provide at the time of the survey over the period of time necessary for it to begin receiving a steady stream of revenue from Medicare. The period in question could last as long as two or even three months. Since a survey has already been conducted, the new HHA's services are not routinely inspected during this period and so there is increased danger that lack of operating funds could result in inadequate care that is not discovered.

B. Effects of Threatened Financial Viability

To assure quality of care to patients who receive care from a new HHA, we are establishing initial capitalization requirements for new HHAs in order to increase the likelihood of their viability and to minimize situations that could adversely affect the health and safety of their patients. These requirements will be effective January 1, 1998.

We believe that these requirements are urgently needed, particularly in light of the findings of the Office of Inspector General (OIG) regarding undercapitalized or bankrupt HHAs and the adverse impact such HHAs have on the Medicare program and public monies. In its July 1997 report, ''Home Health: Problem Providers and Their Impact on Medicare'' (OEI–09–96–00110), the OIG stated, in part:

> If it were not for Medicare accounts receivable, problem agencies would have almost nothing to report as assets. Agencies tend to lease their office space, equipment, and vehicles. They are not required by Medicare to own anything, and they are almost always undercapitalized. On average,

cash on hand and fixed assets amount to only one-fourth of total assets for HHAs, while Medicare accounts receivable frequently equal 100 percent of total assets. These agencies are almost totally dependent on Medicare to pay their salaries and other operating expenses. For a home health agency, there are virtually no startup or capitalization requirements. In many instances, the problem agencies lease everything without collateral. They * * * do not even have enough cash on hand to meet their first payroll.

We agree that it is unacceptable that an HHA can enter the Medicare program in many cases with little or no reserves with which to operate pending receipt of reimbursement from Medicare (and other payers). To do business in this manner sets a new HHA up for potential problems from the beginning and exposes Medicare to unnecessary risk. Accordingly, we believe it is imperative that Medicare set capitalization requirements for new HHAs promptly.

Section 1891(b) of the Act states that it is ''the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1861(o) and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys.'' Section 1861(o)(8) itself authorizes the Secretary to establish ''such additional requirements * * * as the Secretary finds necessary for the effective and efficient operation of the program.''

Section 1866(b)(2) provides that the Secretary may refuse to enter into an agreement under section 1866 after determining ''that the provider fails to comply substantially with the provisions of the agreement'' or ''with the provisions of [Title 18] and regulations thereunder'' or ''that the provider fails substantially to meet the applicable provisions of section 1861.''

It is on the basis of these authorities that we are, by regulation, establishing this new requirement that an HHA must have a certain minimum amount of capital necessary to assure the financial success of the business and, thus, to minimize the possibility of quality problems or financial loss to the Medicare program as a result of shortfalls in business revenue.

C. Capitalization Requirements

For an HHA that seeks to participate in the Medicare or Medicaid program beginning on or after January 1, 1998, we will determine whether the HHA has sufficient capitalization, that is, the initial reserve operating funds that the HHA will need to operate for the first three months as a participating Medicare or Medicaid provider. Capitalization is required for all HHAs that are seeking, for the first time, to participate in Medicare, including new HHAs as a result of a change of ownership if the change of ownership results in a new provider number being issued.

These capitalization requirements apply to Medicaid HHAs as well as Medicare HHAs. As provided in 42 CFR 440.70(d), a home health agency for the Medicaid program means a public or private agency or organization, or part of an agency or organization, that meets requirements for participating in Medicare. Most HHAs participate in both the Medicare and Medicaid programs. However, even those HHAs that participate solely in Medicaid but not in Medicare must meet the Medicare requirements. Therefore, the following discussion, which is directed to Medicare HHAs, must be read to apply also to HHAs that seek participation in both programs or only in the Medicaid program. However, in the case of Medicaid-only HHAs, the Medicaid State agency is responsible for determining whether the capitalization requirements set forth in 42 CFR 489.28 are met in the same manner that Medicare intermediaries make the determination for HHAs requesting to enter the Medicare program only or both the Medicare and Medicaid programs.

As discussed further below, through our Medicare intermediaries we will determine the amount of capital that each new HHA is required to have before becoming certified in the Medicare program. This amount is to enable the HHA to operate for three months after becoming certified to participate as a Medicare provider of services. That is, as of the date that the HHA becomes certified in the Medicare program, which sometimes could be retroactive back to the date the HHA met all condition level requirements, it must have available the amount of capital determined by us as sufficient under criteria established by this rule. After the date of certification, it is expected that the HHA will expend some, or in some cases all, of the funds in providing care to its patients, including Medicare beneficiaries, pending developing a stream of patient care revenue from Medicare and other payers.

There may be several ways to structure a capitalization requirement for new HHAs, but we believe the method discussed below is reasonable and likely to meet the objectives of enhancing the financial viability of the Medicare program. We will determine the sufficiency of the capitalization of an HHA that seeks to participate in the program based on the first-year experience of other HHAs, i.e., on cost data from submitted cost reports for the first full year of operation from at least three other comparable HHAs. Although a number of factors could be relevant in determining an adequate capitalization amount, we believe the following core-approach serves to tailor the capitalization needed by an HHA which is seeking to participate in the Medicare program.

First, the intermediary determines an average cost per visit based on first-year cost report data from the as-filed cost reports for at least three HHAs that it serves that are comparable to the HHA that is seeking to enter the Medicare program, considering such factors as geographic location and urban/rural status, number of visits, provider-based vs. free-standing, and proprietary vs. non-proprietary status. The average cost per visit is determined by dividing the sum of the total reported costs of care for all patients of the HHAs by the sum of their total visits. Then, the intermediary multiplies the average cost per visit by the projected number of visits for *all* patients (Medicare, Medicaid, and all other patients) for the first three months of operation of the HHA that is seeking to enter the program. By developing an average cost per visit using first year cost data from at least three comparable HHAs in the same area, then applying this cost per visit to the new HHA's own projected visits, the initial reserve operating funds so determined should closely approximate the needs of the new HHA.

Finally, if the number of annual visits projected by the HHA seeking to enter the program is less than 90 percent of the average number of annual visits reported by the HHAs from which the average cost per visit was developed (that is, total reported visits divided by the total number of HHAs used), the intermediary will substitute for the HHA's projected visits 90 percent of one calendar quarter of the average reported visits (that is, the average number of visits for three months) for the new HHAs already in the program. This step serves to set a reserve amount for the new HHA in line with the experience of comparable HHAs in the same area and prevents the new HHA from being undercapitalized, and putting the HHA and the Medicare program at risk.

The intermediary also will submit the average cost per visit that it has developed to the HCFA regional office that is involved in certifying the HHA.

We will collect this information and analyze it to determine the feasibility of establishing average per visit costs regionally or centrally or developing some other measure of initial capitalization. Following publication of these new regulations, we will develop program instructions that will describe this process more fully.

The process we have laid out here will work acceptably, we believe, because regional home health intermediaries (RHHIs) serving HHAs are limited in number and have both the expertise and recent cost reporting files to estimate the capital requirements laid out in this rule. We recognize, however, that the process relies to some extent on the recent cost reports available to the RHHIs and that it could be improved if the capitalization amounts required could be derived from a larger data base and could be computed to a greater degree by provider type. We have recently begun to receive HHA cost reports in an automated system; however, the available reports are limited and additional information from survey and certification files and HHA claims data would be necessary to help develop the data we need. We have begun to look at these data to determine if it is feasible to compute capitalization amounts from them. If so, we will use this data in further developing in the future, the capitalization requirements established in this final rule.

The HHA must provide us sufficient evidence to prove that the initial reserve operating funds are available to it and that at least 50 percent of the amount comprises the HHA's own, non-borrowed funds which are not in any way encumbered. If an owner uses his/her own funds in the business, whether loaned or contributed to the business, the funds are considered the owner's investment in the business and, therefore, those funds are part of the HHA's own funds. (However, if the owner lends funds to the business, any interest the HHA pays the owner would not be allowable as interest under the Medicare program (42 CFR 413.153(c)(1)).

If an organization plans to do business with the Medicare program as a new HHA, we believe it is reasonable that it would have 50 percent of the capitalization requirement as non-borrowed funds. Fifty percent of the requirement in non-borrowed funds demonstrates that the organization is earnest in its attempt to become a financially sound provider of home health services under the Medicare program. And from Medicare's perspective, 50 percent of the capitalization minimizes Medicare's risk that the HHA will become financially insolvent in the beginning stages of starting its business. At least one State, (the State of New York), which imposes operating capital requirements as part of its certificate-of-need process for HHAs, requires the applying HHA to document that it has contributed at least 50 percent of its own (non-borrowed) funds in meeting the capital requirement.

To support that the HHA has met the requirement, it must provide the intermediary with a copy of the statement(s) of the HHA's savings, checking, or other account(s) which contain(s) the funds, accompanied by an attestation from an officer of the bank or other financial institution that the funds are in the account(s) and are immediately available.

Although Medicare generally expects the funds available to be cash funds, in some cases an HHA may have all or part of the initial reserve operating funds in cash equivalents. For the purposes of this section, cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash and that present insignificant risk of changes in value. If a cash equivalent is not readily convertible to a known amount of cash as needed *during the initial three month period* for which the initial reserve operating funds are required, the cash equivalent does not qualify in meeting the initial reserve operating funds requirement. Examples of items commonly considered to be cash equivalents are Treasury bills, commercial paper, and money market funds. As with funds in a checking, savings, or other account, the HHA also must be able to document the availability of any cash equivalents.

Depending on the elapsed time between the time the HHA originally establishes that it has the funds available and the time needed for us to determine that the HHA has met all other requirements necessary for certification, we later may require the HHA to furnish us with another attestation from the financial institution that the funds remain available upon the HHA's certification into the Medicare program or, if applicable, documentation from the HHA that any cash equivalents remain available.

Also, the officer at the HHA who will be certifying to the accuracy of the information on the HHA's cost report must certify as to the portion of the required initial reserve operating funds that constitutes non-borrowed funds, an amount which must be at least 50 percent of the total required funds.

The remainder of the initial reserve operating funds may be secured through borrowing or line of credit from an unrelated lender. An unrelated lender is defined in the regulations providing for the reimbursement of allowable interest expense under the Medicare program. In determining whether interest is proper under the Medicare program, 42 CFR 413.153(b)(3) provides that ''interest be—(ii) Paid to a lender not related through control or ownership, or personal relationship to the borrowing organization.'' Funds borrowed from a person or entity contrary to the provisions in § 413.153(b)(3)(ii) do not qualify as funds to meet the initial reserve operating funds requirement.

If borrowed funds are not in the same account(s) as the provider's own funds, the HHA also must provide proof that the borrowed funds are available for use in operating the HHA, by providing to the intermediary a copy of the statement(s) of the HHA's savings, checking, or other account(s) containing the borrowed funds, accompanied by an attestation from an officer of the bank or other financial institution that the funds are in the account(s) and are immediately available. As with the provider's own funds, we later may require the HHA to furnish another attestation by the financial institution that the funds remain available upon the HHA's certification into the Medicare program.

If the HHA chooses to establish the availability of a portion of the initial reserve operating funds with a line of credit, it must provide the intermediary with a letter of credit from the lender. As with funds in a bank or other financial institution, as discussed above, we later may require the HHA to furnish us with an attestation from the lender that the HHA, upon its certification into the Medicare program, continues to be approved to borrow the amount specified in the letter of credit.

We will not enter into a provider agreement with an HHA until we are satisfied, through the intermediary, that the capitalization requirement has been met, that is, that the HHA has the initial reserve operating funds available as discussed above.

V. Provisions of the Final Rule With Comment Period

A. Surety Bond Requirements Under Medicare

We are adding a new Subpart F to 42 CFR part 489, consisting of §§ 489.60 through 489.73, to establish the surety bond requirements that pertain to HHAs under Medicare.

In § 489.60 (''Definitions'') we specify the meaning of the terms ''assessment'', ''assets'', ''civil money penalty'', ''participating home health agency'',

''surety bond'', ''unpaid civil money penalty or assessment'', and ''unpaid claim'' to clarify the meaning of these terms in the context of the surety bond requirements.

We define the terms as follows:

Assessment means a sum certain that HCFA may assess against an HHA in lieu of damages under Titles XI, XVIII, or XXI of the Social Security Act or under regulations in this chapter.

Assets includes but is not limited to any listing that identifies Medicare beneficiaries to whom home health services were furnished by a participating or formerly participating HHA.

Civil money penalty means a sum certain that HCFA has the authority to impose on an HHA as a penalty under Titles XI, XVIII, or XXI of the Social Security Act or under regulations in this chapter.

Participating home health agency means a ''home health agency'' (HHA), as that term is defined by section 1861(o) of the Social Security Act, that also meets the definition of a ''provider'' as set forth at § 400.202 of this chapter.

Surety bond means one or more bonds issued by one or more surety companies under 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225, provided the bond otherwise meets the requirements of this section.

Unpaid civil money penalty or assessment means a civil money penalty or assessment imposed by HCFA on an HHA under Titles XI, XVIII, or XXI of the Social Security Act, plus accrued interest, that, 90 days after the HHA has exhausted all administrative appeals, remains unpaid (because the civil money penalty or assessment has not been paid to, or offset or compromised by, HCFA) and is not the subject of a written arrangement, acceptable to HCFA, for payment by the HHA. In the event a written arrangement for payment, acceptable to HCFA, is made, an *unpaid civil money penalty or assessment* also means such civil money penalty or assessment, plus accrued interest, that remains due 60 days after the HHA's default on such arrangement.

Unpaid claim means a Medicare overpayment for which the HHA is responsible, plus accrued interest, that, 90 days after the date of the agency's notice to the HHA of the overpayment, remains due (because the overpayment has not been paid to, or recouped or compromised by, HCFA) and is not the subject of a written arrangement, acceptable to HCFA, for payment by the HHA. In the event a written arrangement for payment, acceptable to HCFA, is made, an *unpaid claim* also means a Medicare overpayment for which the HHA is responsible, plus accrued interest, that remains due 60 days after the HHA's default on such arrangement.

In § 489.61 (''Basic requirement for surety bonds'') we stipulate that, in general, each Medicare participating HHA or HHA that seeks to become a Medicare participating HHA must obtain and furnish us with a copy of a surety bond. The BBA '97 requires that HHAs must obtain a surety bond effective January 1, 1998. In addition, we believe that requiring a HHA to purchase a surety bond will help ensure that we are able to recover overpayments we cannot collect using other methods.

In § 489.62 (''Requirement waived for Government-operated HHAs'') we stipulate that, under certain conditions, government-operated HHAs are deemed to have furnished a comparable surety bond under State law. When the necessary conditions are met, we waive the bond requirement. We believe that government-operated HHAs tend not to use fraudulent or abusive Medicare billing practices and when overpaid almost invariably honor their debts. Our anecdotal experience suggests that such HHAs timely pay their Medicare debts. More importantly, given the taxing authority of the government of which the HHA is a part, such government will generally be able to raise funds to meet its just debts. As such, we believe such taxing power affords us a comparable if not greater level of protection as would a surety bond issued by a private surety company and that any Medicare debt a government-operated HHA might inadvertently incur would be easily collectible. Therefore, we believe that government-operated HHAs represent a minimum risk to Medicare. Consequently, we have waived the surety bond requirement for government-operated HHAs to the extent such HHAs have a good history of paying their Medicare debts. Government-operated HHAs with a poor history of paying their Medicare debts, if there are any such HHAs, will not meet the standard necessary for waiver of the surety bond requirement.

In § 489.63 (''Parties to the bond'') we specify the format of the names of the three entities on the bond. This provides guidance to the HHA as to how to name the three parties to the bond. By specifically naming the parties to the bond in this manner, clarity is provided as to the rights and obligations of each party of this three-party instrument.

In § 489.64 (''Authorized Surety and exclusion of surety companies'') we stipulate that the surety bond must be obtained from an Authorized Surety and define what conditions must be met for a surety company to be considered an Authorized Surety under this section. We believe that allowing HHAs to obtain bonds only from surety companies that have been issued a Certificate of Authority by the U.S. Department of the Treasury helps ensure that the HHA is obtaining a bond from a company that meets certain minimum standards. To ensure that the HHA has properly fulfilled the surety bond requirement as specified in this rule, we will ask the Surety to furnish timely confirmation of the issuance of, and the validity and accuracy of information appearing on, a bond the HHA has furnished to us. If the Surety fails to comply with our request for such information, we will determine the Surety to be unauthorized as a source of bonds for Medicare purposes, since without such confirmation from the Surety we can not determine if the HHA has properly complied with the surety bond requirements. Similarly, if we demand payment according to the terms of the bond, and the Surety fails without justification to pay us, we may determine that such surety company cannot be relied upon to fulfill its commitments and may then determine the surety company to be unauthorized for future use by any HHA. If a Surety is determined to be an unauthorized surety company, we also determine whether and how such a determination will affect HHAs that have obtained a current bond from the now unauthorized company. We may require that HHAs obtain replacement bonds. A determination by us that a surety company is an unauthorized surety company for the purposes of this rule is not a debarment, suspension, or exclusion for the purposes of Executive Order 12549.

Section 489.65 (''Amount of the bond'') covers the methods of how to calculate the surety bond amount for participating HHAs and HHAs that seek to participate in Medicare. We believe that 15 percent of the annual Medicare payments received by the HHA during its fiscal year is generally a reasonable percentage on which to base the amount of the bond, subject to the statutory minimum of $50,000. By using 15 percent of the amount of annual Medicare payments, the amount of the surety bond and the premium for the surety bond are directly tied to the amount of Medicare payments received by the HHA. As stated earlier, in 1993 overpayments were 4 percent of total Medicare payments made to all HHAs. In 1996, overpayments were 7 percent of total Medicare payments made to all

HHAs. Of course, the percentage of overpayments to total payments for a particular HHA could be significantly higher. However, we believe that the 15 percent standard is a generally reasonable level and will usually ensure that we recover most uncollectible overpayments. Also, we believe that the 15 percent is a reasonable percentage on which to base the amount of the bond, since it would not be too high as to be a barrier for small companies, yet high enough to provide the Trust Funds with a reasonable ability to recover debts owed to the program. In determining this percentage amount, we consulted with an insurance industry trade group. However, we recognize that the 15 percent standard may be insufficient for HHAs that incur large overpayments. Therefore, instead of applying the 15 percent standard to such HHAs, we may require a bond greater than 15 percent of annual payments if the HHA's overpayments exceed that percentage of payments.

Section 489.66 (''Additional requirements of the surety bond'') specifies the bases under which the Surety becomes liable to pay HCFA under the bond, and the conditions under which the Surety's guarantee to HCFA under the bond is not extinguished. Although a surety bond requirement has been implemented in other Federal government agencies, it is new to us as an element of program administration. Therefore, we believe that in order to provide maximum protection to Medicare, it is our obligation to provide specific guidance to the HHAs as to the terms that must be included in the bond.

In § 489.67 (''Submission date and term of the bond'') we specify when HHAs must submit their initial and subsequent surety bonds. We believe neither a multi-year bond nor a continuous bond gives Medicare the level of protection of a one-year bond. The Medicare payments received by HHAs change yearly, usually increasing. Thus, a one-year bond makes it easier to administratively tie the required bond amount with a particular year's Medicare payments, helping to eliminate confusion for the HHA, the Surety, and us if we demand payment from the Surety. We chose for an initial term of the bond a period from January 1, 1998 to the close of each HHA's current fiscal year. (''Current'' means as of January 1, 1998, and not as the date of the publication of the rule.)

In § 489.68 (''Effect of failure to obtain, maintain, and timely file a surety bond'') we state that failure to obtain a surety bond in accordance with this rule is a sufficient basis for us to terminate an HHA's provider agreement or for us to refuse to enter into such an agreement. Such a policy is an administratively efficient means of enforcing the surety bond requirement while affording participating HHAs and HHAs that wish to participate in Medicare appropriate rights of due process as specified in 42 CFR part 498.

In § 489.69 (''Evidence of compliance'') we specify that we may, at any time and in a manner we choose, require an HHA to demonstrate that the HHA is in compliance with the surety bond requirements. We also provide that the failure of the HHA to demonstrate such compliance is sufficient reason to terminate the HHA's provider agreement or refuse to enter into such an agreement. We believe that in order to ensure that an HHA not only obtains a surety bond but also that it does not terminate the bond during the bond's one-year term, it is necessary that we have the ability to make sure the bond is still in effect. In addition, conditions may arise, such as the Surety terminating its business operations, where the bond may become unenforceable. Therefore, in order to safeguard our ability to recover on unpaid debts from HHAs, a method is needed to ascertain the continuing validity of the financial security represented by the bond we have been furnished.

Also, if the Surety's liability is renewed each year up to the limit of the surety bond, any penalties and assessments have a greater opportunity of being repaid by the HHA. If a one-year bond is required, it is easier to link the Surety's liability with a particular term of the bond and the fiscal year.

In § 489.70 (''Effect of payment by the Surety'') the payment by the Surety to HCFA on the bond constitutes collection of the unpaid claim or unpaid civil money penalty or assessment owed by the HHA and is a sufficient basis for termination of the HHA's provider agreement. We believe that having to resort to the Surety for payment of a Medicare debt owed by the HHA, and having the Surety acknowledge our demand for payment as valid, is a sufficient basis to conclude that the HHA is not complying with the provisions of Title XVIII and our implementing regulations.

In § 489.71 (''Surety's standing to appeal Medicare determinations'') we specify that a Surety has the same appeal rights of the HHA, provided the Surety has paid us under the surety bond, the HHA has assigned its right of appeal to the Surety, and the Surety satisfies all jurisdictional and procedural requirements that applied to the HHA. By extending appeal rights to the Surety in this manner, we are further protecting it from improper financial loss in those cases where the HHA did not exercise the HHA's appeal rights and our demand for and receipt of payment under the bond was erroneously determined.

In § 489.72 (''Effect of review reversing HCFA's determination'') we specify that if a Surety has paid HCFA on the basis of a Medicare debt incurred by an HHA and the HHA (or the Surety) successfully appeals HCFA's determination that was the basis of the debt (and the Surety's payment), then HCFA will refund to the Surety the amount that the Surety paid to HCFA to the extent such amount relates to the successful appeal, provided all review, including judicial review, has been completed on the matter. We believe this provision protects the Surety from undue financial loss due to error on our part.

In § 489.73 (''Incorporation into existing provider agreements'') we specify that the requirements of Subpart F of Part 489 are deemed incorporated into existing HHA provider agreements effective January 1, 1998. Due to the BBA '97, we must incorporate the HHA surety bond requirement into all HHA provider agreements by January 1, 1998. Given that the BBA '97 was enacted in August 1997, we find that the only practicable means to accomplish this task in timely fashion is by our regulatory authority.

In new § 413.92 we specify that the costs incurred by a HHA to obtain a surety bond are not included as allowable Medicare costs. This provision implements section 4312(b)(2) of the BBA '97 which amended section 1861(v)(1)(H) of the Act to exclude the cost of these surety bonds as a reimbursable cost under Medicare.

B. Surety Bonds Requirements Under Medicaid

We have established a new § 441.16 (the previous § 441.16 is redesignated as § 441.17) to specify the prohibition on FFP in expenditures for home health services unless the HHA meets the surety bond requirements. In this section, we also include the surety bond requirements specific to Medicaid.

As discussed earlier, generally, we are adopting the surety bond requirements under Medicare for the requirements under Medicaid. However, there are program differences that require changes to the Medicare program requirements and are reflected in the discussion below of the changes to the Medicaid regulations.

In § 441.16(a) we define the terms ''assets'', ''participating home health agency'', ''surety bond'', and ''uncollected overpayment'' as these terms apply to Medicaid. Section 441.16(b) contains the prohibition on FFP provision. Section 441.16(c) includes the basic requirement for the HHA to obtain a surety bond and furnish a copy of the bond to the Medicaid agency.

Section 441.16(d) allows government-operated HHAs, under certain conditions, to be exempt from the surety bond requirements under Medicaid as we have allowed them under Medicare except that we have not included provisions for unpaid civil money penalties or assessments and having claims referred to the Department of Justice or the General Accounting Office (which are not applicable under Medicaid). In § 441.16(e), we define the parties to the bond.

Under paragraph (f)(1) of § 441.16, we stipulate that an HHA may obtain a surety bond only from an authorized surety. We have expanded the Medicare provision on the definition of an authorized surety for Medicaid purposes to allow the Medicaid agency to include any other conditions that the Medicaid agency considers necessary for the proper and efficient administration of the program. We also have included the Medicare criteria for determining an unauthorized surety under paragraph (f)(2).

Under paragraph (f)(3) of § 441.16, we have allowed the Medicaid agency to specify the manner by which public notification of a determination of an unauthorized Surety is given and the effective date of the determination instead of the determination being published in the **Federal Register**.

In § 441.16(g), we stipulate that the amount of the bond must be $50,000 or 15 percent of the annual Medicaid payments made to the HHA by the State Medicaid agency for home health services furnished for which FFP is available, whichever is greater. The computation of the 15 percent for participating HHAs is to be done by the State Medicaid agency on the basis of Medicaid payments made to the HHA for the most recent annual period for which information is available as specified by the State Medicaid agency. Likewise, the computation of 15 percent for an HHA that seeks to become a participating HHA by obtaining assets or ownership interest is computed using the most recent annual period as specified by the State Medicaid agency. The 15 percent computation does not apply to an HHA that seeks to become a participating HHA without obtaining assets or ownership interest. However, we recognize that the 15 percent standard may be insufficient for HHAs that incur large overpayments. Therefore, instead of applying the 15 percent standard to these HHAs, we are providing that the State Medicaid agency may require a bond greater than 15 percent of annual payments if the HHA's overpayments exceed that percentage of payments.

In paragraph (h) of § 441.16 we include the same Medicare provisions on the surety's liability for full and timely payment of the HHA's unpaid overpayments, up to the stated amount of the bond, plus accrued interest, as applicable, for which the HHA is responsible. However, we do not include provisions relating to unpaid civil money penalties or assessments, which are not imposed by us or the States with respect to Medicaid. This section also includes the conditions under which the Surety's liability is not extinguished.

In paragraph (h)(1) we have specified the submission dates and terms of the bond. For all participating HHAs, we have made the initial term of the bond to be effective from January 1, 1998 through a date specified by the State Medicaid agency. For subsequent terms, we have provided that the State may specify the date by which a bond must be submitted, and that the term will be effective for an annual period as specified by the Medicaid agency. We require that an HHA that seeks to become a participating HHA must submit a surety bond before a provider agreement under § 431.107 of the Medicaid regulations can be entered into. An HHA that experiences a change of ownership (as ''change of ownership'' is defined by the State Medicaid agency) must submit a surety bond effective the date of the change of ownership for a term through a date specified by the State Medicaid agency. We also require that a government-operated HHA that does not qualify for waiver submit a surety bond. In addition, we require that an HHA that obtains a replacement surety bond from a different surety to cover the remaining term of a previously obtained bond must submit the new surety bond to the State Medicaid agency within 60 days (or such earlier date as the State Medicaid agency may specify) of obtaining it from the new Surety for an annual term specified by the State Medicaid agency.

Section 441.16(j) specifies the effect of an HHA's failure to obtain, maintain, and timely file a surety bond. Section 441.16(k) specifies that the State Medicaid agency may require an HHA to furnish further evidence of compliance with the surety bond requirement and also specifies actions the Medicaid agency may take if the HHA fails to furnish it with such evidence of compliance. Section 441.16(l) allows the Medicaid agency to establish procedures for granting or denying appeal rights to sureties since the Medicare appeal procedures would not be applicable for State agencies.

C. Capitalization

We are adding new § 489.28 to establish an initial reserve operating fund requirement for HHAs that are seeking, for the first time, to participate in the Medicare program on or after January 1, 1998. Under this requirement, HCFA, through its intermediaries, will determine the amount of reserve funds that each new HHA is required to have before becoming certified in the Medicare program. We are also revising the Medicaid regulations at § 440.70(d), which already apply the Medicare HHA requirements for participation to Medicaid, to reference the Medicare capitalization requirement in § 489.28. This initial reserve operating fund requirement is to ensure that the HHA will be able to operate for three months after becoming certified to participate as a Medicare provider of services. The required amount is based on the average cost per visit of comparable new HHAs, using data from submitted cost reports from those HHAs for the first full year of operation. The HHA must provide proof that it has the funds to meet the requirement, with no more than 50 percent of the funds being borrowed funds, and that the funds are immediately available.

The purpose of this requirement is to establish the financial stability of HHAs newly entering the Medicare program and thus to assure quality of care to the HHA's patients, including Medicare beneficiaries. The requirement is being established in order to increase the likelihood of the viability of an HHA entering the program and to minimize situations that could adversely affect the health and safety of its patients. Lack of adequate initial reserve operating funds, that is, undercapitalization, sets up a new HHA for potential problems from the beginning, exposes Medicare to unnecessary risk, and can adversely affect the quality of care to the HHA's patients. We are establishing the requirement now because we believe it is urgently needed, particularly in light of the findings of the Office of Inspector General that problem HHAs entering the Medicare program are almost always undercapitalized—often with not even

enough cash on hand to meet the first payroll.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are, however, requesting an emergency review of this final rule with comment period. In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are submitting to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure compliance with section 4312(b) and 4724(b) of BBA '97 which requires Medicare and Medicaid participating HHAs to secure a surety bond, as of January 1, 1998, in order to continue participation in the Medicare and Medicaid programs. We cannot reasonably comply with normal clearance procedures because public harm is likely to result if the agency cannot enforce the capitalization requirement to prevent undercapitalized HHAs from entering the Medicare program or cannot enforce the surety bond requirements of the BBA '97 in order to protect the Federal government (especially the Medicare Trust Funds) from losses due to uncollectible debts incurred by HHAs.

HCFA is requesting OMB review and approval of this collection within 3 working days from the date of publication of this regulation, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 2 working days from the date of publication of this regulation.

During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

We are soliciting public comment on each of these issues for the provisions summarized below that contain information collection requirements:

Section 441.16 Home health agency requirements for surety bonds. Section 441.16(h)(3)(i) requires that a Surety must furnish the Medicaid agency with notice of any action by the HHA or the Surety to terminate or limit the scope or term of the bond and that such notice must be furnished not later than 10 days after the date of notice of such action by the HHA, or not later than 60 days before the effective date of the action by the Surety.

The burden associated with this requirement is the time required for a Surety to provide a State Medicaid agency with a notice no later than 10 days after any action by the HHA or the Surety to terminate or limit the scope or term of the bond. HCFA met with surety bond industry representatives to discuss the time and effort associated with furnishing a notice to terminate or limit the scope or term of a bond. It is estimated that less than 1 percent (80 entities) of all 8,062 participating HHAs will terminate or limit the scope or term of a bond. It is also estimated that it will take a surety company 5 minutes to generate and furnish a notice of such action (80 entities * 5 minutes = 400 minutes or 7 hours).

Section 441.16(i) requires each participating HHA that is not exempted by paragraph (d) of this section to submit to the Medicaid agency an initial surety bond by February 27, 1998, effective for the term January 1, 1998, through a date specified by the State Medicaid agency and for subsequent terms annually thereafter by a date as the Medicaid agency may specify, effective for an annual period specified by the Medicaid agency.

The burden associated with this requirement is the time required for each participating HHA to furnish the Medicaid agency a copy of a surety bond with original signatures on an annual basis. It is estimated that it will take 8,062 providers 5 minutes for an annual burden of 40,310 minutes = 672 hours.

Section 441.16(i)(2)(i) requires that HHAs seeking to become a Medicaid participating HHA must submit a surety bond before a provider agreement described under § 431.107 of this subchapter can be entered into.

The burden associated with this requirement is the time required for each HHA seeking Medicaid participation to furnish the State agency with a copy of a surety bond with original signatures. It is estimated that it will take 900 new providers 5 minutes for an annual burden of 4,500 minutes that is 75 hours.

Section 441.16(i)(3) requires an HHA that undergoes a change of ownership to furnish the State agency with a copy of a surety bond with original signatures effective from the date of the change of ownership.

The burden associated with this requirement is the time required for each participating HHA that undergoes a change in ownership to furnish the Medicaid agency a copy of a surety bond with original signatures. It is estimated that it will take 287 providers 5 minutes for an annual burden of 1,435 minutes, that is 24 hours.

Section 441.16(i)(4) requires that a government-operated HHA, that as of January 1, 1998 meets the criteria for waiver of the requirements of this section but thereafter is determined by the Medicaid agency to not meet such criteria, must submit a surety bond within 60 days after it receives notice from the Medicaid agency that it no longer meets the criteria for waiver.

The burden associated with this requirement is the time required for each government-operated HHA that no longer meets the criteria for waiver to furnish the State agency a copy of a surety bond with original signatures. It is estimated that on an annual basis less then 10 entities will be required to comply with this information collection.

Section 441.16(i)(5) requires that an HHA that obtains a replacement surety bond from a different Surety to cover the remaining term of a previously obtained bond must submit the new surety bond to the Medicaid agency within 60 days (or such earlier date as the Medicaid agency may specify) of obtaining it from the new Surety for a term specified by the Medicaid agency.

The burden associated with this requirement is the time required for each HHA that obtains a replacement surety bond to furnish the State agency with a copy of a surety bond with original signatures. It is estimated that it will take 80 providers 5 minutes for an annual burden of 400 minutes, that is, 7 hours.

Section 489.28 Required proof of availability of initial reserve operating funds. In summary, the information

collection requirements for capitalization referenced in § 489.28 requires that an HHA seeking to participate in the Medicare and/or Medicaid program on or after January 1, 1998, must demonstrate that it has sufficient capital, that is, ''initial reserve operating funds,'' to operate for the initial three months of its participation in the program. In particular, the HHA must provide HCFA or the State Medicaid agency a copy of the statement(s) of the HHAs savings, checking, or other account(s) which contain the funds, (e.g. cash, cash equivalents, borrowed funds or line of credit) accompanied by an attestation from an officer of the bank or other financial institution that the funds are in the account(s) and are immediately available.

We estimate that the annual number of HHAs submitting this information to be 900, based on the average number of new HHAs entering the Medicare and/or Medicaid program from 1994 through 1996. An HHA, whether it requests participation in both Medicare and Medicaid, or in one program only, will have to submit this information only once. We estimate this activity to take approximately 900 entities 30 minutes for an annual burden of 450 hours.

Section 489.66 Additional requirements of the surety bond. Section 489.66 (c)(1) provides that the Surety's liability on the bond is not extinguished unless, in the event the HHA or the Surety takes any action to terminate or limit the scope or term of the bond, the Surety furnishes us with notice of such action not later than 10 days after receiving notice of such action by the HHA, or not later than 60 days before the effective date of such action by the Surety.

The burden associated with this requirement is the time required for a Surety to provide Medicare with a notice no later than 10 days after any action by the HHA or the Surety to terminate or limit the scope or term of the bond. It is estimated that less than 1 percent (80 entities) of all 8,062 participating HHAs will terminate or limit the scope or term of a bond. It is also estimated that it will take a surety company 5 minutes to generate and furnish a notice of such action (80 entities at 5 minutes = 400 minutes or 7 hours).

Section 489.67 Submission date and term of the bond. Section 489.67(a) requires each participating HHA that does not meet the criteria for waiver under § 489.62 must submit to HCFA, in such a form as HCFA may specify, a surety bond by February 27, 1998, effective for the term beginning January 1, 1998, through the end of the HHA's fiscal year and for subsequent terms not later than 30 days before the HHA's fiscal year, effective for a term concurrent with the HHA's fiscal year.

The burden associated with this requirement is the time required for each Medicare participating HHA to furnish HCFA a copy of a surety bond with original signatures on an annual basis. It is estimated that it will take 8,062 providers 5 minutes for an annual burden of 40,310 minutes = 672 hours.

Section 489.67(b)(1) requires that an HHA seeking to become a participating HHA must submit a surety bond with its enrollment application (Form HCFA–855, OMB number 0938–0685).

The burden associated with this requirement is the time required for each HHA seeking Medicare participation to furnish us a copy of a surety bond with original signatures. It is estimated that it will take 900 new providers 5 minutes for an annual burden of 4,500 minutes that is 75 hours.

Section 489.67(c) requires an HHA that undergoes a change of ownership to furnish HCFA a copy of a surety bond with original signatures effective from the date of the change of ownership.

The burden associated with this requirement is the time required for each participating HHA that experiences a change of ownership to furnish HCFA a copy of a surety bond with original signatures. It is estimated that it will take 287 providers 5 minutes for an annual burden of 1,435 minutes, that is, 24 hours.

Section 489.67(d) requires that a government-operated HHA, that as of January 1, 1998 meets the criteria for waiver under § 489.62 but thereafter is determined by HCFA to not meet such criteria, must submit a surety bond within 60 days after it receives notice from HCFA that it no longer meets the criteria for waiver.

The burden associated with this requirement is the time required for each government-operated HHA that no longer meets the criteria for waiver to furnish HCFA a copy of a surety bond with original signatures. It is estimated that on an annual basis less then 10 entities will be required to comply with this information collection.

Section 489.67(e) requires that an HHA that obtains a replacement surety bond from a different Surety to cover the remaining term of a previously obtained bond must submit the new surety bond to HCFA within 30 days of obtaining it from the new Surety.

The burden associated with this requirement is the time required for each HHA that obtains a replacement surety bond to furnish HCFA a copy of a surety bond with original signatures. It is estimated that it will take 80 providers 5 minutes for an annual burden of 400 minutes, that is, 7 hours.

As a note, the provider/supplier enrollment forms HCFA–855, HCFA–855C, HCFA–855R, and related instructions, which are currently approved under OMB Approval No. 0938–0685, are in the process of being revised to incorporate the relevant HHA surety bond requirements reflected in this regulation. In particular, an emergency clearance of these information collection requirements was also requested by HCFA. A notice was published in the **Federal Register** on December 18, 1997, requesting that OMB approve the revised collection by December 31, 1997. In that notice the public was given from the date of the notice's publication, until December 29, 1997 to comment on the proposed collection. It should be noted that these emergency clearances sought by HCFA would have a maximum approval period of 6 months from the date of OMB approval. Also, the addendum to this regulation displays the revised HCFA–855, HCFA–855R, HCFA–855C, and related instructions that will implement the surety bond requirements, which were submitted to OMB for emergency approval. We continue to solicit comment on these forms and instructions.

The table below indicates the annual number of responses for each regulation section in this proposed rule containing information collection requirements, the average burden per response in minutes or hours, and the total annual burden hours.

ESTIMATED ANNUAL BURDEN

CFR section	Responses	Average burden per response (minutes)	Annual burden hours
441.16(h)(3)(i)	80	5	7

ESTIMATED ANNUAL BURDEN—Continued

CFR section	Responses	Average burden per response (minutes)	Annual burden hours
441.16(i)	8,062	5	672
441.16(i)(2)(i)	900	30	75
441.16(i)(3)	287	5	24
441.16(i)(5)	80	5	7
489.28	900	5	450
489.66(c)(1)	80	5	7
489.67(a)	8,062	5	672
489.67(b)(1)	900	5	75
489.67(c)	287	5	24
489.67(e)	80	5	7
Total			2,020

We have submitted a copy of this final rule with comment to OMB for its review of the information collection requirement. These requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, *Attn:* John Burke HCFA–1152–FC *Fax number:* (410) 786–1415

and,

Office of Information and Regulatory Affairs, Office of Management and Budget Room 10235, New Executive Office Building Washington, D.C. 20503, *Attn.:* Allison Herron Eydt, HCFA Desk Officer *Fax numbers:* (202) 395–6974 or (202) 395–5167.

VII. Impact Analyses

A. Regulatory Impact Analyses

We have examined the impacts of this final rule with comment period under Executive Order (E. O.) 12866, the Unfunded Mandate Reform Act of 1995, and the Regulatory Flexibility Act. E.O. 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. In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The Unfunded Mandate Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The rule has no consequential effect on State, local, or tribal governments. The impact on the private sector is well below the $100 million threshold.

Consistent with the Regulatory Flexibility Act, we prepare a Regulatory Flexibility Analysis (RFA) unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The RFA is to include a justification of why action is being taken, the kinds and number of small entities which the proposed rule will affect, and an explanation of any considered meaningful options that achieve the objectives and would lessen any significant adverse economic impact on the small entities. For purposes of the RFA, HHAs with annual revenues of $5 million or less and non-profit organizations are considered to be small entities. Because of the scope of this rule, all HHAs will be affected, but we do not expect that effect to be significant. Nonetheless, we have prepared the following analysis, which in conjunction with other material provided in this preamble, constitutes an analysis under the Regulatory Flexibility Act.

The following regulatory impact analysis is divided into three parts to discuss separately the Medicare surety bond requirement, the Medicaid surety bond requirement, and the capitalization requirement.

1. Medicare Surety Bond Regulatory Impact Analysis

Section 4312(b) of BBA§'97 contains a requirement that HHAs obtain a surety bond in an amount not less than $50,000. In addition to using the statutory minimum amount of the bond as a floor, we link the required amount of the surety bond to the amount of Medicare payments we make to the HHA each year by establishing that the bond amount equal 15 percent of such payments. However, if that amount is not sufficient, we may link the required amount of the bond to Medicare overpayments. We believe that tying the amount of the bond to the amount of annual payments or, when necessary, the amount of Medicare overpayments will better protect the Trust Funds from losses due to uncollectible debts incurred by HHAs. Although we generally require a bond in an amount that equals 15 percent of annual Medicare payments, we recognize the 15 percent standard may be insufficient for HHAs that incur very large overpayments. Therefore, instead of applying the 15 percent standard to such HHAs, we may require a bond greater than 15 percent of annual payments if the HHA's overpayments exceed that percentage of payments.

We believe one effect of our rule will be to encourage inefficient or poorly managed HHAs to reform their billing practices. Also, to the extent some HHAs are intent on providing excessive or inappropriate services or defrauding the Medicare program, this rule may discourage such HHAs from continuing to participate in the Medicare program. We expect to have a ''significant impact'' on an unknown number of such entities, effectively preventing some of them from repeating their past aberrant billing activities. The majority of HHAs will not be significantly affected by this rule. In addition, we believe this rule

reinforces the behavior of HHAs that are not currently billing inappropriately, by encouraging them to continue billing only for appropriate Medicare services. We expect reduction in unrecovered program overpayments as a result of this rule either by having debts guaranteed by a surety company, or by high risk businesses being unable to obtain surety bonds and, thus, being unable to comply with their provider agreements.

Because of the large influx of HHAs (nearly 450 additional HHAs come into the Medicare program each year) and because HHAs will be able to furnish services to additional beneficiaries, we do not expect an adverse effect on Medicare beneficiaries. However, we do not know precisely how many HHAs will not enter the Medicare program because of these requirements. As a result, we are soliciting comments on these foregoing assertions and assumptions.

a. Rationale and purposes. We believe an HHA is an essential link in the chain of health care providers needed by Medicare beneficiaries to achieve optimum health. However, some HHAs consistently bill Medicare inappropriately and incur significant Medicare overpayments. Some of these overpayments, amounting to hundreds of millions of dollars, are never recovered. This rule will provide better protection of Medicare funds by establishing a mechanism, the surety bond, to replenish the Medicare Trust Funds from the losses incurred by unpaid debts. In addition, an HHA's failure to comply with the surety bond requirement will provide a basis for us to refuse to enter into or to terminate a Medicare provider agreement. We believe that such HHAs as are unable or unwilling to obtain a surety bond are the most likely HHAs to be unable or unwilling to repay their Medicare debts. We expect this rule to deter HHAs from abusive billing practices and from defrauding the Medicare program and, to the extent certain HHAs are not deterred, the surety bond required by this rule furnishes us with greater assurance that we may recover on Medicare debts. Fraudulent practices include billing the Medicare program for services that were not furnished, not furnishing services as billed, or not furnishing services in accordance with Medicare policies.

Table 1 illustrates the total claims paid to HHAs from 1993 through 1996 and associated overpayment information for those years. This table illustrates that uncollected overpayments have been rising significantly both in absolute dollar amounts and as a percentage of the original amount of overpayment.

TABLE 1.—OVERPAYMENTS

Year	Annual HHA claims paid to date	Original amount of overpayments	Overpayment percentage of claims paid	Current uncollected overpayments	Percent of overpayments uncollected
1993	$9,710,473,021	$360,987,031	4	$17,976,042	5
1994	12,683,597,818	567,570,313	4	25,827,042	5
1995	15,430,623,631	794,637,131	5	98,646,416	12
1996	14,357,504,894	1,061,157,961	7	153,628,056	14

b. Costs. According to a home health industry source, Medicare accounts for approximately 49 percent of the average HHA's revenue. (The approximate percentage amounts for other revenue sources are: private insurance—4 percent, Medicaid—24 percent, and consumer's out-of-pocket—22 percent.)

Table 2 shows the number of participating HHAs by Medicare reimbursement ranges and demonstrates that approximately 94 percent of all HHAs were paid $5 million or less by Medicare in 1996. Because Medicare accounts for approximately only 49 percent of the average HHA's total revenue, we estimate that approximately 84 percent of these HHAs would qualify as small entities under the Regulatory Flexibility Act. We estimate that these HHAs would have a total annual bond cost of approximately $9.5 million and an average annual cost per HHA of approximately $1200.

TABLE 2.—TOTAL NUMBER OF HHAS ARRANGED BY MEDICARE PAYMENT

[Dates of Service—January to December 1996]

Dollars reimbursed	Number of HHAs
>50,000	744
50,001–100,000	452
100,001–200,000	735
200,001–334,000	767
334,001–1,000,000	2854
1,000,001–2,499,000	2406
2,500,000–5,000,000	939
5,000,001–10,000,000	415
10,000,001–20,000,000	103
20,000,001–30,000,000	20
30,000,001–40,000,000	6
40,000,001–50,000,000	2
50,000,001–150,000,000	0
>150,000,001	1
Totals	9444

There were approximately 2800 non-profit HHAs during the time period specified in Table 2. We estimate that all but 150 of them were reimbursed less than $5 million and are already part of the cost estimate developed for small businesses. By including these 150 in the small business category there would not be any significant change to the cost estimates already developed.

This rule will require an HHA to have a surety bond in an amount that is the greater of $50,000 or 15 percent of Medicare payments made to the HHA in the most recent fiscal year for which a cost report is accepted, or if payments in the first six months of the current fiscal year differ from such an amount by more than 25 percent, then the amount of the bond is 15 percent of such payments projected on an annualized basis. However, if an HHA's overpayment in the most recently accepted annual cost report exceeds 15 percent, Medicare may require the HHA to secure a bond up to or equal to the amount of the overpayment, provided the amount of the bond is not less than $50,000. We believe that any additional cost attributable to the percentage of the Medicare reimbursement calculation does not represent a significant economic impact on most HHAs that will be required to purchase a surety bond in an amount greater than $50,000. Moreover, those HHAs that will incur a substantial cost for obtaining a surety bond are those few HHAs that generate Medicare billings in the tens of millions of dollars or more. In order to have some

reasonable assurance of being able to recover a significant portion of otherwise unrecoverable Medicare debts, we believe that using a percentage of total annual Medicare payments to determine surety bond amounts above $50,000 is both reasonable and necessary. Thus, we have chosen alternatives that we believe are cost effective and will ensure that HHAs have bonds in appropriate amounts. Moreover, we believe that for most HHAs the cost of obtaining a surety bond will be outweighed by the benefits gained by participating in the Medicare program. Thus, the surety bond requirement should not result in substantial changes in the number of well-managed and appropriately-billing HHAs. Nonetheless, we are soliciting comments on surety bond amounts that would strengthen protection to the Medicare program and be cost effective.

We believe that 15 percent is a reasonable percentage on which to base the amount of the bond since it would not be too high as to be a barrier to entry for small entities, yet high enough to provide the Medicare Trust Fund with some recourse for compensation for debts owed to the program. We are interested in comments about the reasonableness of the 15 percent amount. However, if an HHA's overpayments in the most recently accepted annual cost report exceeds 15 percent of payments, Medicare may require the HHA to secure a bond up to or equal to the amount of the overpayment, provided the amount of the bond is not less than $50,000. We solicit comments on this approach.

A surety company charges its underwriting fee based on the amount of the bond. We have been advised by the Surety Association of America that for this type of surety bond the surety industry usually has an underwriting charge that ranges between $2 to $30 per thousand dollars of the face amount of the bond. However, we have also been advised by the Surety Association of America that, for such a bond as is required by this rule, the average cost is likely to be approximately $10 per thousand. Based on this average cost, Table 3 indicates the average cost of a surety bond in relation to the HHA's annual Medicare revenue.

Table 3 also indicates that the total costs of bonds would be approximately $22.5 million if all Medicare participating HHAs in 1996, including government-operated HHAs, purchased surety bonds. However, as stated earlier, the requirement is waived for an HHA operated by a Federal, State, local, or tribal government agency if, during the preceding 5 years, the HHA has not had any unrecovered Medicare overpayments or unpaid civil money penalties or assessments, and has not had any HCFA claims referred to the Department of Justice or the General Accounting Office because of nonpayment. Therefore the total cost of the surety bond requirement based on the number of HHAs in calendar year 1996 is approximately $18.4 million as illustrated in Table 4.

TABLE 3.—COST OF SURETY BOND

Dollars reimbursed	Number of HHAs	Reimbursement by range	Average reimbursement per HHA	Average amount of bond	Average cost of bond	Total cost of bonds
<50,000	744	14,801,083	19,894	50,000	[1] 500	372,000
50,001–100,001	452	33,825,800	74,836	50,000	[1] 500	226,000
100,001–200,000	735	107,909,794	146,816	50,000	[1] 500	367,500
200,001–334,000	767	202,035,624	263,410	50,000	[1] 500	383,500
334,001–1,000,000	2854	1,827,498,253	640,329	96,049	960	2,741,247
1,000,001–2,499,000	2406	3,810,798,797	1,583,873	237,581	2,376	5,716,198
2,500,000–5,000,000	939	3,256,036,561	3,467,558	520,134	5,201	4,884,055
5,000,001–10,000,000	415	2,827,979,666	6,814,409	1,022,161	10,222	4,241,969
10,000,001–20,000,000	103	1,356,573,414	13,170,616	1,975,592	19,756	2,034,860
20,000,001–30,000,000	20	462,520,233	23,126,012	3,468,902	34,689	693,780
30,000,001–40,000,000	6	207,852,076	34,642,013	5,196,302	51,963	311,778
40,000,001–50,000,000	2	95,830,624	95,830,624	14,374,594	143,746	287,492
50,000,001–150,000,000	0	0	0	0	0	0
>150,000,001	1	153,842,969	153,842,969	23,076,445	230,764	230,764
Totals	9444	14,357,504,894	1,520,278	228,042	2,280	22,491,145

[1] These costs represent the cost of the minimum bond required by BBA '97, section 4312(b).

Table 4 illustrates that there are approximately 1382 government-operated HHAs. If a government-operated HHA does not qualify for a waiver, it must obtain a surety bond and submit it to us. It is estimated government-operated HHAs would account for approximately $4 million of the Medicare surety bond program cost. If government-operated HHAs are waived then their surety bond costs are removed. The net cost to the industry is then approximately $18.4 million as illustrated in Table 4. We request comment on the accuracy of these estimates.

TABLE 4.—SURETY BOND COST BY WAIVING REQUIREMENT FOR GOVERNMENT-OPERATED HHAS

Total number of HHAs	Number of Govt. HHAs	Number of HHAs subject to bond	Total reimbursement of HHAs subject to bond	Average reimbursement per HHA	Average amount of bond	Average cost of bond	Total cost of bonds
9444	1382	8062	$12,256,481,236	$1,520,278	$228,042	$2,280	$18,384,722

We realize that surety bonds represent a new cost of approximately $18.4 million to HHAs that furnish services to Medicare beneficiaries. In addition, we note that the use of a percentage of the Medicare reimbursement method adds approximately $13.7 million more to the cost of bonds as compared to the cost that would be incurred by HHAs if they were subject only to the $50,000 minimum amount required under the law. However, we believe that the benefits to the Medicare program and Medicare beneficiaries outweigh these additional costs. Our fiscal intermediaries report that, currently, uncollected overpayments total over $150 million (based on 1996 data per Table 1). These funds are at risk of not being recovered because the HHAs responsible for these uncollected overpayments may be unwilling to repay these debts or may go (or may have already gone) out of business. We believe that if each HHA obtains a surety bond in an amount proportional to the amount of Medicare payments it receives, the Medicare program will increase its recoveries of uncollected overpayments, thereby reducing losses to the Trust Funds.

We project that there will not be any savings to the Trust Funds in fiscal year 1998 or 1999 because of the lengthy process of determining overpayments. In fiscal years 2000, 2001, and 2002, we estimate direct savings of $10 million, $20 million, and $20 million, respectively. Uncollected overpayments represented about .185 percent of total HHA payments in fiscal year 1993. We consider .185 percent the most reliable estimate because of the time lag discussed in collecting overpayments. We are estimating that the savings for each year is only half of this percentage because we do not know whether or not 15 percent of an agency's payments would cover all of their uncollectable overpayments. In addition, we believe that the sentinel effect of the surety bond, although indeterminable with any specificity, is likely to result in much higher savings to the Medicare Trust Funds beginning in fiscal year 1998.

c. Discussion of alternatives. We believe it was the Congress' intent to strengthen HHA standards to protect beneficiaries and the Medicare program from fraudulent and abusive billing practices, and to protect the Trust Funds from growing losses due to unrecoverable Medicare debts incurred by HHAs. Therefore, we did not choose the alternative of requiring, across-the-board, a surety bond in the minimum statutory amount of $50,000. Instead of relying on this amount for all HHAs, we have tied the bond amount to a percentage of each HHA's annual Medicare payments. We realize this policy choice increases the cost of obtaining a bond for all HHAs that receive more than $334,000 in Medicare payments annually. However, this policy choice also increases the protection the surety bond requirement gives to the Medicare Trust Funds. We solicit comments on this approach.

Although we are authorized to waive the surety bond requirement if an HHA provides a comparable surety bond under State law, with the exception of government-operated HHAs, we have not implemented that waiver authority in this rule. The limited amount of time available to us between the enactment of BBA '97 and the effective date of the surety bond requirement did not permit us sufficient time to effectively analyze the potential specifications of a general waiver provision. However, we are mindful that some States may already have, or may be considering implementing, surety bond requirements that could affect HHAs. Moreover, section 4724 of BBA '97 establishes a Medicaid surety bond requirement that the States will be implementing. We do not want to add unnecessary costs to HHAs that may be required to obtain multiple surety bonds. However, our principal concern is to safeguard the Medicare Trust Funds from the losses resulting from dramatically increasing unrecovered Medicare debts for which a growing number of HHAs are responsible. We solicit comments on useful standards and criteria for implementing a waiver of our surety bond requirements that would, nonetheless, maintain the same or a greater level of protection of the Medicare Trust Funds achieved by this rule.

Because of the short duration between when BBA '97 became law and the effective date of its surety bond provision, we had little time available to develop a surety bond rule. As such, we did not attempt to also develop and secure approval for a surety bond form to accompany this rule. Instead, as described previously, we have specified certain minimum requirements of an acceptable surety bond. However, our present intention is to develop such a form and to seek approval from the Office of Management and Budget for its use. The development of such a form may eliminate the need to state in regulation some of the various requirements of a surety bond for Medicare purposes and would furnish to HHAs, the surety industry, and our own fiscal intermediaries an unambiguous standard with respect to the required format of a Medicare surety bond. We solicit comments on the advisability of mandating the use of a HCFA-designed surety bond form. In addition, we solicit recommendations regarding the format and other features of a HCFA-designed surety bond form.

We have established that the Surety would be liable for unpaid civil money penalties, assessments imposed by us and for Medicare overpayments. We also considered including within the scope of the Surety's potential liability a guarantee of payment for unpaid civil money penalties and assessments that were imposed by the Office of the Inspector General. However, because of the short time period between when the BBA '97 was enacted and the effective date of the Surety bond provision, we were unable to fully consider this option. In addition, because of our unfamiliarity with surety bonds as a component of program administration, we believed that we did not fully understand how best to implement this option. We solicit comments on the advisability of including within the scope of the Surety's potential liability unpaid Office of Inspector General-imposed civil money penalties and assessments.

2. Medicaid Surety Bond Regulatory Impact Analysis

Section 4724(b) of the BBA '97 contains a requirement that HHAs obtain a surety bond in a minimum amount of $50,000. In addition to using the statutory minimum amount of the bond as a floor, we link the required amount of the surety bond to the amount of estimated Medicaid payments made to the HHA each year. We follow the same rationale used for tying the amount of the bond to Medicaid payments as Medicare uses for tying the amount of the bond to Medicare payments. Likewise, we believe that the effect of our rule will mirror the justification used for imposition of the bond requirement on participating Medicare HHAs.

This rule requires an HHA participating in Medicaid to have a surety bond in an amount that is the greater of $50,000 or 15 percent of annual Medicaid payments made to the HHA. However, we recognize the 15 percent standard may be insufficient for HHAs that incur large overpayments. Therefore, instead of applying the 15 percent standard to such HHAs, we may require a bond in a greater amount if the HHA's overpayments exceed that percentage of payments. In examining the impact that this final rule with comment period will have on Medicaid participating HHAs, we followed the same rationale and methodology that

was used for the determination of the impact of the surety bond requirement on Medicare participating HHAs. Likewise, we expect this rule to encourage some inefficient HHAs to reform their billing practices and to deter other HHAs from abusive billing practices and from defrauding the Medicaid program. Our analysis is based on the information that there are virtually the same number of HHAs participating in Medicaid as there are in Medicare and that in 1995 total Medicaid payments for home health services amounted to approximately $1.9 billion.

We have estimated the average amount of Medicaid payment per HHA and on this amount have based the total cost of surety bonds for Medicaid participating HHAs. After excluding costs associated with government-operated HHAs that meet our waiver requirements, we estimate the total cost of surety bonds for Medicaid-participating HHAs to be approximately $4.8 million. Unlike the Medicare program, the Medicaid program savings are indeterminable because there is no data comparable to the overpayment data used to produce the Medicare estimates. However, combined with the sentinel effect, we believe the Medicaid savings will equal or exceed the modest cost estimated for the bonds.

Using the latest data available, the following tables show the total number of HHAs arranged by Medicaid payment, the total cost of surety bonds if all HHAs in the Medicaid program obtain a surety bond, and the cost of surety bonds if only non-government-operated HHAs in the Medicaid program had obtained a surety bond.

TABLE 1.—TOTAL NUMBER OF HHAS ARRANGED BY MEDICAID PAYMENT

Dollars paid	Number of HHAs
<50,000	2964
50,001–100,000	1750
100,001–150,000	1244
150,001–200,000	834
200,001–334,000	1217
334,001–1,000,000	1190
1,000,001–2,500,000	214
2,500,001–5,000,000	27
5,000,001–10,000,000	3
10,000,001–20,000,000	1
Totals	9444

TABLE 2.—COST OF SURETY BOND

Dollars reimbursed	Number of HHAs	Reimbursement by range	Average reimbursement	Average bond	Average cost	Total cost of bonds
>50,000	2964	$58,990,371	$19,902	$50,000	$500	$1,482,000
50,001–100,000	1750	129,314,787	73,894	50,000	500	875,000
100,001–150,000	1244	152,441,149	122,541	50,000	500	622,000
150,001–200,000	834	144,767,688	173,582	50,000	500	417,000
200,001–334,000	1217	310,906,680	255,470	50,000	500	608,500
334,001–1,000,000	1190	647,061,386	543,749	81,562	816	970,592
1,000,001–2,500,000	214	298,295,160	1,393,903	209,085	2,091	447,443
2,500,001–5,000,000	27	87,119,660	3,226,654	483,998	4,840	130,679
5,000,001–10,000,000	3	17,578,870	5,859,623	878,944	8,789	26,368
10,000,001–20,000,000	1	20,000,000	20,000,000	3,000,000	30,000	30,000
Totals	9444	1,866,475,751	197,636	59,400	594	5,609,582

TABLE 3.—EFFECT ON TOTAL COST OF BONDS BY WAIVING REQUIREMENT FOR GOVERNMENT–OPERATED HHAS

Total number of HHAs	Number of Govt HHAs	HHAs subject to bond	HHAs subject to bond reimbursement	Average reimbursement per HHA	Average amount of bond	Average cost of bond	Total cost of bonds
9444	1382	8062	$1,593,341,432	$197,636	$59,400	$594	$4,788,697

In our discussion of the Medicare surety bond requirement, we identified and invited comments on several alternative courses of action. These alternatives also apply to Medicaid, and we solicit comments on their application in that context.

3. Capitalization Regulatory Impact Analysis

The effect of the capitalization requirement in this rule will be to prevent HHAs that are undercapitalized from participating in the Medicare program. Also, as provided in 42 CFR 440.70(d), a home health agency for the Medicaid program means a public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare. Most HHAs participate in both the Medicare and Medicaid programs. However, even those HHAs that participate in Medicaid but not Medicare must meet the Medicare requirements. Therefore, the following discussion, which is directed to Medicare HHAs, must be read to apply to HHAs that seek participation in both programs or only in the Medicaid program.

We do not know if the capitalization requirement will have a significant economic impact on a substantial number of small entities. However, we believe that it will not adversely affect an HHA that is properly capitalized, that is, has sufficient operating funds to see it through the early months of operation until it develops a stream of revenue from Medicare, Medicaid, and other payers. An organization that is earnest in its attempt to be a financially sound provider of home health services under the Medicare program will already be properly capitalized without the need for Medicare to require such capitalization. Furthermore, the capitalization requirement is structured to minimize significant economic impact on new HHAs. Amounts that will be required for capitalization will be derived from actual experiences of new HHAs under Medicare, so we are confident that HHAs coming into the program should be incurring the same level of expenditures independently of our requirement. Therefore, the regulation simply captures as an entry requirement the amount of capital that

actual HHAs need to operate. Accordingly, its impact on an HHA that plans to succeed with due regard for appropriate quality of patient care and without resorting to fraudulent or abusive billing practices is negligible because the HHA would need to raise this much capital despite Medicare's requirement.

To the extent that any of the funds are not needed in operating the business during the first three months, the funds simply remain with the HHA. Furthermore, any possible impact that this requirement may have on HHAs entering the Medicare program is more than offset by savings to the Trust Funds in situations in which HHAs go out of business due to undercapitalization, leaving the program unable to recover overpayments.

Second, the requirement should not disproportionally affect small HHAs because the amount of capitalization is based on the new HHA's projected number of visits. Therefore, in determining the capitalization for three months, HCFA will expect that an HHA that projects 25,000 visits in the first year will need only one quarter of the capitalization of an HHA projecting 100,000 visits. Of course, if HCFA determines that a new HHA has under-projected its visits, HCFA will base the capitalization on the number of visits of other new HHAs in the program that are of comparable size to the HHA seeking to enter the program.

Finally, it is important to be clear that the need for this requirement is not solely related to financial concerns. Paramount to Medicare's concerns is the need for an HHA to provide quality care to its patients, including its Medicare patients. A lack of funds in reserve to operate the business until a stream of revenues can be established can seriously threaten the viability of the business. For a new HHA, any condition threatening the viability of the new business can adversely affect the quality of care to its patients and, in turn, the health and safety of those patients. That is, if lack of funds forces an HHA to close its business, to reduce staff, or to skimp on patient care services because it lacks sufficient capital to pay for the services, the overall well-being of the HHA's patients could be compromised. In fact, there could be the risk of serious ill effects as a result of patients not receiving adequate services. This capitalization requirement serves to greatly minimize that possibility.

If a new HHA for some reason cannot raise the capital necessary to meet Medicare's requirement and, therefore, is not permitted to enter the Medicare program, that clearly has an economic impact on the HHA. However, we believe that such an economic impact is necessary. If the HHA cannot raise the capital, the HHA is not beginning its business on a sound financial footing. In such a case, we find the likelihood of the HHA's being forced to reduce its patient care due to reduced patient care staff or even to go out of business too great for the Medicare program, and a risk that Medicare does not want to take. Quality care is too important to risk on an HHA that may perform poorly or go out of business due to undercapitalization.

We believe that many HHAs have recently entered the Medicare program undercapitalized and that, absent this rule, more would do so. As discussed above, this requirement will prevent that situation.

We believe that there is no reasonable alternative to this requirement. If an HHA is to provide quality care, it must be properly capitalized to do so.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

VIII. Waiver of Proposed Rulemaking

A. Surety Bond Rules

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of the finding and its reasons in the rule issued. We find good cause to waive the notice-and-comment procedure with respect to this rule because it is impracticable to employ such a procedure in this instance with respect to both the Medicare and Medicaid regulations, because it is unnecessary with respect to the Medicare regulations, and because the delay in promulgating both the Medicare and the Medicaid regulations would be contrary to the public interest.

Issuing a proposed rule with a comment period before issuing a final rule would be impracticable because the Congress has established a statutory deadline of January 1, 1998 for the implementation of the surety bond requirement (BBA '97, sections 4312(f)(2) and 4724(b)(2)). We cannot publish a proposed rule, followed by a final rule, and meet this statutory deadline. The urgency of the Congress to have us implement this requirement was underscored by its further mandate that HHA Medicare participation agreements must be amended by January 1, 1998. Further, because Federal Financial Participation (FFP) will not be available to States after January 1, 1998 for Medicaid home health services unless the surety bond requirement is met by Medicaid HHAs, and because it is necessary to tailor the requirement to the Medicaid program to address the differences between Medicare and Medicaid, it is necessary to issue a Medicaid rule by the statutory deadline. However, it would be impracticable to employ notice-and-comment procedures and accomplish these results. The only practical means of amending the Medicare participation agreements by the statutory deadline is by issuing this rule now as a final rule with comment period and deeming such agreements to be amended as of January 1, 1998 to incorporate the surety bond requirement. Similarly, the only practical means of tailoring the surety bond requirement to the Medicaid program so as to make FFP available for home health services by January 1, 1998 is by issuing this rule now as a final rule with comment period. Therefore, notice-and-comment procedures are impracticable for this rule with respect to both the Medicare and Medicaid surety bond regulations.

Issuing a proposed rule prior to issuing a final rule is also unnecessary with respect to the Medicare surety bond regulation because the Congress has provided that a Medicare rule need not be issued as a proposed rule before issuing a final rule if, as here, a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the enactment of the statute in which the deadline is contained (42 U.S.C. 1395hh(b)(2)(B), section 1871(b)(2)(B) of the Social Security Act). BBA '97 was enacted on August 5, 1997, less than 150 days from the statute's effective date for the surety bond requirement of

January 1, 1998. Therefore, notice-and-comment procedures are not necessary for the Medicare rule.

Issuing a notice of proposed rule before issuing a final rule would also be contrary to the public interest with respect to both the Medicare and Medicaid surety bond regulations because it would prevent us from complying with the statutory deadline imposed by the Congress, would delay significantly the implementation of an effective gatekeeping device to deter undercapitalized and unscrupulous home health operators from participating in the Medicare or Medicaid program, would delay significantly the implementation of fiscal guarantees on potentially hundreds of millions of dollars of Medicare and Medicaid overpayments, and would delay significantly the issuance of essential guidance to the home health industry, the surety industry, and the State Medicaid agencies. Conversely, if notice-and-comment procedures were employed in issuing this final rule with comment, the delay would leave the Medicare Trust Funds and other Federal Government funds vulnerable to a variety of fraudulent and abusive activities at a time when certain unscrupulous operators appear to have targeted the home health industry as a means to improperly obtain Medicare and Medicaid payment. (See, e.g., Department of Health and Human Services, Office of Inspector General report—Home Health: Problem Providers and Their Impact on Medicare, OEI–09–96–00110.) Therefore, for the foregoing reasons we find that, with respect to both the Medicare and Medicaid surety bond regulations, employing notice-and-comment procedures would be contrary to the public interest.

For these reasons, we find good cause to waive publishing a proposed rule and to issue this final rule with comment period. We invite written comments on this final rule and will consider comments we receive by the date and time specified in the **DATES** section of this preamble. Although we cannot respond to comments individually, if we change this rule as a result of our consideration of timely comments, we will respond to such comments in the preamble of the amended rule.

B. Capitalization

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of the finding and its reasons in the rule issued. We find good cause to waive the notice-and-comment procedure with respect to the capitalization requirements of this rule because the delay in promulgating this rule would be contrary to the public interest.

Issuing a notice of proposed rulemaking before issuing a final rule would be contrary to the public interest because to do so would permit HHAs that are undercapitalized, and therefore not adequately financially prepared to do business, to continue to enter into the Medicare and Medicaid programs. Preventing the participation in Medicare and Medicaid of undercapitalized HHAs will have an immediate positive effect in ensuring that a lack of capital will not affect care and will have an immediate sentinel effect on preventing further losses to the Medicare Trust Funds and other Federal funds due to the undercapitalization. The immediacy of this problem and the urgent need to correct it has been well documented.

In its July 1997 report, ''Home Health: Problem Providers and Their Impact on Medicare'' (OEI–09–96–00110), the OIG found that entrepreneurs are able to open and operate HHAs without fixed assets or startup costs, relying almost exclusively on Medicare for income and assets. It stated, in part:

> If it were not for Medicare accounts receivable, problem agencies would have almost nothing to report as assets. Agencies tend to lease their office space, equipment, and vehicles. They are not required by Medicare to own anything, and they are almost always undercapitalized. On average, cash on hand and fixed assets amount to only one-fourth of total assets for HHAs, while Medicare accounts receivable frequently equal 100 percent of total assets. These agencies are almost totally dependent on Medicare to pay their salaries and other operating expenses. For a home health agency, there are virtually no startup or capitalization requirements. In many instances, the problem agencies lease everything without collateral. They * * * do not even have enough cash on hand to meet their first payroll.

It is unacceptable that an HHA currently can enter the Medicare or Medicaid program with little or no reserves with which to operate. An HHA inadequately prepared to do business runs the risk of having to reduce staff or of going out of business pending receipt of a regular and continuous stream of patient care revenues. With this comes the risk of the HHA's providing inadequate care to its patients due to lack of staff or being forced to stop rendering patient care altogether. Equally importantly, a cash poor HHA limping along to provide patient care or an HHA that has gone out of business exposes Medicare and Medicaid to the risk of being unable to recover payments to the HHA which are later determined to be overpayments, resulting in a drain on the Medicare Trust Funds and other Federal funds.

Publishing this final rule with comment period requiring adequate capitalization for new HHAs prevents HHAs which are not financially prepared to do business from entering the Medicare or Medicaid program, thereby greatly reducing the attendant risk of inadequate care to patients and misuse of the Medicare Trust Funds and other Federal Government funds. Employing notice of proposed rulemaking procedures, on the other hand, would continue to permit financially ill-prepared HHAs to enter these programs. Permitting a situation to continue that can result in inadequate health care to an HHA's patients, thus potentially threatening the health and safety of those patients, as well as a situation that can result in the improper disbursement of monies from the Medicare Trust Funds and other Federal funds, is contrary to the public interest. Moreover, although there is currently a moratorium in effect on the entry of new HHAs into the Medicare program, a prolonged moratorium could, itself, eventually create a threat of reduced access to home health services in some markets. Therefore, ending the moratorium timely is also in the public interest. However, ending the moratorium before the capitalization requirement is established would be counterproductive. Therefore, the capitalization requirement should be implemented without significant delay, an objective not achievable if notice and comment procedures are employed. Therefore, HCFA believes that it would be contrary to the public interest to employ notice and comment procedures to implement the capitalization requirement.

For these reasons, we find good cause to waive notice and comment procedures and to issue this final rule with comment period. We invite written comments on this final rule and will consider comments we receive by the date and time specified in the **DATES** section of this preamble.

IX. Waiver of 30-Day Interim Period Before Rule Is Effective

We ordinarily make the effective date of a final rule at least 30 days after the publication of the rule in the **Federal Register**. However, the 30-day interim

period can be waived if an agency finds good cause for making the effective date of the rule earlier than 30 days after the publication of the rule and the agency publishes a brief statement with the rule of its findings and the reasons therefore.

We find good cause to make both the surety bond and the capitalization provisions of this rule effective January 1, 1998. For the reasons discussed above in VIII of this preamble ''Waiver of Proposed Rulemaking,'' i.e., because we find that making the rule effective after January 1, 1998 would be impracticable, unnecessary, and contrary to the public interest, we find good cause to waive the 30-day interim period for this rule. Therefore, we have made the effective date of this rule January 1, 1998.

Although we have waived the 30-day interim period, we invite written comments on this final rule with comment period. We will consider comments we receive by the date and time specified in the **DATES** section of this preamble.

X. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments received by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs-health, Medicaid

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

A. Part 413 is amended as follows:

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1861(v), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v), and 1395hh).

2. Section 413.92 is added to read as follows:

§ 413.92 Costs of surety bonds.

Costs incurred by a provider to obtain a surety bond required by part 489, subpart F of this chapter are not included as allowable costs.

PART 440—SERVICES: GENERAL PROVISIONS

B. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.70, paragraph (d) is revised as follows:

§ 440.70 Home health services.

* * * * *

(d) ''Home health agency'' means a public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare, including the capitalization requirements under § 489.28 of this chapter.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

C. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.10 is amended by redesignating paragraphs (h) through (k) as paragraphs (i) through (l), respectively and adding a new paragraph (h) to read as follows:

§ 441.10 Basis.

* * * * *

(h) Section 1903(i)(18) for the requirement that each home health agency provide the Medicaid agency with a surety bond (§ 441.16).

3. In § 441.15 a new paragraph (d) is added to read as follows:

§ 441.15 Home health services

* * * * *

(d) The agency providing home health services meets the capitalization requirements included in § 489.28 of this chapter.

§ 441.16 [Redesignated as § 441.17]

4. Section 441.16 is redesignated as § 441.17.

5. A new § 441.16 is added to read as follows:

§ 441.16 Home health agency requirements for surety bonds; Prohibition on FFP.

(a) *Definitions.* As used in this section, unless the context indicates otherwise—

Assets includes but is not limited to any listing that identifies Medicaid recipients to whom home health services were furnished by a participating or formerly participating HHA.

Participating home health agency means a ''home health agency'' (HHA) as that term is defined at § 440.70(d) of this subchapter.

Surety bond means one or more bonds issued by one or more surety companies under 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225, provided the bond otherwise meets the requirements of this section.

Uncollected overpayment means an ''overpayment,'' as that term is defined under § 433.304 of this subchapter, plus accrued interest, for which the HHA is responsible, that has not been recouped by the Medicaid agency within a time period determined by the Medicaid agency.

(b) *Prohibition.* FFP is not available in expenditures for home health services under § 440.70 of this subchapter unless the home health agency furnishing these services meets the surety bond requirements of paragraphs (c) through (l) of this section.

(c) *Basic requirement.* Except as provided in paragraph (d) of this section, each HHA that is a Medicaid participating HHA or that seeks to become a Medicaid participating HHA must—

(1) Obtain a surety bond that meets the requirements of this section and instructions issued by the Medicaid agency; and

(2) Furnish a copy of the surety bond to the Medicaid agency.

(d) *Requirement waived for Government-operated HHAs.* An HHA operated by a Federal, State, local, or tribal government agency is deemed to have provided the Medicaid agency with a comparable surety bond under State law, and is therefore exempt from

the requirements of this section if, during the preceding 5 years, the HHA has not had any uncollected overpayments.

(e) *Parties to the bond.* The surety bond must name the HHA as Principal, the Medicaid agency as Obligee, and the surety company (and its heirs, executors, administrators, successors and assignees, jointly and severally) as Surety.

(f) *Authorized Surety and exclusion of surety companies.* An HHA may obtain a surety bond required under this section only from an authorized Surety.

(1) An authorized Surety is a surety company that—

(i) Has been issued a Certificate of Authority by the U.S. Department of the Treasury in accordance with 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225 as an acceptable surety on Federal bonds and the Certificate has neither expired nor been revoked;

(ii) Has not been determined by the Medicaid agency to be an unauthorized Surety for the purpose of an HHA obtaining a surety bond under this section; and

(iii) Meets other conditions, as specified by the Medicaid agency.

(2) The Medicaid agency may determine that a surety company is an unauthorized Surety under this section—

(i) If, upon request by the Medicaid agency, the surety company fails to furnish timely confirmation of the issuance of, and the validity and accuracy of information appearing on, a surety bond that an HHA presents to the Medicaid agency that shows the surety company as Surety on the bond;

(ii) If, upon presentation by the Medicaid agency to the surety company of a request for payment on a surety bond and of sufficient evidence to establish the surety company's liability on the bond, the surety company fails to timely pay the Medicaid agency in full the amount requested up to the face amount of the bond; or

(iii) For other good cause.

(3) The Medicaid agency must specify the manner by which public notification of a determination under paragraph (f)(2) of this section is given and the effective date of the determination.

(4) A determination by the Medicaid agency that a surety company is an unauthorized Surety under paragraph (f)(2) of this section—

(i) Has effect only within the State; and

(ii) Is not a debarment, suspension, or exclusion for the purposes of Executive Order No. 12549 (3 CFR 1986 Comp., p. 189).

(g) *Amount of the bond.*

(1) *Basic rule.* The amount of the surety bond must be $50,000 or 15 percent of the annual Medicaid payments made to the HHA by the Medicaid agency for home health services furnished under this subchapter for which FFP is available, whichever is greater.

(2) *Computation of the 15 percent: Participating HHA.* The 15 percent is computed by the Medicaid agency on the basis of Medicaid payments made to the HHA for the most recent annual period for which information is available as specified by the Medicaid agency.

(3) *Computation of 15 percent: An HHA that seeks to become a participating HHA by obtaining assets or ownership interest.* For an HHA that seeks to become a participating HHA by purchasing the assets or the ownership interest of a participating or formerly participating HHA, the 15 percent is computed on the basis of Medicaid payments made by the Medicaid agency to the participating or formerly participating HHA for the most recent annual period as specified by the Medicaid agency.

(4) *Computation of 15 percent: Change of ownership.* For an HHA that undergoes a change of ownership (as ''change of ownership'' is defined by the State Medicaid agency) the 15 percent is computed on the basis of Medicaid payments made by the Medicaid agency to the HHA for the most recent annual period as specified by the Medicaid agency.

(5) *An HHA that seeks to become a participating HHA without obtaining assets or ownership interest.* For an HHA that seeks to become a participating HHA without purchasing the assets or the ownership interest of a participating or formerly participating HHA, the 15 percent computation does not apply.

(6) *Exception to the basic rule.* If an HHA's overpayment in the most recent annual period exceeds 15 percent, the State Medicaid agency may require the HHA to secure a bond in an amount up to or equal to the amount of the overpayment, provided the amount of the bond is not less than $50,000.

(h) *Additional requirements of the surety bond.* The surety bond that an HHA obtains under this section must meet the following additional requirements:

(1) The bond must guarantee that, upon written demand by the Medicaid agency to the Surety for payment under the bond and the Medicaid agency furnishing to the Surety sufficient evidence to establish the Surety's liability under the bond, the Surety will timely pay the Medicaid agency the amount so demanded, up to the stated amount of the bond.

(2) The bond must provide that the Surety's liability for uncollected overpayments is based on overpayments that arise from Medicaid payments that are made by the Medicaid agency to the HHA during the term of the bond, regardless of when the overpayments are determined by the Medicaid agency or when the overpayments become uncollected overpayments.

(3) The bond must provide that the Surety's liability to the Medicaid agency is not extinguished by any of the following:

(i) Any action by the HHA or the Surety to terminate or limit the scope or term of the bond unless the Surety furnishes the Medicaid agency with notice of such action not later than 10 days after the date of notice of such action by the HHA to the Surety, or not later than 60 days before the effective date of the action by the Surety.

(ii) The Surety's failure to continue to meet the requirements of paragraph (f)(1) of this section or the Medicaid agency's determination that the surety company is an unauthorized surety under paragraph (f)(2) of this section.

(iii) Termination of the HHA's provider agreement described under § 431.107 of this subchapter.

(iv) Any action by the Medicaid agency to suspend, offset, or otherwise recover payments to the HHA.

(v) Any action by the HHA to—

(A) Cease operation;

(B) Sell or transfer any assets or ownership interest;

(C) File for bankruptcy; or

(D) Fail to pay the Surety.

(vi) Any fraud, misrepresentation, or negligence by the HHA in obtaining the surety bond or by the Surety (or by the Surety's agent, if any) in issuing the surety bond, except that any fraud, misrepresentation, or negligence by the HHA in identifying to the Surety (or to the Surety's agent) the amount of Medicaid payments upon which the amount of the surety bond is determined shall not cause the Surety's liability to the Medicaid agency to exceed the amount of the bond.

(vii) The HHA's failure to exercise available appeal rights under Medicaid or to assign such rights to the Surety (provided the Medicaid agency permits such rights to be assigned).

(4) The bond must provide that actions under the bond may be brought by the Medicaid agency or by an agent that the Medicaid agency designates.

(i) *Submission date and term of the bond.*

(1) Each participating HHA that is not exempted by paragraph (d) of this

section must submit to the Medicaid agency a surety bond as follows:

(i) *Initial term.* By February 27, 1998, effective for the term January 1, 1998, through a date specified by the State Medicaid agency.

(ii) *Subsequent terms:* By a date as the Medicaid agency may specify, effective for an annual period specified by the Medicaid agency.

(2) *HHA that seeks to become a participating HHA.*

(i) An HHA that seeks to become a participating HHA must submit a surety bond before a provider agreement described under § 431.107 of this subchapter can be entered into.

(ii) An HHA that seeks to become a participating HHA through the purchase or transfer of assets or ownership interest of a participating or formerly participating HHA must also ensure that the surety bond is effective from the date of such purchase or transfer.

(3) *Change of ownership.* An HHA that undergoes a change of ownership (as ''change of ownership'' is defined by the State Medicaid agency) must submit the surety bond to the State Medicaid agency by such time and for such term as is specified in the instructions of the State Medicaid agency.

(4) *Government-operated HHA that loses its waiver.* A government-operated HHA that, as of January 1, 1998, meets the criteria for waiver of the requirements of this section but thereafter is determined by the Medicaid agency to not meet such criteria, must submit a surety bond to the Medicaid agency within 60 days after it receives notice from the Medicaid agency that it does not meet the criteria for waiver.

(5) *Change of Surety.* An HHA that obtains a replacement surety bond from a different Surety to cover the remaining term of a previously obtained bond must submit the new surety bond to the Medicaid agency within 60 days (or such earlier date as the Medicaid agency may specify) of obtaining the bond from the new Surety for a term specified by the Medicaid agency.

(j) *Effect of failure to obtain, maintain, and timely file a surety bond.*

(1) The Medicaid agency must terminate the HHA's provider agreement if the HHA fails to obtain, file timely, and maintain a surety bond in accordance with this section and the Medicaid agency's instructions.

(2) The Medicaid agency must refuse to enter into a provider agreement with an HHA if an HHA seeking to become a participating HHA fails to obtain and file timely a surety bond in accordance with this section and instructions issued by the State Medicaid agency.

(k) *Evidence of compliance.*

(1) The Medicaid agency may at any time require an HHA to make a specific showing of being in compliance with the requirements of this section and may require the HHA to submit such additional evidence as the Medicaid agency considers sufficient to demonstrate the HHA's compliance.

(2) The Medicaid agency may terminate the HHA's provider agreement or refuse to enter into a provider agreement if an HHA fails to timely furnish sufficient evidence at the Medicaid agency's request to demonstrate compliance with the requirements of this section.

(l) *Surety's standing to appeal Medicaid determinations.* The Medicaid agency may establish procedures for granting or denying appeal rights to sureties.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

D. Part 489 is amended as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 489.1 is amended by adding a new paragraph (e) to read as follows:

§ 489.1 Statutory basis.

* * * * *

(e) Section 1861(o)(7) of the Act requires each HHA to provide HCFA with a surety bond.

3. In § 489.10, new paragraphs (e) and (f) are added to read as follows:

§ 489.10 Basic requirements.

* * * * *

(e) In order for a home health agency to be accepted, it must also meet the surety bond requirements specified in subpart F of this part.

(f) In order for a home health agency to be accepted as a new provider, it must also meet the capitalization requirements specified in subpart B of this part.

4. A new § 489.28 is added to read as follows:

§ 489.28 Special capitalization requirements for HHAs

(a) *Basic rule.* An HHA entering the Medicare program on or after January 1, 1998, including a new HHA as a result of a change of ownership, if the change of ownership results in a new provider number being issued, must have available sufficient funds, which we term ''initial reserve operating funds,'' to operate the HHA for the three month period after its Medicare provider agreement becomes effective, exclusive of actual or projected accounts receivable from Medicare or other health care insurers.

(b) *Standard.* Initial reserve operating funds are sufficient to meet the requirement of this section if the total amount of such funds is equal to or greater than the product of the actual average cost per visit of three or more similarly situated HHAs in their first year of operation (selected by HCFA for comparative purposes) multiplied by the number of visits projected by the HHA for its first three months of operation—or 22.5 percent (one fourth of 90 percent) of the average number of visits reported by the comparison HHAs—whichever is greater.

(c) *Method.* HCFA, through the intermediary, will determine the amount of the initial reserve operating funds using reported cost and visit data from submitted cost reports for the first full year of operation from at least three HHAs that the intermediary serves that are comparable to the HHA that is seeking to enter the Medicare program, considering such factors as geographic location and urban/rural status, number of visits, provider-based versus free-standing, and proprietary versus non-proprietary status. The determination of the adequacy of the required initial reserve operating funds is based on the average cost per visit of the comparable HHAs, by dividing the sum of total reported costs of the HHAs in their first year of operation by the sum of the HHAs' total reported visits. The resulting average cost per visit is then multiplied by the projected visits for the first three months of operation of the HHA seeking to enter the program, but not less than 90 percent of average visits for a three month period for the HHAs used in determining the average cost per visit.

(d) *Required proof of availability of initial reserve operating funds.* The HHA must provide HCFA with adequate proof of the availability of initial reserve operating funds. Such proof, at a minimum, will include a copy of the statement(s) of the HHA's savings, checking, or other account(s) that contains the funds, accompanied by an attestation from an officer of the bank or other financial institution that the funds are in the account(s) and that the funds are immediately available to the HHA. In some cases, an HHA may have all or part of the initial reserve operating funds in cash equivalents. For the purpose of this section, cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash and that

present insignificant risk of changes in value. A cash equivalent that is not readily convertible to a known amount of cash as needed during the initial three month period for which the initial reserve operating funds are required does not qualify in meeting the initial reserve operating funds requirement. Examples of cash equivalents for the purpose of this section are Treasury bills, commercial paper, and money market funds. As with funds in a checking, savings, or other account, the HHA also must be able to document the availability of any cash equivalents. HCFA later may require the HHA to furnish another attestation from the financial institution that the funds remain available, or, if applicable, documentation from the HHA that any cash equivalents remain available, until a date when the HHA will have been surveyed by the State agency or by an approved accrediting organization. The officer of the HHA who will be certifying the accuracy of the information on the HHA's cost report must certify what portion of the required initial reserve operating funds is non-borrowed funds, including funds invested in the business by the owner. That amount must be at least 50 percent of the required initial reserve operating funds. The remainder of the reserve operating funds may be secured through borrowing or line of credit from an unrelated lender.

(e) *Borrowed funds.* If borrowed funds are not in the same account(s) as the HHA's own non-borrowed funds, the HHA also must provide proof that the borrowed funds are available for use in operating the HHA, by providing, at a minimum, a copy of the statement(s) of the HHA's savings, checking, or other account(s) containing the borrowed funds, accompanied by an attestation from an officer of the bank or other financial institution that the funds are in the account(s) and are immediately available to the HHA. As with the HHA's own (that is, non-borrowed) funds, HCFA later may require the HHA to establish the current availability of such borrowed funds, including furnishing an attestation from a financial institution or other source, as may be appropriate, and to establish that such funds will remain available until a date when the HHA will have been surveyed by the State agency or by an approved accrediting organization.

(f) *Line of credit.* If the HHA chooses to support the availability of a portion of the initial reserve operating funds with a line of credit, it must provide HCFA with a letter of credit from the lender. HCFA later may require the HHA to furnish an attestation from the lender that the HHA, upon its certification into the Medicare program, continues to be approved to borrow the amount specified in the letter of credit.

(g) *Provider agreement.* HCFA does not enter into a provider agreement with an HHA unless the HHA meets the initial reserve operating funds requirement of this section.

5. A new subpart F is added to read as follows:

Subpart F—Surety Bond Requirements for HHAs

Sec.
489.60 Definitions.
489.61 Basic requirement for surety bonds.
489.62 Requirement waived for Government-operated HHAs.
489.63 Parties to the bond.
489.64 Authorized Surety and exclusion of surety companies.
489.65 Amount of the bond.
489.66 Additional requirements of the surety bond.
489.67 Submission date and term of the bond.
489.68 Effect of failure to obtain, maintain, and timely file a surety bond.
489.69 Evidence of compliance.
489.70 Effect of payment by the Surety.
489.71 Surety's standing to appeal Medicare determinations.
489.72 Effect of review reversing HCFA's determination.
489.73 Incorporation into existing provider agreements.

Subpart F—Surety Bond Requirements for HHAs

§ 489.60 Definitions.

As used in this subpart unless the context indicates otherwise—

Assessment means a sum certain that HCFA may assess against an HHA in lieu of damages under Titles XI, XVIII, or XXI of the Social Security Act or under regulations in this chapter.

Assets includes but is not limited to any listing that identifies Medicare beneficiaries to whom home health services were furnished by a participating or formerly participating HHA.

Civil money penalty means a sum certain that HCFA has the authority to impose on an HHA as a penalty under Titles XI, XVIII, or XXI of the Social Security Act or under regulations in this chapter.

Participating home health agency means a ''home health agency'' (HHA), as that term is defined by section 1861(o) of the Social Security Act, that also meets the definition of a ''provider'' set forth at § 400.202 of this chapter.

Surety bond means one or more bonds issued by one or more surety companies under 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225, provided the bond otherwise meets the requirements of this section.

Unpaid civil money penalty or assessment means a civil money penalty or assessment imposed by HCFA on an HHA under Titles XI, XVIII, or XXI of the Social Security Act, plus accrued interest, that, 90 days after the HHA has exhausted all administrative appeals, remains unpaid (because the civil money penalty or assessment has not been paid to, or offset or compromised by, HCFA) and is not the subject of a written arrangement, acceptable to HCFA, for payment by the HHA. In the event a written arrangement for payment, acceptable to HCFA, is made, an *unpaid civil money penalty or assessment* also means such civil money penalty or assessment, plus accrued interest, that remains due 60 days after the HHA's default on such arrangement.

Unpaid claim means a Medicare overpayment for which the HHA is responsible, plus accrued interest, that, 90 days after the date of the agency's notice to the HHA of the overpayment, remains due (because the overpayment has not been paid to, or recouped or compromised by, HCFA) and is not the subject of a written arrangement, acceptable to HCFA, for payment by the HHA. In the event a written arrangement for payment, acceptable to HCFA, is made, an *unpaid claim* also means a Medicare overpayment for which the HHA is responsible, plus accrued interest, that remains due 60 days after the HHA's default on such arrangement.

§ 489.61 Basic requirement for surety bonds.

Except as provided in § 489.62, each HHA that is a Medicare participating HHA, or that seeks to become a Medicare participating HHA, must obtain a surety bond (and furnish to HCFA a copy of such surety bond) that meets the requirements of this subpart F and HCFA's instructions.

§ 489.62 Requirement waived for Government-operated HHAs.

An HHA operated by a Federal, State, local, or tribal government agency is deemed to have provided HCFA with a comparable surety bond under State law, and HCFA therefore waives the requirements of this section with respect to such an HHA if, during the preceding 5 years the HHA has—

(a) Not had any unpaid claims or unpaid civil money penalties or assessments; and

(b) Not had any of its claims referred by HCFA to the Department of Justice or the General Accounting Office in

accordance with part 401 of this chapter.

§ 489.63 Parties to the bond.

The surety bond must name the HHA as Principal, HCFA as Obligee, and the surety company (and its heirs, executors, administrators, successors and assignees, jointly and severally) as Surety.

§ 489.64 Authorized Surety and exclusion of surety companies.

(a) An HHA may obtain a surety bond required under § 489.61 only from an authorized Surety.

(b) An authorized Surety is a surety company that—

(1) Has been issued a Certificate of Authority by the U.S. Department of the Treasury in accordance with 31 U.S.C. 9304 to 9308 and 31 CFR parts 223, 224, and 225 as an acceptable surety on Federal bonds and the Certificate has neither expired nor been revoked; and

(2) Has not been determined by HCFA to be an unauthorized Surety for the purpose of an HHA obtaining a surety bond under this section.

(c) HCFA determines that a surety company is an unauthorized Surety under this section—

(1) If, upon request by HCFA, the surety company fails to furnish timely confirmation of the issuance of, and the validity and accuracy of information appearing on, a surety bond an HHA presents to HCFA that shows the surety company as Surety on the bond;

(2) If, upon presentation by HCFA to the surety company of a request for payment on a surety bond and of sufficient evidence to establish the surety company's liability on the bond, the surety company fails to timely pay HCFA in full the amount requested, up to the face amount of the bond; or

(3) For other good cause.

(d) Any determination HCFA makes under paragraph (c) of this section is effective immediately when notice of the determination is published in the **Federal Register** and remains in effect until a notice of reinstatement is published in the **Federal Register**.

(e) Any determination HCFA makes under paragraph (c) of this section does not affect the Surety's liability under any surety bond issued by a surety company to an HHA before notice of such determination is published in accordance with paragraph (d) of this section.

(f) A determination by HCFA that a surety company is an unauthorized Surety under this section is not a debarment, suspension, or exclusion for the purposes of Executive Order No. 12549 (3 CFR, 1986 comp., p. 189).

§ 489.65 Amount of the bond.

(a) *Basic rule.* The amount of the surety bond must be $50,000 or 15 percent of the Medicare payments made by HCFA to the HHA in the HHA's most recent fiscal year for which a cost report has been accepted by HCFA, whichever is greater.

(b) *Computation of the 15 percent: Participating HHA.*

The 15 percent is computed as follows:

(1) For the initial bond—on the basis of Medicare payments made by HCFA to the HHA in the HHA's most recent fiscal year as shown in the HHA's most recent cost report that has been accepted by HCFA. If the initial bond will cover less than a full fiscal year, the computation of the 15 percent will be based on the number of months of the fiscal year that the bond will cover.

(2) For subsequent bonds—on the basis of Medicare payments made by HCFA in the most recent fiscal year for which a cost report has been accepted. However, if payments in the first six months of the current fiscal year differ from such an amount by more than 25 percent, then the amount of the bond is 15 percent of such payments projected on an annualized basis.

(c) *Computation of 15 percent: An HHA that seeks to become a participating HHA by obtaining assets or ownership interest.* For an HHA that seeks to become a participating HHA by purchasing the assets or the ownership interest of a participating or formerly participating HHA, the 15 percent is computed on the basis of Medicare payments made by HCFA to the participating or formerly participating HHA in the most recent fiscal year that a cost report has been accepted.

(d) *Change of ownership.* For an HHA that undergoes a change of ownership the 15 percent is computed on the basis of Medicare payments made by HCFA to the HHA for the most recently accepted cost report.

(e) *An HHA that seeks to become a participating HHA without obtaining assets or ownership interest.* For an HHA that seeks to become a participating HHA without purchasing the assets or the ownership interest of a participating or formerly participating HHA, the 15 percent computation does not apply.

(f) *Exception to the basic rule.* If an HHA's overpayment in the most recently accepted cost report exceeds 15 percent of annual payments, HCFA may require the HHA to secure a bond in an amount up to or equal to the amount of overpayment, provided the amount of the bond is not less than $50,000.

§ 489.66 Additional requirements of the surety bond.

The surety bond that an HHA obtains under this subpart must meet the following additional requirements:

(a) The bond must guarantee that within 30 days of receiving written notice from HCFA of an unpaid claim or unpaid civil money penalty or assessment, which notice contains sufficient evidence to establish the Surety's liability under the bond, the Surety will pay HCFA, up to the stated amount of the bond—

(1) The full amount of any unpaid claim, plus accrued interest, for which the HHA is responsible; and

(2) The full amount of any unpaid civil money penalty or assessment imposed by HCFA on the HHA, plus accrued interest.

(b) The bond must provide that the Surety's liability for unpaid claims and unpaid civil money penalties and assessments is based on—

(1) Medicare overpayments that arise from Medicare payments that are made by HCFA to the HHA during the term of the bond, regardless of when the overpayments are determined by HCFA or when the overpayments become unpaid claims; and

(2) Civil money penalties and assessments that HCFA imposes on the HHA during the term of the bond regardless of when it is determined that the civil money penalties or assessments are unpaid.

(c) The bond must provide that the Surety's liability to HCFA under the bond is not extinguished by any action of the HHA, the Surety, or HCFA, including but not necessarily limited to any of the following actions:

(1) Any action by the HHA or the Surety to terminate or limit the scope or term of the bond unless the Surety furnishes HCFA with notice of such action not later than 10 days after receiving notice of such action by the HHA, or not later than 60 days before the effective date of such action by the Surety.

(2) The Surety's failure to continue to meet the requirements of § 489.64(a) or HCFA's determination that the surety company is an unauthorized Surety under § 489.64(b).

(3) Termination of the HHA's provider agreement.

(4) Any action by HCFA to suspend, offset, or otherwise recover payments to the HHA.

(5) Any action by the HHA to—

(i) Cease operation;

(ii) Sell or transfer any asset or ownership interest;

(iii) File for bankruptcy; or

(iv) Fail to pay the Surety.

(6) Any fraud, misrepresentation, or negligence by the HHA in obtaining the surety bond or by the Surety (or by the Surety's agent, if any) in issuing the surety bond, except that any fraud, misrepresentation, or negligence by the HHA in identifying to the Surety (or to the Surety's agent) the amount of Medicare payments upon which the amount of the surety bond is determined will not cause the Surety's liability to HCFA to exceed the amount of the bond.

(7) The HHA's failure to exercise available appeal rights under Medicare or to assign such rights to the Surety.

(d) The bond must provide that actions under the bond may be brought by HCFA or by HCFA's fiscal intermediaries.

§ 489.67 Submission date and term of the bond.

(a) Each participating HHA that does not meet the criteria for waiver under § 489.62 must submit to HCFA, in such a form as HCFA may specify, a surety bond as follows:

(1) *Initial term:* By February 27, 1998, effective for the term beginning January 1, 1998 through the end of the HHA's fiscal year.

(2) *Subsequent terms:* Not later than 30 days before the HHA's fiscal year, effective for a term concurrent with the HHA's fiscal year.

(b) *HHA that seeks to become a participating HHA.*

(1) An HHA that seeks to become a participating HHA must submit a surety bond with its enrollment application (Form HCFA–855, OMB number 0938–0685). The term of the initial surety bond must be effective from the effective date of provider agreement as specified in § 489.13 of this part. However, if the effective date of the provider agreement is less than 30 days before the end of the HHA's current fiscal year, the HHA may obtain a bond effective through the end of the next fiscal year, provided the amount of the bond is the greater of $75,000 or 20 percent of the amount determined from the computation specified in § 489.65(c) as applicable.

(2) An HHA that seeks to become a participating HHA through the purchase or transfer of assets or ownership interest of a participating or formerly participating HHA must also ensure that the surety bond is effective from the date of such purchase or transfer.

(c) *Change of ownership.* An HHA that undergoes a change of ownership must submit the surety bond to HCFA not later than the effective date of the change of ownership and the bond must be effective from the effective date of the change of ownership through the remainder of the HHA's fiscal year.

(d) *Government-operated HHA that loses its waiver.* A government-operated HHA that, as of January 1, 1998, meets the criteria for waiver under § 489.62 but thereafter is determined by HCFA to not meet such criteria, must submit a surety bond to HCFA within 60 days after it receives notice from HCFA that it no longer meets the criteria for waiver.

(e) *Change of Surety.* An HHA that obtains a replacement surety bond from a different Surety to cover the remaining term of a previously obtained bond must submit the new surety bond to HCFA within 30 days of obtaining the bond from the new Surety.

§ 489.68 Effect of failure to obtain, maintain, and timely file a surety bond.

(a) The failure of a participating HHA to obtain, file timely, and maintain a surety bond in accordance with this subpart F and HCFA's instructions is sufficient under § 489.53(a)(1) for HCFA to terminate the HHA's provider agreement.

(b) The failure of an HHA seeking to become a participating HHA to obtain and file timely a surety bond in accordance with this Subpart F and HCFA's instructions is sufficient under § 489.12(a)(3) for HCFA to refuse to enter into a provider agreement with the HHA.

§ 489.69 Evidence of compliance.

(a) HCFA may at any time require an HHA to make a specific showing of being in compliance with the requirements of this Subpart F and may require the HHA to submit such additional evidence as HCFA considers sufficient to demonstrate the HHA's compliance.

(b) If requested by HCFA to do so, the failure of an HHA to timely furnish sufficient evidence to HCFA to demonstrate compliance with the requirements of this Subpart F is sufficient for HCFA to terminate the HHA's provider agreement under § 489.53(a)(1) or to refuse to enter into a provider agreement with the HHA under § 489.12(a)(3), as applicable.

§ 489.70 Effect of payment by the Surety.

A Surety's payment to HCFA under a bond for an unpaid claim or an unpaid civil money penalty or assessment, constitutes—

(a) Collection of the unpaid claim or unpaid civil money penalty or assessment (to the extent the Surety's payment on the bond covers such unpaid claim, civil money penalty, or assessment); and

(b) A basis for termination of the HHA's provider agreement under § 489.53(a)(1).

§ 489.71 Surety's standing to appeal Medicare determinations.

(a) A Surety shall have standing to appeal any matter that the HHA could appeal provided that:

(1) The Surety has made payment of all amounts owed to HCFA by the HHA, up to the amount of the bond.

(2) The HHA has assigned its right of appeal to the Surety.

(3) The Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA.

(b) Any assignment of appeal rights by the HHA to the Surety must be in writing and must include the right to appeal all issues contested with respect to the specified cost reporting period.

§ 489.72 Effect of review reversing determination.

In the event a Surety has paid HCFA on the basis of liability incurred under a bond obtained by an HHA under this subpart F, and to the extent the HHA that obtained such bond (or the Surety under § 489.71) is subsequently successful in appealing the determination that was the basis of the unpaid claim or unpaid civil money penalty or assessment that caused the Surety to pay HCFA under the bond, HCFA will refund to the Surety the amount the Surety paid to HCFA to the extent such amount relates to the matter that was successfully appealed by the HHA (or by the Surety), provided all review, including judicial review, has been completed on such matter. Any additional amounts owing as a result of the appeal will be paid to the HHA.

§ 489.73 Incorporation into existing provider agreements.

The requirements of this subpart F are deemed to be incorporated into existing HHA provider agreements effective January 1, 1998.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Hospital Insurance Program, and Program No. 93.778, Medical Assistance Program)

Dated: December 1, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 24, 1997.

Donna E. Shalala,

Secretary.

Note: The attached addendum will not appear in the Code of Federal Regulations.

BILLING CODE 4120–01–P

OMB Approval No. 0938-0685

Medicare
And Other Federal Health Care Programs
General Enrollment

Health Care Provider/Supplier Application

Privacy Act Statement

The Health Care Financing Administration (HCFA) is authorized to collect the information requested on this form in order to ensure that correct payments are made to providers and suppliers under the Medicare program established by Title XVIII of the Social Security Act. **See**, sections 1814 and 1815 of the Social Security Act for payment under Part A of Title XVIII [42 U.S.C. §§ 1395f(a)(1) and 1395g(a)] and section 1833(e) [42 U.S.C. § 1395l(e)] for payment under Part B. In addition, HCFA is required to ensure that no payments are made to providers or suppliers who are excluded from participation in the Medicare program under section 1128 of Title XVIII [42 U.S.C. § 1320a-70] or who are prohibited from providing services to the federal government under section 2455 of the Federal Acquisition Streamlining Act of 1994, (P.L. 103-355) [31 U.S.C. § 6101 note]. This information must, minimally, clearly identify the provider and its' place of business as required by the Budget Reconciliation Act of 1985 (P.L. 99-272) [42 U.S.C. § 9202(g)] and provide all necessary documentation to show they are qualified to perform the services for which they are billing.

The Debt Collection Improvement Act (DCIA) of 1996 (P.L. 104-134) [31 U.S.C. §§ 3720B-3720D] requires agencies to collect the Taxpayer Identification Number (either the Social Security Number or the Employer Identification Number) from all persons or business entities doing business with the federal government. Under section 31001(I)(1) of the DCIA [31 U.S.C. § 7701(c)(1)], the taxpayer identification number will be used to collect (including collection through use of offset) and report any delinquent amounts arising out of the business relationship with the Government. Therefore, collection of this data element is mandatory.

The purpose of collecting this information is to determine or verify the eligibility of individuals and organizations to enroll in the Medicare program as providers/suppliers of goods and services to Medicare beneficiaries and to assist in administration of the Medicare program and other Federal and State health care programs. All information on this form is required, with the exception of those sections marked as optional on the form. Without this information, the ability to make payments will be delayed or denied.

The information collected will be entered into either system number 09-70-0525 titled Unique Physician/Practitioner Identification Number (UPIN) System (published in the Federal Register in Vol. 61, no. 89, May 7, 1996), or the National Provider Identifier (NPI) System (OMB) approval 0938-0684 (R-187). The information in this application will be disclosed according to the routine uses described below.

Information from these systems may be disclosed under specific circumstances, to:

(1) Contractors working for HCFA to carry out Medicare functions, collating or analyzing data, or to detect fraud or abuse;
(2) A congressional office from the record of an individual health care provider in response to an inquiry from the congressional office at the written request of that individual health care practitioner;
(3) The Railroad Retirement Board for purposes of administering provisions of the Railroad Retirement or Social Security Acts;
(4) Peer Review Organizations in connection with the review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XVIII of the Social Security Act;
(5) To the Department of Justice or an adjudicative body when the agency, an agency employee, or the United States Government is a party to litigation and the use of the information is compatible with the purpose for which the agency collected the information. (6) To the Department of Justice for investigation and prosecuting violations of the Social Security Act to which criminal penalties attach;
(7) To the American Medical Association (AMA), for the purpose of attempting to identify medical doctors when the Unique Physician Identification Number Registry is unable to establish identity after matching contractor submitted data to the data extract provided by the AMA;
(8) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or to the restoration or maintenance of health;
(9) Other Federal agencies who administer a Federal health care benefits program to enumerate/enroll providers of medical services or to detect fraud or abuse;
(10) State Licensing Boards for review of unethical practices or nonprofessional conduct;
(11) States for the purpose of administration of health care programs; and/or
(12) Insurance companies, self insurers, health maintenance organizations, multiple employer trusts, and other health care groups providing health care claims processing, when a link to Medicare or Medicaid claims is established, and data are used solely to process provider's/supplier's health care claims.

The applicant should be aware that the Computer Matching and Privacy Protection Act of 1988, (P.L. 100-503) amended the Privacy Act, 5 U.S.C. § 552a, to permit the government to verify information through computer matching.

Protection of Proprietary Information

Privileged or confidential commercial or financial information collected on this form are protected from public disclosure by Federal law 5 U.S.C. 552(b)(4) and Executive Order 12600.

Protection of Confidential Commercial and/or Sensitive Personal Information

If any information within this application (or attachments thereto) constitutes a trade secret or privileged or confidential information (as such terms are interpreted under the Freedom of Information Act and applicable case law), or is of a highly sensitive personal nature such that disclosure would constitute a clearly unwarranted invasion of the personal privacy of one or more persons, then such information will be protected from release by HCFA under 5 U.S.C. § 552(b)(4) and/or (b)(6), respectively.

OMB Approval No. 0938-0685

MEDICARE AND OTHER FEDERAL HEALTH CARE PROGRAMS PROVIDER/SUPPLIER ENROLLMENT APPLICATION INSTRUCTIONS General Application - HCFA 855

Upon completion, return this application and all necessary documentation to:

General

This application must be completed by all providers and suppliers of medical and other health services for enrollment in the Medicare or any other federal health care program.

Some applicants may also need to be surveyed and/or certified by the appropriate State Agency or Regional Medicare Office when required to meet Medicare conditions of enrollment. In this case, those applicants must initially contact the State Agency or Regional Medicare Office prior to completion and submission of this application.

If you need assistance or have any questions concerning the completion of this application, contact your local Medicare or other federal health care contractor.

A separate application must be submitted for each classification of provider/supplier type (e.g., physician in private practice, physician in group practice) even if the different types of services are furnished within the same organization or entity (e.g., hospitals and all affiliated units).

Each entity of an organization must submit a separate application (e.g., hospital based skilled nursing facility, hospices, outpatient clinics, etc.). Each entity of a chain organization must submit a separate application.

Providers and/or suppliers enrolling in the Medicare or any other federal health care program as a group member, partner, or individual contractor who reassigns their Medicare or other federal health care program benefits to the enrolling applicant must also complete HCFA Form 855R (Individual Reassignment of Benefits Application).

Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies must enroll in the Medicare or any other federal health care program using HCFA Form 855S (DMEPOS Supplier Enrollment Application) instead of this application.

Note: Any changes in the information reported in this application must be reported to the Medicare or other federal health care contractor within 30 calendar days of said change.

Definitions

Authorized Representative: The appointed official who has the authority to enroll the entity in Medicare or other federal health care programs as well as to make changes and/or updates to the applicant's status, and to commit the provider/supplier to Medicare laws and regulations.

Chain Organization: Multiple providers and/or suppliers (chains) are owned, leased or through any other devices, controlled by a single business entity. The chain organization must consist of two or more health care facilities. The controlling business entity is called the chain "Home Office." Each entity in the chain may have a different owner (generally chains are not owned by the "Home Office").

Typically, the chain "Home Office:"

-maintains uniform procedures in each facility for handling admissions, utilization review, preparation and processing admission notices and bills;

-maintains and controls centrally, individual provider/supplier cost reports and fiscal records and a major part of the Medicare audit for each component can be performed centrally.

Examples of provider types that would typically be chain organizations are: Certified Outpatient Rehabilitation Facilities (CORFs); Skilled Nursing Facilities (SNFs); and Home Health Agencies (HHAs).

Clinical Laboratory Improvement Amendments (CLIA) Number : This number is assigned to laboratories who are certified by the Health Care Financing Administration (HCFA) under the Clinical Laboratory Improvement Amendments.

Note: Any laboratory soliciting or accepting specimens for laboratory testing is required to hold a valid certificate issued by the Secretary of the United States Department of Health and Human Services or hold a license from a CLIA exempt State.

Consolidated Cost Report: A cost report compiled for multiple facilities joined together and filed under the parent facility's Medicare Identification Number.

Contractor: Any individual, entity, facility, organization, business, group practice, etc., receiving an Internal Revenue Service (IRS) Form 1099 for services provided to this applicant (e.g., independent contractor, subcontractor).

Distinct Part Unit [of a facility]: A separate psychiatric, rehabilitation, or skilled nursing unit that is attached to a hospital paid under the Prospective Payment System (PPS) but which is paid on a cost reimbursement or other non-PPS basis. It must be a clearly identifiable unit, such as an entire ward, wing, floor, or building, including all the beds and related services in the unit, that meets all the requirements for a type of facility other than the one in which it is located, **and** houses all the beneficiaries and recipients for whom payment is made under Medicare for services in the other type of facility.

Food and Drug Administration Number (FDA): This is the certification number assigned by the FDA for equipment used in mammography screening and diagnostic services.

Group Member: A physician or non-physician practitioner who renders services in a group practice and who reassigns benefits to the group.

Independent Diagnostic Testing Facility (IDTF) (formerly Independent Physiological Laboratories (IPL's)): An entity independent of a hospital or physician's office in which diagnostic tests are performed by licensed, certified non-physician personnel under appropriate physician supervision (e.g., free standing cardiac catherization facility, imaging center, etc.).

Legal Business Name: The legal name of the individual or entity applying for enrollment. This name should be the same name the applicant uses in reporting to the Internal Revenue Service.

Medicaid Number: This number uniquely identifies the applicant as a Medicaid provider and/or supplier in a given State.

Medicare Identification Number: This number uniquely identifies the applicant as a Medicare provider and/or supplier and is the number used on claim forms. The Medicare Identification Number is also known as Medicare Provider Number and Provider Identification Number (PIN). Examples of Medicare Identification Numbers are the UPINs, OSCAR numbers, and NSC numbers.

Note: If the applicant is enrolling in the Medicare or other federal health care programs for the first time, the applicant will receive a Medicare or other federal health care program identification number upon enrollment.

National Provider Identifier (NPI): This number is assigned using the National Provider System to identify health care providers and/or suppliers. In the future, it will replace the Medicare Identification Number.

National Supplier Clearinghouse Number (NSC): This number uniquely identifies the applicant as a supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). It is the number used by DMEPOS suppliers on claim forms.

On-Line Survey Certification and Reporting System (OSCAR): National database used for maintaining and retrieving survey and certification data for certified providers and/or suppliers that are approved to participate in the Medicare, Medicaid and CLIA programs. OSCAR numbers are assigned by the Regional Medicare office.

Other Affiliated Units: Entities that are either a Provider Based Facility, a Distinct Part Unit, or file a consolidated cost report.

Provider Based Facility: Entities operating under the control of a parent organization (e.g., hospital based End Stage Renal Disease Unit, Skilled Nursing Facility, etc.).

Reassignee: An individual or organization that allows another organization to bill Medicare or other federal health care programs on their behalf for services rendered.

Unique Physician Identification Number (UPIN): This number is assigned to physicians, non-physician practitioners and groups to identify the referring or ordering physician on Medicare claims.

APPLICATION COMPLETION INSTRUCTIONS

Furnish all requested information in its entirety. If a field is not applicable, write N/A in the field. If entire section is not applicable, check the box at the beginning of the section indicating the entire section is not applicable. Any section of the application that does not have a check box at the beginning of the section indicating the entire section is not applicable must be completed by applicant.

Check Type of Business: (For administrative purposes only)

Check appropriate box indicating how applicant's business is structured. The answer to this item will not affect the amount of reimbursement or enrollment status.

> **Note:** If applicant's business structure is a **partnership,** applicant must provide a copy of its partnership agreement signed by all parties and identifying the general partner (if any) and attest that the partnership meets all State requirements. **Partnerships** see group instruction.

Check "Applicant Enrolling As" Type: (For administrative purposes only) The answer to this item will not affect the amount of reimbursement or enrollment status.

See the instructions below that identify which sections the applicant is responsible for completing.

Individual: An individual person enrolling as a physician, supplier or non-physician practitioner (e.g., physician, nurse, midwife, etc.).

> **Note:** An individual who is registered as a business is considered a sole proprietor for the purpose of completing this application and should not check this box.

> **Individuals** complete sections 1a, 1d, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, and 18.

Sole Proprietor: An individual person registered as a business and issued a tax identification number from the IRS and rendering services under the business name.

> **Sole Proprietors** complete sections 1a, 1b, 1d, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17 and 18.

Organization: A company, not-for-profit entity, governmental agency (Federal, State, or Local) or a qualified health care delivery system which renders medical care (e.g., pharmacy, equipment manufacturer, hospital, Public Health Clinic, laboratory, skilled nursing facility, Ambulance Service Supplier, Independent Diagnostic Testing Facility, etc.).

> **Organizations** complete sections 1b, 1d, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.

Ambulance Service Suppliers must also complete Attachment 1.

Independent Diagnostic Testing Facilities must also complete Attachment 2.

Home Health Agencies must also complete Attachment 3.

Group: Two or more physicians, non-physician practitioners or other health care providers/suppliers who form a practice together (as authorized by State law) and bill Medicare or other federal health care programs as a single unit. This excludes contracted physicians, contracted non-physician practitioners and other contracted health care providers/suppliers. A group has individual practitioners. The individual members must be enumerated and enrolled in the Medicare or other federal health care program as individuals in order to enroll as members of the group.

Only those health care practitioners who are authorized to bill Medicare or other federal health care programs directly in their individual capacities are allowed to form a group. A group can only be enrolled if it can meet the conditions for reassignment (see instructions for the Reassignment of Benefits section).

The above definition of a group is to be used for Medicare or other federal health care programs' enrollment purposes only. It is not the group definition described in section 1877(h) of the Social Security Act.

> **Groups/Partnerships** complete sections 1c, 1d, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17 and 18.

All group member/partners must complete HCFA Form 855R.

> **Note: PARTNERSHIPS:** For purposes of this application, partnerships should check that they are "enrolling as" a group.

> **Note: RURAL HEALTH CLINICS:** Rural Health Clinics that meet the definition of a group, should also submit HCFA Form 855R (Individual Reassignment of Benefits Application) for each member of the group. This is not applicable to those Rural Health Clinics that are provider based.

Mass Immunization Biller Only: A health care provider/supplier who roster bills Medicare or other federal health care programs solely for mass immunizations.

> **Mass Immunization/Roster Billers** complete sections 1a, 1b, 1d, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17 and 18.

> **Note:** Applicants enrolling in the Medicare or other federal health care program as mass immunization/roster billers cannot bill the Medicare or other federal health care program for any other services. The applicant agrees to accept assignment of the influenza/pneumococcus benefit as payment in full and cannot "balance bill" the beneficiary.

> For those who are only applying to enroll in the Medicare or other federal health care program to roster bill for mass immunization, enter "Roster" under primary speciality in Section 1A if applicant is an individual, or enter "Roster" under type of facility in Section 1B if applicant is an organization.

Check appropriate federal health care program:

If applicant is enrolling in a federal health care program other than Medicare, check the appropriate box. Check only one box. For each federal health care program in which the applicant wishes to enroll, the applicant must complete a separate enrollment application and submit it to that federal health care program.

Check Application For:

Initial Enrollment: Applicant is enrolling in the Medicare or other federal health care programs for the first time, or re-activating a prior Medicare billing number.

Enrollment of Additional Location(s): Currently enrolled provider/supplier is applying to enroll a new practice location.

Re-certification: Currently enrolled provider/supplier is completing application to comply with mandatory periodic re-survey and/or re-certification through the State agency or Regional Medicare Office.

Change of Ownership (CHOW): This term applies to certain limited circumstances as defined in 42 CFR § 489.18 as described below.

A new or prospective new owner must complete this application to report new or prospective new ownership. In addition, the applicant must also submit an Individual Reassignment of Benefits Application (HCFA Form 855R) identifying all individuals who will reassign their benefits to the applicant.

A change of ownership is defined as:

- In the case of a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable State law;
- In the case of an unincorporated sole proprietorship, transfer of title and property to another party;
- In the case of a corporation, the merger of the provider corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation (transfer of corporate stock or the merger of another corporation into the provider corporation does not constitute a change of ownership); and
- In the case of leasing, the lease of all or part of a DMEPOS supplier facility constitutes a change of ownership of the leased portion.

  Note: A currently enrolled provider/supplier who is reporting new information on the current owners (i.e., addition(s) or deletion(s) of owner(s)) which is not expected to result in a CHOW as defined above, must make the appropriate changes using the ownership information section of this application. This action is considered a change of information (see below).

Change of Information: Currently enrolled provider/supplier is completing applicable sections of the application to report a change in information other than a CHOW as defined above. Currently enrolled provider/suppliers can use HCFA Form 855C (Change of Information Form) to report changes in name, specialty, e-mail address, practice location address, billing agency address, pay to address, surety bond changes/renewals, mailing address, pricing locality, telephone number(s), fax number(s), deactivation of Medicare or other federal health care billing number(s), addition or deletion of authorized representatives, and potential termination of current ownership.

Changes not listed above must be reported using this application.

When using this application to notify the Medicare or other federal health care program that a practice location(s), owner(s), or various personnel are no longer associated with this entity, check the appropriate deletion box in the applicable section(s) and identify the practice location and/or personnel.

All changes must be reported in writing and have an original signature. For individuals, the applicant must sign and for organizations and group practices, an "Authorized Representative" must sign to confirm the requested change(s). Faxed or photocopied signatures will **not** be accepted.

Check Where Applicant Will Be Submitting Bills:

MEDICARE APPLICANTS ONLY

Fiscal Intermediary: Applicant will be enrolled to bill the fiscal intermediary only. The fiscal intermediary is generally known as the Part A Medicare Contractor. The applicant will generally be a hospital or other health care facility.

Carrier: Applicant will be enrolled to bill the carrier only. The carrier is generally known as the Part B Medicare Contractor. The applicant will generally be a physician or non-physician practitioner.

Both: Applicant's application will automatically be forwarded to bill both the fiscal intermediary and the carrier for enrollment consideration.

Regional Home Health Intermediary: Applicant will be enrolled to bill the regional home health intermediary.

Check other federal health care program(s) where applicant is currently enrolled:

If applicant is currently enrolled in any other federal health care program(s), check all appropriate boxes.

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1. Applicant Identification

A. Individuals Only

Complete all items in this section if applicant plans to bill the Medicare or other federal health care program as an individual practitioner.

If an individual or sole proprietorship, complete applicant's full name (this is the name payment will be made in), date and place of birth (county and/or city). If applicant has previously practiced or operated a business under another name, including applicant's maiden name, supply that name under Other Name.

If applicant is a resident or intern at a hospital, check appropriate box.

If applicant is enrolling as an individual or sole proprietor, furnish the applicant's primary speciality (e.g. cardiologist, pathologist, nurse practitioner, etc.). Designation of a secondary speciality is optional.

Gender and Race/Ethnicity information is optional. This data will only be used to assist HCFA in uniquely identifying the applicant.

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A. Individuals Only (continued)

If applicant is employed by an entity that will receive payments for the applicant's services, applicant must complete and sign the HCFA Form 855R (Individual Reassignment of Benefits Application).

B. Organizations Only

Complete this section if applicant is a sole proprietor of the business or if applicant is a publicly or privately held business entity.

Complete all items in this section. For Legal Business Name, supply the name that the business, organization or group practice reports to the IRS (this is the name payment will be made in). For Type of Facility give the classification that designates the entity (e.g., hospital, skilled nursing facility, home health agency, ambulance company, etc.), and check whether this facility is accredited or non-accredited.

> **Note:** Clinical laboratories and independent diagnostic testing facilities should annotate this section "LABORATORY" (LAB).

All organizations must identify if they are considered a Provider Based Facility, a Distinct Part Unit, or file a consolidated cost report under another provider/supplier Medicare identification number. If an organization is a Distinct Part Unit, then the organization also falls under the broader category of Provider Based Facility.

If the organization is a:

-Provider Based Facility;
-Distinct Part Unit;
-or files a consolidated cost report,

then the organization must provide the name and Medicare identification number of their parent provider.

> **Note:** The final determination as to whether an entity is truly a Provider Based Facility will be made by HCFA prior to completion of the enrollment process.

In addition to the parent provider relationship described above, the organization must identify how many Provider Based Facilities, Distinct Part Units, Branches, or Multi-campus sites the organization is responsible for. For each of those locations identified, the Practice Location(s) section of this application must be completed.

If applicant receives payment from Medicare or any other federal health care agency for any services rendered by a contractor, when permitted by Medicare or other federal health care program requirements, the contractor must complete and sign the HCFA Form 855R (Individual Reassignment of Benefits Application).

C. Physician and Non-Physician Practitioner Groups Only

Complete all items in this section. Furnish the group's legal business name. This should be the legal name used in reporting to the IRS. Furnish the group's primary specialty (the primary specialty of the majority of the group's members). Designation of a secondary specialty is optional. All group members who the group will be billing the Medicare or other federal health care program in their behalf, must be individually enrolled in the given Medicare or other federal health care program.

> **Note:** The group's members must be enrolled within the same federal health care program as the group enrollment. Otherwise, the group member must enroll separately as an individual in the group's federal health care program prior to becoming a member of that group practice.

Each group member must complete and sign the HCFA Form 855R (Individual Reassignment of Benefits Application).

> **Note: PARTNERSHIPS**: When completing this section, provide legal business name of partnership, date partnership was incorporated, and the State where the partnership is incorporated. Place "n/a" in the specialty block.

D. All Applicants

Provide applicant's mailing address. This is where the applicant can receive correspondence and bulletins from Medicare or other federal health care program contractors. This address may be the applicant's home address or a Post Office Box. Applicant must supply fax number and e-mail address if available. If applicable, provide applicant's previously assigned Medicare Identification Number(s) and the name(s) of the Carrier and/or Fiscal Intermediary to which applicant most recently submitted bills using this number. If applicable, provide applicant's most recent Medicaid number and the State in which it was issued. Applicant must provide his/her Social Security Number and when applicable, his/her Employer Identification Number(s).

> **Note:** All applicants **must** provide either their Social Security Number and/or, when applicable, their Employer Identification Number (EIN). **If applicant uses more than one EIN, list all, starting with the EIN(s) currently used or to be used for tax reporting purposes relating to this application. Attach a copy of IRS Form CP 575 to verify the applicant's EIN.**

Applicant must answer all questions related to criminal activity. Answering "yes" to any of these questions will not automatically deny enrollment into Medicare or other federal health care programs. For purposes of these questions related to criminal activity, an "immediate family member" of the applicant is defined as:

- a husband or wife;
- the natural or adoptive parent, child or sibling;
- the stepparent, stepchild, stepbrother or stepsister;
- the father, mother, daughter, son, brother or sister;
- parent-in-law, brother-in-law or sister-in-law;
- the grandparent or grandchild; and
- the spouse of a grandparent or grandchild.

For purposes of these questions related to criminal activity, "member of household" with respect to the applicant is defined as any individual sharing a common abode as part of a single family unit with the applicant, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.

2. Professional and Business License, Certification, and Registration Information

All applicants are required to furnish information on all Federal, State and local (city/county) professional and business licenses, certifications and/or registrations required to practice as applicant's provider/supplier type in applicant's State (e.g. State medical license for physician, State certification and/or registration for Nurses, Federal DEA number, Business Occupancy License, local business license, etc.). The local Medicare or other federal health care contractor will supply specific credentialing requirements for applicant's provider/supplier type upon request.

Notarized or "certified true" copies of the above information are optional, but will speed the processing of this application.

> **Notarized:** A notarized copy of an original document that will have a stamp which states "Official Seal" along with the name and signature of the notary public, State, County, and the date the notary's commission expires.
>
> **Certified True:** This is a copy of the original document obtained from where it originated or is stored, and it has a raised seal which identifies the State and County in which it originated or is stored.

In lieu of copies of the above requested documents, the applicant may submit a notorized or "cretified true" Certificate of Good Standing from the applicant's State licensing/certification board or other medical association. This certificate cannot be more than 30 days old.

Non-physician practitioners who must meet Medicare or other federal health care program requirements for professional experience should submit evidence of practice and the dates of employment.

If applicant's enrollment requires a State survey and/or certification, the applicant is required to forward copies of State survey and/or certification documents to the Medicare or other federal health care contractor once they are received from the State agency or Regional Medicare Office.

> **Note:** Temporary licenses are acceptable submissions with this application. However, once received, a copy of the applicant's permanent license must be forwarded to the Medicare or other federal health care program contractor within 30 days of receipt.

If applicant's State licensure is dependent upon State survey and/or certification, check applicable box and furnish information on all other required licensing information.

> **Note:** A business license is required for each practice location.

If applicant had a previously revoked or suspended license, certication, or registration reinstated, attach a copy of the reinstatement notice(s) with this application, if applicable.

3. Professional School Information (Individuals Only)

If applicable, supply information about the educational institution from which applicant received medical, professional, or related degree or training as required by applicant's State. Enclose copies of diploma, degree or evidence of qualifying course work.

Non-physician practitioners who must meet HCFA or other federal health care program requirements for education must provide documentation of courses or degrees taken that satisfy Medicare or other federal health care program requirements. Contact the local Medicare or other federal health care program representative for requirements needed for applicant's provider/supplier type.

4. Board Certification

If applicant is Board Certified, furnish requested information for each Board Certification obtained by the applicant.

5. Exclusion/Sanction Information

Supply all requested information, and, if applicable, attach a clear copy of the applicant's reinstatement letter(s).

6. Practice Location(s)

Provide all information requested for each location where applicant will render services to Medicare or other federal health care program beneficiaries.

Individual practitioners should include all hospitals and/or other health care facilities where they render service or have privileges to treat patients. Individual practitioners who only render services in the patient's home (house calls) should supply his/her home address in this section. If individual practitioners render services in retirement or assisted living communities, complete this section using the names and addresses of these communities.

Hospitals must list all off-site clinics, distinct part units, and provider based facilities (e.g., skilled nursing facility, rural health clinic, etc.) and multi-campus sites.

Home health agencies and hospices must list all branches.

> **Note:** Listing the facilities, clinics, units, and multi-campus sites controlled by a hospital or other entity does not automatically enroll them in the Medicare or other federal health program. The HCFA Form 855 (General Enrollment Application) must also be completed for each of these entities.

Post Office boxes and drop boxes are **not** acceptable as practice location addresses. The phone number must be a number where patients and/or customers can reach the applicant to ask questions or register complaints.

Furnish the "Pay To" address for payment of services rendered at this practice location. Payments will be made in the legal business name that the individual, organization, or group/partnership uses to report to the IRS, as reported in Section 1 of this application. In most circumstances, payment will be made in the name of the individual who furnished the service unless a valid Reassignment of Benefits Statement has been completed. The "Pay To" address may be a Post Office box.

Furnish the name and social security number of the primary managing/directing employee of this practice location.

If applicable, provide the CLIA number or FDA certification number associated with each piece of equipment at each practice location and submit a copy of the most current certification.

6. Practice Location(s) (continued)

Indicate whether patient records are kept on the premises. If not, supply the name of the storage facility/location and the physical address where the records are maintained. Post Office boxes and drop boxes are **not** acceptable as the physical address where patient records are maintained.

7. Prior Practice Information

FOR MEDICARE ENROLLMENT ONLY

If applicant has previously billed Medicare or Medicaid, supply requested information about the prior practice. Indicate whether applicant was a participating or non-participating provider/supplier in the prior practice.

8. Ownership Information

Complete this section for all individuals and/or entities who have an ownership or control interest in the applicant's business/entity. If owner is an individual, complete owner name, social security number and employer identification number. If applicant is owned by another entity, complete legal business name and employer identification number. Entities with ownership interest must provide their legal business name(s).

A person or entity with an ownership or control interest is one that:

- has an ownership interest totaling 5 percent or more in the provider/supplier;
- has a direct, indirect, or combination of direct and indirect ownership interest equal to 5 percent or more in the provider/supplier, where the amount of an indirect ownership interest is determined by multiplying the percentages of ownership in each entity (for example, if A owns 10 percent of the stock in a corporation that owns 80 percent of the provider/supplier, A's interest equates to an 8 percent indirect ownership interest in the provider/supplier and must be reported);
- owns an interest of 5 percent or more in any mortgage, deed of trust, note or other obligation secured by the provider/supplier if that interest equals at least 5 percent of the value of the property or assets of the provider/supplier;
- is an officer or director of a provider/supplier that is organized as a corporation; and/or
- is a partner in a provider/supplier that is organized as a partnership.

Supply all requested information about the owner's past and present billing relationships with Medicare. Furnish past history for the last 10 years. If data is not known or is incomplete, check the appropriate box.

Supply all requested sanction information, and, if applicable, attach a clear copy of the owner's reinstatement letter(s).

Attach a copy of the applicant's IRS Form CP 575 pertaining to this business. The IRS Form CP 575 will be used to verify the employer identification number (EIN). In lieu of the IRS Form CP 575, the applicant may use any official correspondence, such as the quarterly tax payment coupon, from the IRS showing the name of the entity as shown on this application and the EIN.

9. Managing/Directing Employees

Complete this section for all managing and/or directing employees, employed by the applicant. This section should include, but is not limited to, general manager(s), business manager(s), administrator(s), director(s), or other individuals who exercise operational or managerial control over the provider/supplier, or who directly or indirectly conduct the day-to-day operations of the applicant.

> **Note:** This section **is not** to be completed with information about billing agency or management service organization employees. If applicant uses a billing agency or management service organization, complete the appropriate section of this application.
>
> **Note:** Non-profit organizations should complete this section with information about the members on the Board of Directors and the managing and/or directing employees and submit a copy of the 501(C)(3) approval notification from the IRS.
>
> **Note:** For large business organizations, furnish only the top 20 compensated managing and/or directing personnel. Social security numbers must be provided for all persons listed in this section.

Applicant must include all managing and/or directing employees for each practice location. Organizations must also complete this section for all corporate officers. Include the name(s) and address(es) of all practice location(s) where this employee manages and/or directs.

Supply all requested information about the managing and/or directing employee's past and present billing relationships with Medicare or other federal health care programs.

Supply all requested information about other entities this managing and/or directing employee managed or directed that previously billed or are presently billing the Medicare or other federal health care programs. Furnish past history for the last 10 years. If data is not known or is incomplete, check the box indicating this.

Supply all requested information about other entities this managing and/or directing employee had ownership interest in that previously billed or are presently billing the Medicare or other federal health care programs. Furnish past history for the last 10 years. If data is not known or is incomplete, check the appropriate box.

Supply requested sanction information, and if applicable, attach a copy of the managing and/or directing employee's reinstatement letter(s).

10. Parent/Joint Venture or Subsidiary Information

If applicant is a subsidiary (wholly or partially owned by another organization or business), or a joint venture (equally owned by another individual(s), organization(s) or business(s)), complete all information requested in this section about the parent company or joint venture. Attach a copy of the parent company's or other owner's IRS Form CP 575 pertaining to this business.

11. Chain Organization Information

When applicable, this section to be completed by Medicare Part A Institutional provider/suppliers ONLY. This includes all institutional chain provider/suppliers that bill fiscal intermediaries (e.g., Home Health Agencies and Skilled Nursing Facilities).

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11. Chain Organization Information (conitnued)

If applicant is in a chain organization, check appropriate action block for this chain, then supply all information requested about the chain home office.

12. Contractor Information (Business Organizations)

This section is to be completed with information about any business organization that the applicant contracts with that:

- provides medical or diagnostic services or medical supplies for which the cost or value is $10,000 or more in a 12 month period; OR
- will reassign benefits to the applicant, regardless of annual cost or value of medical or diagnostic services or supplies provided.

Note: Individual contractors with whom the applicant does business and who will reassign benefits to the applicant must complete the HCFA Form 855R (Individual Reassignment of Benefits Application).

Provide all requested information about the contractor's past and present billing relationships with Medicare or Medicaid.

Furnish all requested sanction information about the contractor(s), and, if applicable, attach a clear copy of the contractor's reinstatement letter(s).

If a business or group contractor will be reassigning Medicare benefits to the applicant, an authorized representative must complete and sign the Reassignment of Benefits section. For additional information concerning Federal requirements for reassignment see instructions below.

If a currently enrolled provider/supplier is obtaining the services of a new contractor that will be reassigning their benefits, complete only the Application Identification section, the Contractor Information section and the Reassignment of Benefits Statement.

13. Reassignment of Benefits Statement

In general, Medicare and other federal health care programs make payment only to the beneficiary or the individual or entity that directly provides the service.

If the applicant receives payment on behalf of other business organizations for services provided, that other business organization must complete and sign the Reassignment of Benefits Statement. Failure to do so will cause a delay in processing the application and limit the Medicare or other federal health care program contractor's ability to make payment.

Note: The reassignee is permitted by Federal law to reassign Medicare benefits to an employer, the facility in which the reassignee provides services, or to a health care delivery system. For further information on Federal requirements on reassignment of benefits the applicant should contact the local Medicare or other federal health care program contractor before signing the application.

Any individual practitioner, including individual contractors and group members, who reassign Medicare or other federal health care program benefits to the applicant must complete the HCFA Form 855R.

Individual practitioners who are contracted by the applicant, but do not reassign their benefits to the applicant do not need to complete the HCFA Form 855R.

14. Billing Agency/Management Service Organization Address

A Billing Agency is a company contracted by the applicant to furnish all claims processing functions for the applicant's practice.

A Management Service Organization is a company contracted by the applicant to furnish some or all administrative, clerical and claims processing functions of the applicant's practice.

If the applicant currently uses or will be using a billing agency and/or management service organization to submit bills, complete all requested information and attach a current copy of the signed contract between the applicant and the billing agency or management service organization.

Note: If applicant uses a billing agency and/ or management service organization but no written contract exists between applicant and billing agency and/or management service organization, a contract must be written and furnished with this application.

Any change in the contract between the applicant and the billing agency and/or management service organization must be reported to the Medicare or other federal health care program contractor within 30 calendar days of said change.

15. Electronic Claims Submission Information

If applicant plans to submit bills electronically, or would like information about electronic billing, supply a contact name and phone number. The Medicare or other federal health care program contractor will be in contact with further instructions about qualifying for electronic billing submissions.

Note: Electronic Funds Transfer can only be made into an account controlled exclusively by the applicant.

16. Surety Bond Information

If applying to the State Medicaid program, do not complete this section for submission of Medicaid surety bond information.

Complete all requested information.

Annual surety bond renewals must be reported to the Medicare or other federal health care program contractor using HCFA Form 855C (Change of Information Form).

An original copy of the surety bond must be submitted with this application. Failure to submit a copy of the surety bond will prevent the processing of this application. In addition, the applicant must obtain and submit a certified copy of the agent's Power of Attorney with this application, if the bond is issued by an agent.

17. Contact Person

Provide the full name and telephone number of an individual who can be reached to answer questions regarding the information furnished in this application.

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18. Certification Statement

This statement includes the minimum standards to which the applicant must adhere to be enrolled in Medicare or other federal health care programs. Read these statements carefully.

By signing the certification statement, the applicant agrees to adhere to all the conditions listed and is aware that the applicant may be denied entry to or revoked from the program if any condiditons are violated. The certification statement must contain an original signature. Faxed or photocopied signatures will not be accepted.

Note: If applicant is applying as an individual or sole proprietor, **applicant** must sign and date the Certification Statement. If applicant is applying as an organization or as a group practice, **an authorized representative of the organization/group practice** must sign the Certification Statement. If applicant has more than one authorized representative, furnish the names and signatures of those authorized representatives who will be directly involved with the Medicare or other federal health care contractors.

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Attachment 1 Ambulance Service Suppliers

This attachment is to be completed by the applicant for each ambulance service company being enrolled in the Medicare or other federal health care program.

1. State License Information

If applicant is currently State licensed and certified to operate as an ambulance service supplier, complete this section and attach copy(s) of all State licenses and documents.

A copy of applicant's current license or certificate must be attached to this form. The effective date and expiration date must be stated on the license or certificate. Claims will be paid based on these dates. The applicant must provide this office with a copy of the renewal license in order to receive payment after the expiration date.

2. Description of Vehicle(s)

Applicant must identify the type (e.g., automobile, aircraft, boat) of each vehicle, and furnish year, make, model, and vehicle identification number.

The applicant's vehicle(s) must be specially designed and equipped for transporting the sick or injured. It must have customary patient care equipment including, but not limited to, a stretcher, clean linens, first aid supplies and oxygen equipment, and it must have all other safety and lifesaving equipment as required by State and local authorities. If the ambulance will supply Advanced Life Support services, list all the necessary equipment and provide documentation of certification from the authorized licensing and regulation agency for applicant's area of operation.

Vehicles must be regularly inspected and recertified according to applicable State and local licensure laws. Evidence of recertification must be submitted to the Medicare or other federal health care program contractor on an ongoing basis, as required by State or local law.

Note: Air Ambulance

To qualify for air ambulance, the following is required:

- a written statement that gives the name and address of the facility where the aircraft is hangared signed by the President, Chief Executive Officer, or Chief Operating Officer of the airport; and
- proof that the air ambulance applicant or its leasing company possess a valid charter flight license (FAA 135 Certificate) for the aircraft being used as an air ambulance. If the air medical transportation company owns the aircraft, the owner's name on the FAA 135 Certificate must be the same as the applicant's name on this enrollment application. If the air medical transportation company leases the aircraft, a copy of the lease agreement must accompany this enrollment application. The name of the company leasing the aircraft must be the same as the applicant's name on this enrollment application.

3. Qualification of Crew

The ambulance crew must consist of at least two members. Those crew members charged with the care or handling of the patient must include one individual with adequate first aid training, (i.e., training at least equivalent to that provided by the basic and advanced Red Cross first aid courses). If the ambulance crew will provide ALS services, they must list their ALS training courses.

Training "equivalent" to the basic and advanced Red Cross first aid courses include ambulance service training and experience acquired in military service and/or successful completion by the individual of a comparable first aid course furnished by or under the sponsorship of State or local authorities, an educational institution, a fire department, a hospital, a professional organization, or other such qualified organization.

Applicant must enclose a certificate(s) showing that crew members have successfully completed the required first aid training, or give a description of the equivalent military training, where and when it was received. Crew must continue to pursue and complete continuing education requirements in accordance with State and local licensure laws. Evidence of recertification must be submitted to the Medicare or other federal health care program contractor on an ongoing basis, as required by State and local law.

4. Billing Method

FOR MEDICARE ENROLLMENT ONLY

Answer all applicable questions regarding billing methods. Supply the name of the Medical Director and the geographic area the applicant services.

Note: Paramedic Intercept Services:

- A basic life support (BLS) ambulance supplier may arrange with a paramedic/Emergency Medical Technician (EMT) organization or another advanced life support (ALS) ambulance supplier to provide the advanced life support services while it provides for the transportation component. The BLS would bill for the ALS services and make arrangement to pay the organization providing the ALS services. As an alternative, the BLS could arrange for the organization providing the ALS to be its billing agent.
- If this arrangement exists, applicant must complete the Billing Agency/Management Service Organization and Reassignment of Benefits section and submit a copy of the signed contract.

Check the appropriate box indicating if applicant bills for nautical miles or statute miles.

If applicant is not enrolling in the Medicare program skip this section.

5. Exclusion/Sanction Information

If applicable, supply all requested information for the company or any owner or employee of the company and attach a clear copy of the reinstatement form(s).

Attachment 2 Independent Diagnostic Testing Facilities (IDTFs)

Formerly known as Independent Physiological Laboratories.

This attachment is to be completed by the applicant for each Independent Diagnostic Testing Facility being enrolled in the Medicare or other federal health care program.

Definition:

Independent Diagnostic Testing Facility (IDTF): An entity independent of a hospital or physician's office in which diagnostic tests are performed by licensed, certified non-physician personnel under appropriate physician supervision (e.g., free standing cardiac catherization facility, imaging center).

> **Note:** A cardiac catherization facility which is a physician's office is not an IDTF. The term "free standing" means that the cardiac catherization facility, whether office or IDTF, is independent of a hospital.

1. Identification of Practice Location

Indicate whether this practice location is operating as a mobile unit. If so, provide vehicle identification number and expiration date of vehicle license. If operating mobile units, the vehicles must be regularly inspected and recertified according to State and local licensure laws. Evidence of recertification must be submitted to the Medicare or other federal health care program contractor on an ongoing basis, as required by State and local law.

Identify practice location of IDTF for which this attachment is being completed. If this is a mobile unit, furnish the address where the vehicle is stored.

If applicable, complete all information concerning applicant's practice location.

2. Identification of Supervising/Directing Physician(s)

The information in this section is required only if applicant's State requires that a supervising physician be associated with all IDTFs. Supervising physicians must perform their duties as described by State requirements. Each supervising/directing physician is required to be enrolled as an individual practitioner in Medicare or other federal health care program for which the applicant is applying.

3. Service Performance

List all Current Procedural Terminology, Version 4 (CPT-4) and HCFA Common Procedure Coding System (HCPCS) codes this IDTF or its contractors intend to perform, supervise, interpret, or bill. Describe the setting where the service will be rendered, and identify each physician who will be performing, supervising, and/or interpreting the test results.

4. Referral Records

Explain how referral records, physician's written order and the name of the technician who rendered the service are maintained.

5. Signature of Supervising/Directing Physician(s)

Each supervising/directing physician identified in Section 2 of this attachment must complete and sign this attachment.

Attachment 3 Home Heath Agencies (HHAs)

This attachment is to be completed by all Home Health Agencies for enrollment in the Medicare or other federal health care program.

Each owner listed in the Ownership Information section who has an ownership interest in or controls other related businesses (as defined below) must complete this attachment.

This attachment must also be completed with other related business interests in which the HHA itself has an ownership or control interest.

Copy and submit a separate Attachment 3 for the HHA and each owner, as applicable.

Definitions:

Related to the Provider: Related to the provider (HHA) means that the provider (HHA), to a significant extent, is associated or affiliated with or has control of or is controlled by an organization furnishing services, facilities, or supplies to the provider.

Common Ownership: Common ownership exists if an individual or individuals possess significant ownership or equity in the provider (HHA) **and** the institution or organization serving the provider (HHA).

Control Interest: Control exists if an owner of the HHA has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution furnishing services, facilities, or supplies to the provider (HHA).

1. Other Related Business Interests

All owners of the enrolling Home Health Agency are required to furnish identifying information about all other related businesses in which they have an ownership and/or control interest.

In general, businesses than furnish services, facilities, and supplies to the provider (HHA) that are related to the provider (HHA) by common ownership or control interest are to be listed in this attachment.

Supply all requested information about the related businesses.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0685. The time required to complete this information collection is estimated at 1 ½ - 3 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: HCFA, P.O. Box 26684, Baltimore, Maryland 21207 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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MEDICARE/FEDERAL HEALTH CARE PROVIDER/SUPPLIER ENROLLMENT APPLICATION
General Application

PLEASE CHECK APPLICABLE BOX

Type of Business: ☐ Individual ☐ Corporation ☐ Partnership ☐ Other (specify) _____

PLEASE CHECK APPLICABLE BOX

Applicant Enrolling As: ☐ Individual ☐ Sole Proprietor ☐ Organization ☐ Group ☐ Mass Immunization Biller Only

Check the approriate box listed below if applicant is completing this application for enrollment in a federal health care program other than Medicare.
(Check only one program box.)
☐ State Medicaid ☐ CHAMPUS ☐ Indian Health Service
☐ Railroad Retirement Board ☐ Public Health Service ☐ CHAMPVA ☐ Other (specify) _____

PLEASE CHECK APPLICABLE BOX

Application For: ☐ Initial Enrollment ☐ Re-certification ☐ Change of Ownership (CHOW)
☐ Enrollment of Additional Location(s) ☐ Change of Information

MEDICARE APPLICANTS ONLY:
Where will applicant be submitting billings? ☐ Fiscal Intermediary ☐ Carrier ☐ Both (OR) ☐ Regional Home Health Intermediary

Is the applicant currently enrolled in another federal health care program? ☐ **YES** ☐ **NO**
IF YES, check all the appropriate federal programs listed below.
☐ Medicare ☐ State Medicaid ☐ CHAMPUS ☐ Indian Health Service
☐ Railroad Retirement Board ☐ Public Health Service ☐ CHAMPVA ☐ Other (specify) _____

1. Applicant Identification

A. Individuals ONLY

Check here ☐ **only if this entire section does not apply to the applicant.**

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Other Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Residency Status (if applicable) ☐ resident ☐ intern
Name of Facility Where Resident or Intern:

Are services rendered in the above setting part of the applicant's requirements for graduation from a formal residency program? ☐ YES ☐ NO

Primary Specialty (e.g. pathology, cardiology, nurse practitioner, etc.)(required)	Secondary Specialty (if applicable)

Gender (optional) ☐ male ☐ female

Race/Ethnicity (optional) ☐ Asian or Asian American or Pacific Islander ☐ Hispanic ☐ Black (not Hispanic) or African-American ☐ North American Indian or Alaska Native ☐ White (not Hispanic)

Date of Birth (MM/DD/YYYY)	County of Birth	State of Birth	Country of Birth

B. Organizations ONLY

Check here ☐ **only if this entire section does not apply to the applicant.**

Legal Business Name	Fiscal Year End Date (MM/DD)	Incorporation Date (if applicable) (MM/DD/YYYY)

Type of Facility (e.g., hospital, nursing home, clinical laboratory, roster biller, etc.) ☐ Accredited ☐ Non-Accredited

State Where Incorporated:	Date Business Established at This Location (MM/DD/YYYY)	All other states in which applicant does business:

Is this a organization a Provider Based Facility? ☐ Yes ☐ No Is this organization a Distinct Part Unit? ☐ Yes ☐ No
Does this organization file a consolidated cost report under another Medicare provider's number? ☐ Yes ☐ No

IF YES to any of the above three questions, furnish name of parent provider.	Parent Medicare Provider Number

Does this organization operate other affiliated units, off-site clinics, or have multi-campus sites or branches? ☐ Yes ☐ No
If Yes, how many of each? _____ other affiliated units _____ off-site clinics _____ multi-campus sites _____ branches
Complete Section 7 for each unit, clinic, site, and/or branch operated.

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1. Applicant Identification (continued)

C. Physician and Non-Physician Practitioner Groups ONLY (For each group member, complete form HCFA 855R.)

Check here ☐ only if this entire section does not apply to the applicant.

Legal Business Name	Incorporation Date (if applicable) (MM/DD/YYYY)	State Where Incorporated
Group's Primary Specialty (required)	Group's Secondary Specialty (if applicable)	

D. All Applicants

Mailing Address Line 1

Mailing Address Line 2

City	County	State	ZIP Code + 4

Telephone Number ( )	Fax Number ( )	E-mail Address
Employer Identification Number (if applicable)	Social Security Number (if applicable)	Medicare Identification Number(s) (if applicable)

Does applicant now have or has applicant ever had a Medicare or Medicaid provider number in this or any other State?

☐ Yes ☐ No IF YES, supply all current and prior information requested below.

Current Carrier Name (if applicable)	Current Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)
Current CLIA Number (if applicable)	Prior CLIA Number (if applicable)	

Has applicant ever been convicted of any health care related crime? ☐ Yes ☐ No

Has applicant ever been convicted of a felony under Federal or State law? ☐ Yes ☐ No

Has any family and/or household member(s) of the applicant who has ownership or control interest in the enrolling business or entity ever been convicted, assessed, or excluded from the Medicare program due to fraud, obstruction of an investigation, or a controlled substance violation?

☐ Yes ☐ No IF YES, furnish name and relationship of relative/household member(s) below.

Name: First	Middle	Last	Jr., Sr., etc.	Relationship

Does the applicant have any outstanding overpayments with Medicare? ☐ Yes ☐ No

2. Professional and Business License/Certification/Registration Information

Attach a copy of each required Federal, State, and/or local city/county business and/or professional license, certification or registration. Notarized or "certified true" copies are optional but will speed the processing of this application.

Check here ☐ if applicant's State licensure is pending upon completion of State survey and/or certification.

Has applicant ever had any Federal, State, and/or local city/county business and/or professional business license, certification or registration revoked or suspended? ☐ Yes ☐ No

IF YES, explain below and attach copy of reinstatement letter if applicable.

3. Professional School Information (Individuals only)

Check here ☐ only if this entire section does not apply to the applicant.

Attach a copy of each degree or certificate. Notarized or "certified true" copies are optional but will speed processing of application.

School Name		Graduation Year (YYYY)
City	State	Country

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4. Board Certification

Check here ☐ **only if this entire section does not apply to the applicant.**

If applicant is Board Certified in his/her primary specialty complete the following information.

If applicant is Board Certified in more than one specialty, copy this section and complete the following information for each.

Certification Board Name

Certification Number	Effective Date (MM/DD/YYYY)	Expiration Date (MM/DD/YYYY)

5. Exclusion/Sanction Information

A. Has the applicant ever been sanctioned from the Medicare/Medicaid program, or debarred, suspended, or excluded from any other Federal agency or program? ☐ **Yes** ☐ **No IF YES, supply the following information.**

Date(s) of Sanction, Debarment, etc. (MM/DD/YYYY)	Date(s) of Reinstatement (Attach copy(s) of the Reinstatement letter(s)) (MM/DD/YYYY)

B. Have civil monetary penalties ever been levied against the applicant by the Medicare or Medicaid program or any Federal agency or program? ☐ **Yes** ☐ **No**
IF YES, has penalty been paid? ☐ **Yes** ☐ **No**

Date(s) of Penalty (MM/DD/YYYY)

6. Practice Location(s)

Check here ☐ **if deleting this practice location.**

A. How many practice locations does applicant utilize?_____ For each additional practice location, copy and complete this section.

B. "Doing Business As" name for this location

Medicare Identification Number for this location (if applicable)

Business Street Address Line 1

Business Street Address Line 2

City	County	State	ZIP Code + 4

Telephone Number ( )	Fax Number ( )	E-mail Address

Is this location an ☐ off site clinic? ☐ distinct part unit? ☐ multi-campus site? ☐ branch?
☐ a location that files a consolidated cost report? ☐ provider based facility? ☐ or none of these?

Date applicant began practicing at this location? (MM/DD/YYYY)	If applicable, date applicant ceased practicing at this location? (MM/DD/YYYY)

Does the applicant own or lease this practice location? ☐ Yes ☐ No

C. "Pay To" address for this practice location. If same as practice location in section 6 B., check here ☐ and skip to section 6 D.

Check here ☐ if applicant wants all practice location payments listed in this application sent to address furnished in Section 6 C.

Mailing Address Line 1

Mailing Address Line 2

City	State	ZIP Code + 4	Telephone Number ( )

D. Name of managing/directing employee for this location? First	Middle	Last	Social Security Number

E. CLIA Number for this location (if applicable)	FDA Mammography Certification Number(s) at this location (if applicable)

F. Are all patient records stored at this practice location? ☐ **Yes** ☐ **No IF NO, supply storage location below.**

Name of Storage Facility/Location	Telephone Number ( )	Fax Number ( )

Street Address Line 1

Street Address Line 2

City	County	State	ZIP Code + 4

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7. Prior Practice Information

Check here ☐ **only if this entire section does not apply to the applicant.**

If applicant has previously billed the Medicare or Medicaid programs, furnish requested prior practice information below. For each additional prior practice, copy and complete this section.

Type of Practice	Status ☐ Inactive ☐ Active	IF INACTIVE, supply date of termination (MM/DD/YYYY) _____
Legal Business Name		Doing Business As Name
Medicare Identification Number(s)	Medicaid Number/State	Telephone Number ( )
Business Street Address Line 1		
Business Street Address Line 2		
City	County	State	ZIP Code + 4

Was applicant a ☐ participating or ☐ non-participating provider/supplier in this prior practice?

8. Ownership Information

Check here ☐ **if deleting this owners' association with this entity.**

Effective date of deletion? _____ **(MM/DD/YYYY)**

How many owners have 5 percent or more ownership interest in this entity? _____ **(maximum of 20)**

For each additional owner, copy and complete this section.

Applicants must submit a copy of the entity's IRS form CP 575.

A. Identifying Information

Owner Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Other Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Date of Birth (MM/DD/YYYY)	County of Birth	State of Birth	Country of Birth

Legal Business Name

"Doing Business As" Name	Effective Date of Ownership (MM/DD/YYYY)

Social Security Number	Employer Identification Number	Medicare Identification Number (if applicable)

B. Does this owner now have or has this owner ever had a Medicare or Medicaid provider number in this or any other State?

☐ **Yes** ☐ **No** **IF YES, supply all current and prior information requested below.**

Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)

C. Has this owner ever managed or directed other organizations that have billed or are currently billing Medicare for services?

☐ **Yes** ☐ **No** **IF YES, how many?** _____

Copy and complete the following for each organization this owner managed or directed in the last 10 years.

If this list is incomplete, check here ☐ **indicating that some information for the last 10 years is missing.**

Organization's Legal Business Name

Employer Identification Number	Medicare Identification Number	Date Associated TO --- FROM (MM/DD/YYYY)
Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)

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8. Ownership Information (continued)

D. Has this owner ever had ownership in other organizations that have billed or are currently billing Medicare for services?

☐ Yes ☐ No IF YES, how many? _____

Copy and complete the following for each organization this owner has had ownership in during the last 10 years.

If this list is incomplete, check here ☐ indicating that some information for the last 10 years is missing.

Organization's Legal Business Name

Employer Identification Number	Medicare Identification Number	Date Associated TO — FROM (MM/DD/YYYY)
Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)

E. Has this owner ever been sanctioned from the Medicare/Medicaid program or debarred, suspended, or excluded from any other Federal agency or program? ☐ Yes ☐ No **IF YES, supply the following information.**

Date(s) of Sanction, Debarment, etc. (MM/DD/YYYY)	Date(s) of Reinstatement (Attach a copy(s) of the Reinstatement letter(s)) (MM/DD/YYYY)

F. Have civil monetary penalties ever been levied against this owner by the Medicare or Medicaid program or any Federal agency or program? ☐ Yes ☐ No

IF YES, has penalty been paid? ☐ Yes ☐ No

Date(s) of Penalty (MM/DD/YYYY)

G. Has this owner ever been convicted of any health care related crime? ☐ Yes ☐ No

Has this owner ever been convicted of a felony under Federal or State law? ☐ Yes ☐ No

9. Managing/Directing Employees

If applicant is the sole owner and the sole managing/directing employee, skip this section.

Check here ☐ if deleting this managing/directing employee's association with the applicant.

Effective date of deletion? _____ **(MM/DD/YYYY)**

What is the total number of managing/directing employees for all location(s) listed in this application? _____ **(Maximum of 20)**

For each additional managing/directing employee, copy and complete this section.

A. Identifying Information

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Title/Position
Social Security Number	Employer Identification Number (if applicable)		Medicare Identification Number (if applicable)		
Date of Birth (MM/DD/YYYY)	County of Birth	State of Birth	Country of Birth		

Legal Name of Business Where This Person Manages/Directs

"Doing Business As" Name Where This Person Manages/Directs

B. Has this Managing/Directing employee ever had a Medicare or Medicaid provider number in this or any other State?

☐ Yes ☐ No IF YES, supply all current and prior information requested below.

If additional space is needed, copy and complete this section.

Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)

C. Has this managing/directing employee ever managed or directed other organizations that have billed or are currently billing Medicare for services? ☐ Yes ☐ No IF YES, how many? _____

Copy and complete the following for each organization this managing/directing employee managed or directed in the last 10 years.

If this list is incomplete, check here ☐ indicating that some information for the last 10 years is missing.

Legal Business Name	Medicare Identification Number	Employer Identification Number
Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)

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9. Managing/Directing Employees

D. Has this managing/directing employee ever had ownership interest in other organizations that have billed or are currently billing Medicare for services? ☐ Yes ☐ No IF YES, how many? _____

Copy and complete the following for each organization this managing/directing employee managed or directed in the last 10 years.

If this list is incomplete, check here ☐ **indicating that some information for the last 10 years is missing.**

Legal Business Name	Medicare Identification Number	Employer Identification Number
Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)

E. Has this managing/directing employee ever been sanctioned from the Medicare/Medicaid program or debarred, suspended, or excluded from any other Federal agency or program? ☐ Yes ☐ No IF YES, supply the following information.

Date(s) of Sanction, Debarment, etc. (MM/DD/YYYY)	Date(s) of Reinstatement (Attach copy(s) of the Reinstatement letter(s)) (MM/DD/YYYY)

F. Have civil monetary penalties ever been levied against this managing/directing employee by the Medicare/Medicaid program or any Federal agency or program? ☐ Yes ☐ No
IF YES, has penalty been paid? ☐ Yes ☐ No

Date(s) of Penalty (MM/DD/YYYY)

10. Parent/Joint Venture Information

Check here ☐ **only if this entire section does not apply to the applicant.**

Check if this entity is a subsidiary company or joint venture. ☐ **Subsidiary Company** ☐ **Joint Venture**

Complete the information below about the PARENT company or JOINT venture.

Attach a copy of parent company's or other owner's IRS form W-9 pertaining to this DMEPOS supplier/provider/business/entity.

Legal Business Name		
"Doing Business As" Name		Effective Date of Affilation (MM/DD/YYYY)
Employer Identification Number	Medicare Identification Number	
Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)
Business Street Address Line 1		
Business Street Address Line 2		
City	State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address

11. Chain Organization Information

This section to be completed by Medicare Part A institutional provider/suppliers ONLY.

Check here ☐ **only if this entire section does not apply to the applicant.**

Does the applicant need to register a chain action? (see list below) ☐ Yes ☐ No

IF YES, check the appropriate action:
- ☐ Applicant in chain for first time
- ☐ Applicant in a different chain since last report
- ☐ Applicant dropped out of all chains
- ☐ Applicant in same chain under new chain name

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11. Chain Organization Information (continued)

Complete the following information about the chain Home Office:

Name of Home Office				Effective Date of Linkage (MM/DD/YYYY)
Name of Home Office Administrator or CEO: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Title of Home Office Administrator				
Home Office Business Street Address Line 1				
Business Street Address Line 2				
City	County	State	ZIP Code + 4	
Telephone Number ( )	Fax Number ( )	E-mail Address		
Chain Number	Name of Home Office Intermediary			

Applicant's Affiliation to Chain: ☐ Joint Venture/Partnership ☐ Managed/Related ☐ Leased ☐ Operated/Related ☐ Wholly Owned ☐ Other

Fiscal Year End Date of this Chain (MM/DD)

Do all the providers of the chain use the same Part A fiscal intermediary? ☐ Yes ☐ No

12. Contractor Information (Business Organizations)

A. Does the applicant contract with a business organization for any medical or diagnostic services or supplies for which the cost or value is $10,000 or more in a 12 month period? ☐ **Yes** ☐ **No**

IF YES, how many of the above business organizations does the applicant contract with? _____

For each of these business organizations, complete this section. If more than one contractor, copy and complete this section.

B. Will the applicant be billing and receiving payment (reassigned benefits) for medical or diagnostic services or medical supplies rendered by any other business organization, (excluding individuals), regardless of cost or value? ☐ **Yes** ☐ **No**

IF YES, how many of the above business organizations reassign benefits to the applicant? _____

For each business organization (excluding individuals) that will reassign benefits to the applicant, complete this section and the Reassignment of Benefits Statement section. If more than one reassignee, copy and complete these sections.

Check here ☐ **if deleting (no longer using) this contractor.**

Legal Business Name			
Doing Business As Name			Effective Date of Relationship/Reassignment (MM/DD/YYYY)
Business Street Address Line 1			
Business Street Address Line 2			
City		State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address	
Employer Identification Number		Medicare Identification Number (if applicable)	

C. Does this contractor now have or has this contractor ever had a Medicare or Medicaid provider number in this or any other state? ☐ **Yes** ☐ **No** **IF YES, supply all current and prior information requested below.**

Current Carrier Name (if applicable)	Current Fiscal Intermediary Name (if applicable)	Current Medicaid Number/State (if applicable)
Prior Carrier Name (if applicable)	Prior Fiscal Intermediary Name (if applicable)	Prior Medicaid Number/State (if applicable)

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12. Contractor Information (Business Organizations) (continued)

D. Has this contractor ever been sanctioned from the Medicare/Medicaid program or debarred, suspended, or excluded from any other Federal agency or program? ☐ Yes ☐ No **IF YES, supply the following information.**

Date(s) of Sanction, Debarment, etc. (MM/DD/YYYY)	Date(s) of Reinstatement (Attach copy(s) of contractor's Reinstatement letter(s)) (MM/DD/YYYY)

E. Have civil monetary penalties ever been levied against this contractor by the Medicare or Medicaid program or any Federal agency or program? ☐ Yes ☐ No
IF YES, has penalty been paid? ☐ Yes ☐ No

Date(s) of Penalty (MM/DD/YYYY)

13. Reassignment of Benefits Statement

Check here ☐ **only if this entire section does not apply to the applicant.**

Medicare law prohibits payment for services to entities other than the provider/supplier who provided the services unless the provider/supplier specifically authorizes another entity (employer, facility, health care delivery system, or agent) to bill for its services, per Federal Regulation 42 CFR 424.80. This Reassignment of Benefits Statement authorizes an entity to receive Medicare payments on your behalf.
This contract must be in compliance with HCFA regulations. The Reassignment of Benefits Statement must be signed by all providers/suppliers who allow an employer, facility, health care delivery system, or agent to receive payment for the provider/supplier's services.
I acknowledge that, under the terms of my contract,
(Legal Business Name of Entity) _____
is entitled to claim or receive any fees or charges for my services.

Reassignee Name (printed) First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Reassignee Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)	Date (MM/DD/YYYY)

14. Billing Agency/Management Service Organization Address

Check here ☐ **if deleting (no longer using or changing) this billing agency/service management organization.**
Check here ☐ **only if this entire section does not apply to the applicant.**
Complete this section if applicant will be using a billing agency or management service organization.
Applicant MUST submit a copy of the applicant's current signed billing agreement/contract with this application.

Name of Billing Agency/Management Service Organization	Employer Identification Number

Agency/Organization Contact Person Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Business Street Address Line 1

Business Street Address Line 2

City	State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address

15. Electronic Claims Submission Information

Check here ☐ **only if this entire section does not apply to the applicant.**
Furnish a contact person in this section if the applicant would like to submit claims electronically.

Contact Person Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Mailing Address Line 1

Mailing Address Line 2

City	State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address

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16. Surety Bond Information

Check here ☐ **only if this entire section does not apply to the applicant.**

Name of Surety Bond Company

Agent's Name: First	Middle	Last	Jr., Sr., etc.

Telephone Number ( )	Fax Number ( )

Amount of Surety Bond $	Effective Date of Surety Bond (MM/DD/YYYY)	Bond for Tax Year (YYYY)	Annual Bond Renewal Date (MM/DD/YYYY)

17. Contact Person

Furnish the name and telephone number of a person who can answer questions about the information furnished in this application.

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Telephone Number ( )	Fax Number ( )	E-mail Address

Penalties for Falsifying Information on the Medicare Health Care Provider/Supplier Enrollment Application.

1. 18 U.S.C. § 1001 authorizes criminal penalties against an individual who in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

Individual offenders are subject to fines of up to $250,000 and imprisonment for up to five years. Offenders that are organizations are subject to fines of up to $500,000. 18 U.S.C. § 3571. Section 3571(d) also authorizes fines of up to twice the gross gain derived by the offender if it is greater than the amount specifically authorized by the sentencing statute.

2. Section 1128B(a)(1) of the Social Security Act authorizes criminal penalties against an individual who "knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a program under a Federal health care program."

The offender is subject to fines of up to $25,000 and/or imprisonment for up to five years.

3. The Civil False Claims Act, 31 U.S.C. § 3729 imposes civil liability, in part, on any person who:
a.) knowingly presents, or causes to be presented, to an officer or an employee of the United States Government a false or fraudulent claim for payment or approval;
b.) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; or
c.) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid.

The Act imposes a civil penalty of $5,000 to $10,000 per violation, plus 3 times the amount of damages sustained by the Government.

4. Section 1128A(a)(1) of the Social Security Act imposes civil liability, in part, on any person (including an organization, agency or other entity) that knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency. . . a claim. . .that the Secretary determines is for a medical or other item or service that the person knows or should know:
a.) was not provided as claimed; and/or
b.) the claim is false or fraudulent.

This provision authorizes a civil monetary penalty of up to $10,000 for each item or service, an assessment of up to 3 times the amount claimed, and exclusion from participation in the Medicare program and State health care programs.

5. The government may assert common law claims such as "common law fraud," "money paid by mistake," and "unjust enrichment."

Remedies include compensatory and punitive damages, restitution and recovery of the amount of the unjust profit.

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18. Certification Statement

I, the undersigned, certify to the following:

1.) I have read the contents of the application and the information contained herein is true, correct, and complete. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Medicare or other federal health care program contractor of this fact immediately.
2.) I authorize the Medicare or other federal health care program contractor to verify the information contained herein. I agree to notify the Medicare or other federal health care program contractor of any changes in this form within 30 days of the effective date of the change. I understand that a change in the incorporation of my organization or my status as an individual or group biller may require a new application.
3.) I am familiar with and agree to abide by the Medicare or other federal health care program laws and regulations that apply to my provider/supplier type. The Medicare laws and regulations are available through the Medicare Contractor.
4.) Neither the individual practitioner, nor the company, nor any owner, director, officer, employee of the company, or any contractor retained by the company or any of the aforementioned persons, currently is subject to sanction under the Medicare or Medicaid program or debarred, suspended, or excluded under any other Federal agency or program, or otherwise is prohibited from providing services to Medicare or other federal health care program beneficiaries.
5.) I agree that any existing or future overpayment to me by the Medicare or other federal health care program(s) may be recouped by Medicare or the other federal health care program(s) through withholding future payments.
6.) I understand that only the Medicare or other federal health care program(s) billing number for the provider/supplier who performed the service or to whom benefits were reassigned under current Medicare or other federal health care program(s) regulations may be used when billing Medicare or other federal health care program(s) for services.
7.) I understand that any omission, misrepresentation or falsification of any information contained in this application or contained in any communication supplying information to Medicare or other federal health care program(s) to complete or clarify this application may be punishable by criminal, civil, or other administrative actions including revocation of Medicare or other federal health care program(s) billing number(s), fines, penalties, damages, and/or imprisonment under Federal law.
8.) I further certify that I am the individual practitioner who is applying for the billing number, or in the case of a business organization, I am an officer, chief executive officer, or general partner of the business organization that is applying for the Medicare or other federal health care program(s) billing number.

Applicant Name (printed) First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Applicant Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)			Date (MM/DD/YYYY)	

FOR GROUPS AND ORGANIZATIONS: **(Please list all "Authorized Representatives" for this group/organization)**

Check here ☐ **if deleting this representative from this entity.**

Authorized Representative Name (printed) First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Title/Position
Social Security Number	Medicare Identification Number (if applicable)				
Authorized Representative Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)			Date (MM/DD/YYYY)		

Check here ☐ **if deleting this representative from this entity.**

Authorized Representative Name (printed) First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Title/Position
Social Security Number	Medicare Identification Number (if applicable)				
Authorized Representative Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)			Date (MM/DD/YYYY)		

ATTACHMENT 1

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Ambulance Service Suppliers

1. State License Information

Is applicant licensed as a Supplier of Ambulance Services by applicant's State? ☐ **Yes** ☐ **No**

IF YES, complete this section, attach a copy of the applicant's current State license, and skip sections 2 and 3.

License Number	Issuing State	Effective Date (MM/DD/YYYY)	Expiration Date (MM/DD/YYYY)

2. Description of Vehicle (Copy and complete this section as needed for additional vehicles.)

For each vehicle, attach copy of the vehicle registration.

1. Type (automobile, aircraft, boat, etc.) | Vehicle Identification Number

Make | Model | Year (YYYY)

Does this vehicle have the following:

first aid supplies?	☐ Yes	☐ No	other safety/life saving equipment?	☐ Yes	☐ No
oxygen equipment?	☐ Yes	☐ No	two-way telecommunications radio?	☐ Yes	☐ No
warning lights?	☐ Yes	☐ No	mobile communication?	☐ Yes	☐ No
sirens?	☐ Yes	☐ No			

List other medical equipment this vehicle has.

Does this vehicle provide:

basic life support (BLS)?	☐ Yes	☐ No	land ambulance?	☐ Yes	☐ No
advanced life support (ALS)?	☐ Yes	☐ No	air ambulance?	☐ Yes	☐ No
emergency runs?	☐ Yes	☐ No	marine ambulance?	☐ Yes	☐ No
non-emergency runs?	☐ Yes	☐ No			

How many crew members accompany this vehicle on runs? ☐

2. Type (automobile, aircraft, boat, etc.) | Vehicle Identification Number

Make | Model | Year (YYYY)

Does this vehicle have the following:

first aid supplies?	☐ Yes	☐ No	other safety/life saving equipment?	☐ Yes	☐ No
oxygen equipment?	☐ Yes	☐ No	two-way telecommunications radio?	☐ Yes	☐ No
warning lights?	☐ Yes	☐ No	mobile communication?	☐ Yes	☐ No
sirens?	☐ Yes	☐ No			

List other medical equipment this vehicle has.

Does this vehicle provide:

basic life support (BLS)?	☐ Yes	☐ No	land ambulance?	☐ Yes	☐ No
advanced life support (ALS)?	☐ Yes	☐ No	air ambulance?	☐ Yes	☐ No
emergency runs?	☐ Yes	☐ No	marine ambulance?	☐ Yes	☐ No
non-emergency runs?	☐ Yes	☐ No			

How many crew members accompany this vehicle on runs? ☐

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3. Qualification of Crew (Copy and complete this section as needed for additional crew.)

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Social Security Number

List training completed by this crew member (i.e., First Aid, CPR, ACLS, etc.) and attach copy(s) of training certificate(s).

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Social Security Number

List training completed by this crew member (i.e., First Aid, CPR, ACLS, etc.) and attach copy(s) of training certificate(s).

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Social Security Number

List training completed by this crew member (i.e., First Aid, CPR, ACLS, etc.) and attach copy(s) of training certificate(s).

4. Billing Method

A. Certified Basic Life Support (BLS) companies complete the following:

Contact the local Medicare contractor for information on the billing method that applies in the State where applicant will operate.

Does company bill Method 1 (an all-inclusive base rate)? ☐ Yes ☐ No
Does company bill Method 2 (base rate plus a separate charge for mileage)? ☐ Yes ☐ No
Does company bill Method 3 (base rate plus a separate charge for supplies)? ☐ Yes ☐ No
Does company bill Method 4 (separate charges for services, mileage, and supplies)? ☐ Yes ☐ No
Is company certified to perform defibrillation? (IF YES, attach certification.) ☐ Yes ☐ No

Does company provide Advanced Life Support (ALS) Services under contract with a paramedic or Emergency Medical Technician (EMT) organization or an Advanced Life Support (ALS) ambulance supplier? ☐ Yes ☐ No
IF YES, submit a copy(s) of the signed contractual agreement(s).

If the company provides Paramedic Intercept Service, does the contract allow the supplier of the life support service to submit the Medicare claim for the paramedic service and the transport on the company's behalf under the company's provider number? ☐ Yes ☐ No

AIR AMBULANCE ONLY: Do you bill nautical mileage ☐ or statute mileage ☐ ?

Medical Director Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Social Security Number

What geographic area does company serve?

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4. Billing Method (continued)

B. Certified Advanced Life Support (ALS) companies complete the following:

Contact the local Medicare contractor for information on the billing method that applies in the State where applicant will operate.

Does company bill Method 1 (an all-inclusive base rate)? ☐ Yes ☐ No
Does company bill Method 2 (base rate plus a separate charge for mileage)? ☐ Yes ☐ No
Does company bill Method 3 (base rate plus a separate charge for supplies)? ☐ Yes ☐ No
Does company bill Method 4 (separate charges for services, mileage, and supplies)? ☐ Yes ☐ No
Does company have a contract with any municipality? ☐ Yes ☐ No
If Yes, submit copy(s) of the signed contractual agreement(s).
Is company certified to perform defibrillation? (IF YES, attach certification.) ☐ Yes ☐ No

AIR AMBULANCE ONLY: Do you bill nautical mileage ☐ or statute mileage ☐ ?

Medical Director Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Social Security Number

What geographic area does company serve?

5. Exclusion/Sanction Information

Copy and complete this section as needed for additional owners and/or employees.

A. Has the company, any owner, or employee ever been sanctioned from the Medicare/Medicaid program, or debarred, suspended or excluded from any other Federal agency or program ☐ Yes ☐ No IF YES, supply the information below.

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Social Security Number	Employer Identification Number
Date(s) of Sanction, Debarment, etc. (MM/DD/YYYY)	Date(s) of Reinstatement (Attach a copy(s) of the Reinstatement letter(s)) (MM/DD/YYYY)

B. Have civil monetary penalties ever been levied against the company, any owner, or employee by the Medicare or Medicaid program or any Federal agency or program? ☐ Yes ☐ No Date(s) of Penalty (MM/DD/YYYY)

IF YES, who was the civil monetary penalty levied against?

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Social Security Number	Employer Identification Number

Has penalty been paid? ☐ Yes ☐ No

ATTACHMENT 2

OMB Approval No. 0938-0685

Independent Diagnostic Testing Facility (IDTFs)

This attachment must be completed for each IDTF owned and /or operated by the applicant.

1. Identification of Practice Location

A. Is this practice location a mobile unit? ☐ YES ☐ NO

IF YES, please list the vehicle(s) identification number(s) and the expiration date of the license for all mobile units and submit copies of all vehicle(s) registration(s).

Vehicle Identification Number	Expiration Date of License (MM/DD/YYYY)
1	
2	
3	

If this practice location is a mobile unit, complete practice location address below with the address where the mobile unit is stored.

B. "Doing Business As" Name of This Practice Location

Business Street Address Line 1

Business Street Address Line 2

City	County	State	ZIP Code + 4

C. Are all diagnostic tests/services performed at the business/practice location? ☐ YES ☐ NO

IF NO, complete the Contractor section with information on where the diagnostic tests/services are performed.

D. Is the practice location used for any other purpose? ☐ YES ☐ NO

IF YES, please answer the following questions:

Is the practice location used for another type of business? ☐ YES ☐ NO

IF YES, what type? _____

Is the practice location used for residential purposes? ☐ YES ☐ NO

IF YES, explain reason for dual use as residence. _____

If above two questions are both answered "no", please explain the other uses for the practice location.

_____

2. Identification of Supervising/Directing Physician(s)

List all Supervising/Directing Physicians affiliated with this facility.

For each additional Supervising/Directing Physician or Contractor, copy and complete this section.

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Social Security Number	Medicare Identification Number	Current Medicaid Number/State (if applicable)	Prior Medicaid Number/State (if applicable)	
Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Social Security Number	Medicare Identification Number	Current Medicaid Number/State (if applicable)	Prior Medicaid Number/State (if applicable)	

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3. Service Performance (For each additional CPT-4 or HCPCS code, copy and complete this section.)

List all Current Procedural Terminology, Version 4 (CPT-4) codes or HCFA Common Procedure Coding System codes (HCPCS), equipment, and model number which this facility or its contractors intend to perform, supervise, interpret, or bill.

	CPT-4 or HCPCS Code	Equipment	Model Number
1			
2			
3			
4			
5			

Where will these services be rendered? (Check all that apply.) ☐ Physician's Office ☐ Skilled Nursing Facility ☐ Hospital

☐ Other (Explain.) _____

Will this facility be billing for both the technical and professional components? ☐ YES ☐ NO

IF YES, fill out the following information for each physician who will be performing the interpretations:

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Title	Social Security Number		Medicare Identification Number	
Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Title	Social Security Number		Medicare Identification Number	

Will tests be taken by employees or contractors who are licensed or approved by the State in:

X-Ray Technology, ☐ YES ☐ NO Nursing, or ☐ YES ☐ NO

Other ☐ YES ☐ NO (IF YES to "Other", explain and give qualifications below.)

_____

IF YES to any of the above, provide the following information for each employee/contractor licensed or approved:

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Social Security Number	License Number		License Issue Date (MM/DD/YYYY)	
Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Social Security Number	License Number		License Issue Date (MM/DD/YYYY)	

4. Referral Records

Does applicant maintain records of:

the name of the attending or consulting physician who ordered the test(s)? ☐ YES ☐ NO

a copy of the physician's written order(s) for the test(s)? ☐ YES ☐ NO

the name(s) of the technician(s) who rendered the service(s)? ☐ YES ☐ NO

IF YES to any of the above, explain how the referral records are maintained (e.g., electronic, paper, by patient name, or by physician name, etc.).

_____

_____

_____

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5. Signature of Supervising/Directing Physician(s)

Each Supervising/Directing Physician must sign the following statement:
For additional Supervising/Directing Physician signatures, copy and complete this section.

I hereby acknowledge that I have agreed to provide the (IDTF Name) _____ with general supervisory and/or directing responsibilities for tests performed by this facility. If I terminate my relationship with the aforementioned IDTF, I will report the date of termination to the Medicare Contractor within 30 days of termination.

Supervising/Directing Physician Name (printed):	First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Title/Position
Signature of Supervising/ Directing Physician	(First, Middle, Last, Jr., Sr., M.D., D.O., etc.)				Date (MM/DD/YYYY)	

I hereby acknowledge that I have agreed to provide the (IDTF Name) _____ with general supervisory and/or directing responsibilities for tests performed by this facility. If I terminate my relationship with the aforementioned IDTF, I will report the date of termination to the Medicare Contractor within 30 days of termination.

Supervising/Directing Physician Name (printed):	First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.	Title/Position
Signature of Supervising/ Directing Physician	(First, Middle, Last, Jr., Sr., M.D., D.O., etc.)				Date (MM/DD/YYYY)	

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ATTACHMENT 3

Home Health Agencies (HHAs)

1. Other Related Business Interests (Control and/or Ownership)

For each owner listed in the Ownership section, as well as the home health agency (HHA) itself, complete the following information about all other businesses that each owner or the HHA has an ownership and/or control interest.

For each owner, and/or when additional space is needed, copy and complete this attachment.

Check here ☐ **if this entire attachment does not apply to the Home Health Agency or any of it's owners.**

Owner Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

A. Legal Business Name of Related Business		Employer Identification Number
"Doing Business As" Name		Effective Date of Ownership (MM/DD/YYYY)
Business Street Address Line 1		
Business Street Address Line 2		
City	State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address
B. Legal Business Name of Related Business		Employer Identification Number
"Doing Business As" Name		Effective Date of Ownership (MM/DD/YYYY)
Business Street Address Line 1		
Business Street Address Line 2		
City	State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address
C. Legal Business Name of Related Business		Employer Identification Number
"Doing Business As" Name		Effective Date of Ownership (MM/DD/YYYY)
Business Street Address Line 1		
Business Street Address Line 2		
City	State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address
D. Legal Business Name of Related Business		Employer Identification Number
"Doing Business As" Name		Effective Date of Ownership (MM/DD/YYYY)
Business Street Address Line 1		
Business Street Address Line 2		
City	State	ZIP Code + 4
Telephone Number ( )	Fax Number ( )	E-mail Address

OMB Approval No. 0938-0685

Medicare

And Other Federal Health Care Programs
Individual Reassignment of Benefits Enrollment

Health Care Provider/Supplier Application

Privacy Act Statement

The Health Care Financing Administration (HCFA) is authorized to collect the information requested on this form in order to ensure that correct payments are made to providers and suppliers under the Medicare program established by Title XVIII of the Social Security Act. **See**, sections 1814 and 1815 of the Social Security Act for payment under Part A of Title XVIII [42 U.S.C §§ 1395f(a)(1) and 1395g(a)] and section 1833(e) [42 U.S.C. §1395l(e)] for payment under Part B. In addition, HCFA is required to ensure that no payments are made to providers or suppliers who are excluded from participation in the Medicare program under section 1128 of Title XVIII [42 U.S.C. § 1320a-7] or who are prohibited from providing services to the federal government under section 2455 of the Federal Acquisition Streamlining Act of 1994, (P.L. 103-355) [31 U.S.C. § 6101 note]. This information must, minimally, clearly identify the provider and its' place of business as required by the Budget Reconciliation Act of 1985 (P.L. 99-272) [42 U.S.C § 9202(g)] and provide all necessary documentation to show they are qualified to perform the services for which they are billing.

The Debt Collection Improvement Act (DCIA) of 1996 (P.L. 104-134) [31 U.S.C.§§ 3720B-3720D] requires agencies to collect the Taxpayer Identification Number (either the Social Security Number or the Employer Identification Number) from all persons or business entities doing business with the federal government. Under section 31001(i)(1) of the DCIA [31 U.S.C. § 7701(c)(1)], the taxpayer identification number will be used to collect (including collection through use of offset) and report any delinquent amounts arising out of the business relationship with the federal government. Therefore, collection of this data element is mandatory.

The purpose of collecting this information is to determine or verify the eligibility of individuals and organizations to enroll in the Medicare program as providers/suppliers of goods and services to Medicare beneficiaries and to assist in administration of the Medicare program and other Federal and State health care programs. All information on this form is required, with the exception of those sections marked as optional on the form. Without this information, the ability to make payments will be delayed or denied.

The information collected will be entered into either system number 09-70-0525 titled Unique Physician/Practitioner Identification Number (UPIN) System (published in the Federal Register in Vol. 61, no. 89, May 7, 1996), or the National Provider Identifier (NPI) System (OMB) approval 0938-0684 (R-187). The information in this application will be disclosed according to the routine uses described below.

Information from these systems may be disclosed under specific circumstances, to:

(1) Contractors working for HCFA to carry out Medicare functions, collating or analyzing data, or to detect fraud or abuse;

(2) A congressional office from the record of an individual health care provider in response to an inquiry from the congressional office at the written request of that individual health care practitioner;

(3) The Railroad Retirement Board for purposes of administering provisions of the Railroad Retirement or Social Security Acts;

(4) Peer Review Organizations in connection with the review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XVIII of the Social Security Act;

(5) To the Department of Justice or an adjudicative body when the agency, an agency employee, or the United States Government is a party to litigation and the use of the information is compatible with the purpose for which the agency collected the information. (6) To the Department of Justice for investigation and prosecuting violations of the Social Security Act to which criminal penalties attach;

(7) To the American Medical Association (AMA), for the purpose of attempting to identify medical doctors when the Unique Physician Identification Number Registry is unable to establish identity after matching contractor submitted data to the data extract provided by the AMA;

(8) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or to the restoration or maintenance of health;

(9) Other Federal agencies who administer a Federal health care benefits program to enumerate/enroll providers of medical services or to detect fraud or abuse;

(10) State Licensing Boards for review of unethical practices or nonprofessional conduct;

(11) States for the purpose of administration of health care programs; and/or

(12) Insurance companies, self insurers, health maintenance organizations, multiple employer trusts, and other health care groups providing health care claims processing, when a link to Medicare or Medicaid claims is established, and data are used solely to process provider's/supplier's health care claims.

The applicant should be aware that the Computer Matching and Privacy Protection Act of 1988, (P.L. 100-503) amended the Privacy Act, U.S.C. § 552a, to permit the government to verify information through computer matching.

Protection of Proprietary Information

Privileged or confidential commercial or financial information collected on this form are protected from public disclosure by Federal law 5 U.S.C. 552(b)(4) and Executive Order 12600.

Protection of Confidential Commercial and/or Sensitive Personal Information

If any information within this application (or attachments thereto) constitutes a trade secret or privileged or confidential information (as such terms are interpreted under the Freedom of Information Act and applicable case law), or is of a highly sensitive personal nature such that disclosure would constitute a clearly unwarranted invasion of the personal privacy of one or more persons, then such information will be protected from release by HCFA under 5 U.S.C. § 552(b)(4) and/or (b)(6), respectively.

OMB Approval No. 0938-0685

MEDICARE AND OTHER FEDERAL HEALTH CARE PROGRAMS PROVIDER/SUPPLIER ENROLLMENT APPLICATION INSTRUCTIONS

Individual Reassignment of Benefits Application

HCFA 855R

Upon completion, return this application and all necessary documentation to:

General

This form is to be completed for any individual who will reassign their benefits to an eligible entity.

THE REASSIGNMENT OF BENEFITS APPLICATION MUST BE COMPLETED FOR THE FOLLOWING SITUATIONS:

Initial Enrollment: A newly enrolling entity will list all individuals who will be reassigning their Medicare or other federal health care program benefits to the enrolling entity.

> **NOTE:** All entities and individuals must be currently enrolled or concurrently enrolling in the Medicare or other federal health care program.

Adding a Reassignment: An individual practitioner is currently enrolled in Medicare or another federal health care program(s) and will reassign benefits to an entity that is currently in the Medicare or the same other federal health care program(s).

Deleting a Reassignment: An individual that has been reassigning benefits to an entity is terminating that reassignment. No reassigned claims will be paid to the entity for dates of service after the effective date of deletion.

Changing Status of an Individual: An individual reporting a change in the type of income tax withholding or the practice locations with which he or she is associated.

Changes of Ownership (CHOW): This application is to be completed by all individual contractors, physicians, and other non-physician practitioners who will be reassigning their Medicare or other federal health care benefits to a new or a prospective new owner due to the occurrence or potential occurrence of a CHOW.

Definitions

Authorized Representative: The appointed official whose signature legally binds the entity.

Change of Ownership (CHOW): This term applies to certain limited circumstances as defined in 42 CFR § 489.18 as described below.

A change of ownership is defined as:

- In the case of a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable State law;
- In the case of an unincorporated sole proprietorship, transfer of title and property to another party;
- In the case of a corporation, the merger of the provider corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation (transfer of corporate stock or the merger of another corporation into the provider corporation does not constitute a change of ownership); and
- In the case of leasing, the lease of all or part of a provider/supplier facility constitutes a change of ownership of the leased portion.

Entity: A business organization (e.g., group practice, hospital, clinic, health care delivery system) that is eligible to receive reassigned benefits as permitted under 42 CFR 424.80.

Individual: A physician or other individual practitioner eligible to receive Medicare or other federal health program benefits who is permitted to reassign their benefits to an eligible entity.

Medicare Identification Number: This number uniquely identifies individuals and entities as Medicare providers/suppliers and is the number used on claim forms. The Medicare Identification Number is also known as Medicare Provider Number and Provider Identification Number (PIN). Examples of Medicare Identification Numbers are the UPIN, OSCAR number, NSC number, etc.

National Provider Identifier (NPI): This number is assigned using the National Provider System to identify health care provider/suppliers. In the future, it will replace the Medicare Identification Number.

OMB Approval No. 0938-0685 II

APPLICATION COMPLETION INSTRUCTIONS

Check the box indicating the reason this application is being completed.

1. Entity Identification

Complete information identifying the entity to whom Medicare or other federal health care program benefits are being reassigned to and the type of action being reported.

> **Note:** This form may be used to add or delete an individual who reassigned his or her benefits to the entity.

The legal business name of the entity must be the same name the entity uses in reporting to the Internal Revenue Service (IRS).

2. Individual Identification

Complete this section for each individual who is reassigning Medicare or other federal health care benefits to the entity shown in the Entity Identification section.

3. Practice Location(s)

Complete all information requested for each location where the individual will render services to Medicare or other federal health care program beneficiaries on behalf of the entity identified in the Entity Identification section. The entity must have enrolled, or be in the process of enrolling, all of these practice locations using the HCFA 855 General Enrollment Application.

4. Billing Agency/Management Service Organization Address

A Management Service Organization is a company contracted by the applicant to furnish some or all administrative, clerical and claims processing functions of the applicant's practice.

Complete this section if the entity shown in the Entity Identification section currently uses a billing agency/management service organization to submit bills.

5. Reassignment of Benefits Statement

In general, Medicare and other federal health care programs only make payments to the beneficiary or the individual or entity that directly provides the service. However, an individual or entity may reassign benefits to an eligible entity as defined in 42 CFR 424.80. The individual making this reassignment must sign a reassignment of benefits statement. Failure to complete the statement will cause a delay in processing the application and limit the Health Care Financing Administration's or other federal health care program's ability to make payment.

> **Note:** For further information on Federal requirements on reassignment of benefits, the applicant should contact his/her Medicare or other federal health care contractor before signing the application.

6. Contact Person

Provide the full name and telephone number of an individual who can be reached to answer questions regarding the information furnished in this application.

7. Attestation Statement

The Authorized Representative of the entity that will receive payments must sign and date this form, attesting to the accuracy of the information provided and certifying that the entity applying to receive payments is eligible to receive reassigned benefits.

SEE PAGE ONE OF THESE INSTRUCTIONS FOR THE ADDRESS TO RETURN THIS COMPLETED APPLICATION.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0685. The time required to complete this information collection is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: HCFA, P.O. Box 26684, Baltimore, Maryland 21207 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB Approval No. 0938-0685

MEDICARE/FEDERAL HEALTH CARE PROVIDER/SUPPLIER ENROLLMENT APPLICATION
Individual Reassignment of Benefits Application

THIS FORM IS TO BE COMPLETED FOR ANY INDIVIDUAL WHO WILL REASSIGN THEIR BENEFITS TO AN ELIGIBLE ENTITY.

Check box indicating the reason this application is being completed. (Note: definitions of the following terms are found in the instructions.)

- ☐ **Initial Enrollment**
- ☐ **Deleting a Reassignment**
- ☐ **Changes of Ownership (CHOW)**
- ☐ **Adding a Reassignment**
- ☐ **Changing Status of an Individual**

1. Entity Identification

Legal Business Name

"Doing Business As" Name

Entity Employer Identification Number	Entity Medicare Identification Number

Adding or Listing Individual	☐	Date Individual Reassigned Benefits (required) (MM/DD/YYYY)
Deleting Individual	☐	Date Individual Terminated Reassignment (if applicable) (MM/DD/YYYY)

2. Individual Identification

Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Social Security Number	Medicare Identification Number	Date of Birth (MM/DD/YYYY)

Individual Primary Speciality	Individual Secondary Speciality (optional)

What income reporting form does this individual receive from the entity or the Internal Revenue Service at the end of the calendar year?

☐ **W-2** ☐ **1099** ☐ **1065-K1** ☐ **Other** _____

3. Practice Location(s)

List all entity locations where individual will render services.

At how many entity locations does this individual render services? _____

If more space is needed, copy page and attach to application.

Legal Business Name For This Location

Doing Business As Name For This Location

Business Street Address Line 1

Business Street Address Line 2

City	County	State	ZIP Code + 4

OMB Approval No. 0938-0685

4. Billing Agency/Management Service Organization Address

Check here ☐ only if this entire section does not apply to the applicant.

Complete this section if entity is using a billing agency or management service organization.

Name of Billing Agency/Management Service Organization				Employer Identification Number
Agency/Organization Contact Person Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Business Street Address Line 1				
Business Street Address Line 2				
City	State		ZIP Code + 4	
Telephone Number ( )	Fax Number ( )		E-mail Address	

5. Reassignment of Benefits Statement

Medicare law prohibits payment for services to entities other than the practitioner who provided the services unless the practitioner specifically authorizes another entity (employer, facility, health care delivery system, or agent) to receive payment for his or her services, per Federal Regulation 42 CFR 424.80. By signing the Reassignment of Benefits Statement below, you are authorizing an entity to receive Medicare payments on your behalf.

This contract must be in compliance with HCFA regulations. The Reassignment of Benefits Statement must be signed by all providers, suppliers, and individuals who allow an entity (employer, facility, health care delivery system, or agent) to receive payment for the individual's services.

I acknowledge that, under the terms of my employment or contract,
(Legal Business Name of Entity) _____
is entitled to claim or receive any fees or charges for my services.

Reassignee Name (printed) First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Reassignee Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)			Date (MM/DD/YYYY)	

6. Contact Person

Please supply the name and telephone number of a person who can answer questions about the information furnished in this application.

Name First	Middle	Last	Jr., Sr., etc.	Telephone Number ( )

7. Attestation Statement

I certify that I have examined the above information and that it is true, accurate and complete. I understand that any misrepresentation or concealment of material information may subject me to liability under civil and criminal laws. I certify that the entity applying to receive payments is eligible to receive reassigned benefits.

Authorized Representative Name (printed) First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Authorized Representative Title			Date (MM/DD/YYYY)	
Authorized Representative Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)				

OMB Approval No. 0938-0685

Medicare
And Other Federal Health Care Programs
Change of Information

Health Care Provider/Supplier Form

Privacy Act Statement

The Health Care Financing Administration (HCFA) is authorized to collect the information requested on this form to ensure that correct payments are made to providers and suppliers under the Medicare program established by Title XVIII of the Social Security Act. See, sections 1814 and 1815 of the Social Security Act for payment under Part A of Title XVIII [42 U.S.C. §§ 1395f(a)(1) and 1395g(a)], section 1833(e) [42 U.S.C. § 1395l(e)] for payment under Part B and section 1833(e) and 1834(j) [42 U.S.C. §§ 1395m(j)] for payment to DMEPOS under Part B of Title XVIII. In addition, HCFA is required to ensure that no payments are made to providers or suppliers who are excluded from participation in the Medicare program under section 1128 of Title XVIII [42 U.S.C. § 1320a-7] or who are prohibited from providing services to the federal government under section 2455 of the Federal Acquisition Streamlining Act of 1994, (P.L. 103-355) [31 U.S.C. § 6101 note]. This information must, minimally, clearly identify the provider and its' place of business as required by the Budget Reconciliation Act of 1985 (P.L. 99-272) [42 U.S.C. § 9202(g)] and provide all necessary documentation to show they are qualified to perform the services for which they are billing.

The Debt Collection Improvement Act (DCIA) of 1996 (P.L. 104-134) [31 U.S.C. §§ 3720B-3720D] requires agencies to collect the Taxpayer Identification Number (either the Social Security Number or the Employer Identification Number) from all persons or business entities doing business with the federal government. Under section 310001(l)(1) of the DCIA [31 U.S.C. § 7701(c)(1)], the taxpayer identification number will be used to collect (including collection through use of offset) and report any delinquent amounts arising out of the business relationship with the Government. Therefore, collection of this data element is mandatory.

The purpose of collecting this information is to determine or verify the eligibility of individuals and organizations to enroll in the Medicare program as providers/suppliers of goods and services to Medicare beneficiaries and to assist in administration of the Medicare program and other Federal and State health care programs. All information on this form is required, with the exception of those sections marked as optional on the form. Without this information, the ability to make payments will be delayed or denied.

The information collected will be entered into either system number 09-70-0525 titled Unique Physician/Practitioner Identification Number (UPIN) System (published in the Federal Register in Vol. 61, no. 89, May 7, 1996), or the National Provider Identifier (NPI) System (OMB) approval 0938-0684 (R-187). The information in this application will be disclosed according to the routine uses described below.

Information from these systems may be disclosed under specific circumstances, to:

(1) Contractors working for HCFA to carry out Medicare functions, collating or analyzing data, or to detect fraud or abuse;
(2) A congressional office from the record of an individual health care provider in response to an inquiry from the congressional office at the written request of that individual health care practitioner;
(3) The Railroad Retirement Board for purposes of administering provisions of the Railroad Retirement or Social Security Acts;
(4) Peer Review Organizations in connection with the review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XVIII of the Social Security Act;
(5) To the Department of Justice or an adjudicative body when the agency, an agency employee, or the United States Government is a party to litigation and the use of the information is compatible with the purpose for which the agency collected the information. (6) To the Department of Justice for investigation and prosecuting violations of the Social Security Act to which criminal penalties attach;
(7) To the American Medical Association (AMA), for the purpose of attempting to identify medical doctors when the Unique Physician Identification Number Registry is unable to establish identity after matching contractor submitted data to the data extract provided by the AMA;
(8) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or to the restoration or maintenance of health;
(9) Other Federal agencies who administer a Federal health care benefits program to enumerate/enroll providers of medical services or to detect fraud or abuse;
(10) State Licensing Boards for review of unethical practices or nonprofessional conduct;
(11) States for the purpose of administration of health care programs; and/or
(12) Insurance companies, self insurers, health maintenance organizations, multiple employer trusts, and other health care groups providing health care claims processing, when a link to Medicare or Medicaid claims is established, and data are used solely to process provider's/supplier's health care claims.

The applicant should be aware that the Computer Matching and Privacy Protection Act of 1988, (P.L. 100-503) amended the Privacy Act, 5 U.S.C. § 552a, to permit the government to verify information through computer matching.

Protection of Proprietary Information

Privileged or confidential commercial or financial information collected on this form are protected from public disclosure by Federal law 5 U.S.C. 552(b)(4) and Executive Order 12600.

Protection of Confidential Commercial and/or Sensitive Personal Information

If any information within this application (or attachments thereto) constitutes a trade secret or privileged or confidential information (as such terms are interpreted under the Freedom of Information Act and applicable case law), or is of a highly sensitive personal nature such that disclosure would constitute a clearly unwarranted invasion of the personal privacy of one or more persons, then such information will be protected from release by HCFA under 5 U.S.C. § 552(b)(4) and/or (b)(6), respectively.

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MEDICARE AND OTHER FEDERAL HEALTH CARE PROGRAMS PROVIDER/SUPPLIER FORM CHANGE OF INFORMATION INSTRUCTIONS

Change of Information Form-HCFA 855C

Upon completion, return this form and all necessary documentation to:

General

This form is for reporting changes in provider/supplier information for the Medicare or any other federal health care program. All changes must be requested in writing and have an original signature. Faxed or photocopied signatures will not be accepted. Changes on this form are those made most frequently and may also be reported using HCFA Form 855, 855R, or 855S, as appropriate. All changes **not** on this form **must** be reported using HCFA Forms 855, 855R, or 855S.

This form is not to be used to report a change of ownership (CHOW) as defined in 42 CFR § 489.18. A change of ownership requires the new owner to submit a completed HCFA Form 855 (General Enrollment Application). However, the current owner should complete the Potential Termination of Current Ownership section of this form to report that a potential change of ownership may occur.

Check Type of Change Being Reported

Check all changes that apply.

1. Provider/Supplier Identification

Complete provider/suppliers's full name and Social Security Number and Employer Identification Number as it is currently on file at the Medicare or other federal health care contractor. The current Medicare or other federal health care program identification number must be provided (e.g. UPIN, NSC, OSCAR, PIN, NPI).

For legal business name, supply the name that the individual or entity uses in reporting to the Internal Revenue Service (IRS), as well as the individual's or entity's Employer Identification Number (EIN) as it is currently on file at the Medicare or other federal health care contractor. If the EIN has changed, a new Enrollment Application (HCFA Form 855 or 855S) must be completed.

2. Name Change Information

If the provider/supplier is reporting a name change, complete applicable changes to the individual, organization or group name, and/or the "doing business as" name in the appropriate section. If an organization or group is requesting a name change, an IRS form W-9 or other official correspondence must be submitted showing the new name and the tax identification number related to the new name.

3. Address/Telephone Number Change Information

Complete provider/supplier's new mailing address. This is where the provider/supplier receives notices from the Health Care Financing Administration or other federal health care programs.

Complete the "Pay To" address section if provider/supplier would like payments to go to an address other than the reported "Pay To" address currently on file. This address may be a Post Office Box.

If the provider/supplier is reporting a billing agency/management service organization address change, complete identifying information for the agency/organization and furnish the new address. If the provider/supplier is reporting a **NEW** billing agency/management service organization, do not use this form. Provider/supplier must complete HCFA Form 855 (Provider/Supplier Identification and Billing Agency/Management Service Organization Address sections) and submit a copy of the new billing agreement/contract.

If provider/supplier is changing the location of the current practice, complete all information requested for the new location where provider/supplier will render services to Medicare or other federal health care program beneficiaries. If establishing a concurrent location (in addition to the current location), a new HCFA Form 855 must be completed for the **new** location.

A post office box or drop box is **not** acceptable as a practice location address. The phone number must be a number where patients and/or customers can reach the provider/supplier to ask questions or register complaints.

Indicate whether patient records are kept at the new practice location. If records are not kept at the new practice location, supply the physical address where the records are maintained. A post office box or drop box is **not** acceptable as the physical address where patient records are maintained.

4. Provider/Supplier Specialty

Complete this section if provider/supplier's primary and/or secondary specialty is changing.

5. Medicare or Other Federal Health Care Program Billing Number Deactivation Information

If provider/supplier wishes to deactivate his/her Medicare or other federal health care program billing number, identify the type of Medicare or other federal health care program billing number (e.g. UPIN, NSC, OSCAR, CHAMPUS, CHAMPVA, etc.) and provide the billing number, the effective date of deactivation for that billing number, and the reason for deactivation. Provider/supplier may deactivate any and all Medicare or other federal health care program billing numbers as necessary by listing all applicable numbers, their types, and effective dates of deactivation as outlined above in this section. However, applicant must notify each individual federal agency regarding the deactivation of the number(s) under that agency's control.

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6. Addition/Deletion of Authorized Representative

Complete this section if provider/supplier wishes to delete a currently listed authorized representative, or the provider/supplier would like to report a new authorized representative.

The original signature of the new authorized representative is required to add a new authorized representative.

7. Surety Bond Information

This section to be completed by all providers/suppliers for which a surety bond is required.

Annual renewals must be reported to the Medicare contractor using this Change of Information form - HCFA Form 855C.

An original copy of the surety bond must be submitted with this form. Failure to submit an original copy of the surety bond will prevent the processing of this form. In addition, the surety bond company must submit a certified copy of the agent's Power of Attorney with this form.

8. Potential Termination of Current Ownership

When the business/organiization is changing ownership, in accordance with the provisions for Change of Ownership (CHOW) as defined in 42 CFR § 489.18, the current owner should furnish name of the potential new owner and the projected effective date of the potential change of ownership.

Note: This section is not to be completed when the existing business/organization is adding or deleting a new owner. Changes of individual owners should be reported using the appropriate sections of HCFA Form 855 (General Application).

9. Effective Date of Change(s)

Report the date all listed changes are effective.

10. Attestation Statement

Sign and date this form attesting to the accuracy of the requested changes. If changes are being reported by the individual provider/supplier, the provider/supplier must sign this form. If the changes are being reported for an organization or group practice, an authorized representative of the organization or group practice must sign this form to confirm the requested change(s).

THIS FORM SHOULD BE RETURNED TO YOUR LOCAL MEDICARE OR OTHER FEDERAL HEALTH CARE PROGRAM CONTRACTOR. SEE THE RETURN ADDRESS AT THE BEGINNING OF THESE INSTRUCTIONS.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0685. The time required to complete this information collection is estimated to average 30 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: HCFA, P.O. Box 26684, Baltimore, Maryland 21207 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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MEDICARE/FEDERAL HEALTH CARE PROVIDER/SUPPLIER FORM
Change of Information Form

Type of Change (Check all that apply.)

- ☐ Name
- ☐ Pay To Address
- ☐ E-Mail Address
- ☐ Potential Termination of Current Ownership
- ☐ Practice Location Address
- ☐ Billing Agency Address
- ☐ Authorized Representative
- ☐ Mailing Address
- ☐ Specialty
- ☐ Deactivation of Medicare Billing Number(s)
- ☐ Surety Bond Change or Renewal Information
- ☐ Telephone Number(s)
- ☐ Fax Number(s)

1. Provider/Supplier Identification (Required)

Individual Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Other Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

OR

Business Name:

Social Security Number (if applicable)	Employer Identification Number (if applicable)	Medicare Identification Number(s) (if applicable)

2. Name Change Information

A. Individuals ONLY

Prior Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
New Name: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.

Social Security Number (if applicable)	Employer Identification Number (if applicable)	Medicare Identification Number(s) (if applicable)

B. Organizations or Groups ONLY

New Legal Business Name	Employer Identification Number

C. "Doing Business As" Name

Under what new name do you conduct business?

_____

3. Address/Telephone Number Change Information

A. Mailing Address

New Mailing Address Line 1

New Mailing Address Line 2

New City	New County	New State	New ZIP Code + 4

New Telephone Number ( )	New Fax Number ( )	New E-mail Address

B. "Pay To" Address

New Mailing Address Line 1

New Mailing Address Line 2

New City	New State	New ZIP Code + 4	New Telephone Number ( )

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3. Address/Telephone Number Change Information (continued)

C. Billing Agency/Management Service Organization Address

Attach a copy of the most current signed contract with provider's/supplier's billing agency or management service organization.

Name of Billing Agency/Management Service Organization			Employer Identification Number	
Agency/Organization Contact Person Name: First	Middle	Last	Jr., Sr., etc.	Title
New Telephone Number ( )	New Fax Number ( )		New E-mail Address	
New Business Street Address Line 1				
New Business Street Address Line 2				
New City	New State		New ZIP Code + 4	

D. Practice Location(s) (For each additional location, copy and complete this section.)

New Street Address Line 1			
New Street Address Line 2			
New City	New County	New State	New ZIP Code + 4
New Telephone Number ( )	New Fax Number ( )	New E-mail Address	

Are all patient records stored at this new practice location? ☐ **Yes** ☐ **No** **IF NO, supply storage location below.**

Name of New Storage Facility/Location			
New Street Address Line 1			
New Street Address Line 2			
New City	New County	New State	New ZIP Code + 4
New Telephone Number ( )	New Fax Number ( )	New E-mail Address	

4. Provider/Supplier Specialty Change Information

New Primary Specialty	New Secondary Specialty

5. Medicare or Other Federal Health Care Program Billing Number Deactivation Information

Type (OSCAR, UPIN, PIN, etc.)	Medicare/Other Federal Health Care Program Number	Effective Date of Deactivation (MM/DD/YYYY)

Reason for deactivation request?

6. Addition/Deletion of Authorized Representative

For each additional authorized representative, copy and complete this section.

☐ **Addition of Authorized Representative** **Effective date (MM/DD/YYYY)** _____			☐ **Deletion of Authorized Representative** **Effective date (MM/DD/YYYY)** _____	
Authorized Representative Name: (printed) First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Authorized Representative Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)			Title/Position	Date (MM/DD/YYYY)
Social Security Number	Medicare Identification Number(s) (if applicable)		Medicaid Identification Number(s) and State(s) (if applicable)	

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7. Surety Bond Change or Renewal Information

An original copy of the current surety bond must be submitted with this form.

A certified copy of the surety bond agent's Power of Attorney must be submitted with this form.

Name of Surety Bond Company		Telephone Number ( )	Fax Number ( )
Agent's Name: First	Middle	Last	Jr., Sr., etc.
Amount of Surety Bond $	Effective Date (MM/DD/YYYY)		
Bond for Tax Year:	Annual Renewal Date (MM/DD/YYYY)		

8. Potential Termination of Current Ownership

Furnish name of potential new owner and projected effective date of change of ownership.

Individual Name of Potential New Owner: First	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
OR				
Legal Business Name of Potential New Owner:				
Projected Effective Date of Change of Ownership (MM/DD/YYYY)	Medicare Identification Number of Potential New Owner (if applicable)			

9. Effective Date of Change(s)

This change/these changes are effective as of _____ (MM/DD/YYYY)

10. Attestation Statement

I certify that I have examined the above information and that it is true, accurate and complete. I understand that any misrepresentation or concealment of material information may subject me to liability under civil and criminal laws.

Provider/Supplier Name: First (printed)	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Provider/Supplier Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)			Date (MM/DD/YYYY)	

or for groups and organizations:

Authorized Representative Name: First (printed)	Middle	Last	Jr., Sr., etc.	M.D., D.O., etc.
Authorized Representative Signature (First, Middle, Last, Jr., Sr., M.D., D.O., etc.)		Title/Position	Date (MM/DD/YYYY)	

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federal register

Monday
January 5, 1998

Part III

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 970103002–7304–03

RIN: 0660–ZA02

CFDA: 11.552; Telecommunications and Information Infrastructure Assistance Program

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this notice describing the conditions under which applications will be received under the Telecommunications and Information Infrastructure Assistance Program (TIIAP) and how NTIA will determine which applications it will fund. TIIAP assists eligible organizations by promoting the widespread use and availability of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for information infrastructure projects, this program will help develop a nationwide, interactive, multimedia information infrastructure that is accessible to all Americans, in rural as well as urban areas.

DATES: Complete applications for the Fiscal Year 1998 TIIAP grant program must be mailed or hand-carried to the address indicated below and received by NTIA no later than 9:00 p.m. EST, March 12, 1998.

ADDRESSES: Applications must be mailed to:

Telecommunications and Information Infrastructure Assistance Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, HCHB, Room 4092, Washington, D.C. 20230.

or hand-delivered to:

Telecommunications and Information Infrastructure Assistance Program, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 1874, Herbert Clark Hoover Building, 1401 Constitution Avenue, NW, Washington, D.C. 20230.

Room 1874 is located at entrance #10 on 15th Street NW, between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: Stephen J. Downs, Director of the Telecommunications and Information Infrastructure Assistance Program, Telephone: 202/482–2048. Fax: 202/501–5136. E-mail: tiiap@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Program Purposes

NTIA announces the fifth annual round of a competitive matching grant program, the Telecommunications and Information Infrastructure Assistance Program (TIIAP). TIIAP was created to promote the development, widespread availability, and use of advanced telecommunications and information technologies to serve the public interest.

To accomplish this objective, TIIAP will provide matching grants to state, local, and tribal [1] governments; non-profit health care providers and public health institutions; schools; libraries; museums; colleges; universities; public safety providers; non-profit community-based organizations; and other non-profit entities. TIIAP will support projects that improve the quality of, and the public's access to, cultural, education, and training resources; reduce the cost, improve the quality, and/or increase the accessibility of health care and public health services; promote responsive public safety services; improve the effectiveness and efficiency of government services; and foster communication, resource-sharing, and economic development within communities, both rural and urban.

Authority

Title II of the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1998 (set out in Pub L. 105–119, 111 Stat 2440).

Funding Availability

Approximately $17 million is available for federal assistance. A small amount of additional funds that has been deobligated from grants awarded in previous fiscal years may also be available for Fiscal Year 1998 grants. Based on past experience, NTIA expects this year's grant round to be highly competitive. In Fiscal Year 1997, NTIA received more than 900 applications collectively requesting $354 million in grant funds. From these applications, the Department of Commerce announced 55 TIIAP awards totaling $20.9 million in federal funds.

Based on previous grant rounds, TIIAP anticipates that the average size of a grant award will be approximately $350,000. An applicant may request up to $750,000 in total federal support over a period of up to three years.

Eligible Organizations

State, local, and tribal governments; colleges and universities; and non-profit entities are eligible to apply. Although individuals and for-profit organizations are not eligible to apply, they may participate as project partners.

Matching Funds Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. Applicants must document their capacity to provide matching funds. Matching funds may be in the form of cash or in-kind contributions. Grant funds under this program are usually released in direct proportion to local matching funds utilized and documented as having been expended. NTIA will provide up to 50 percent of the total project cost, unless the applicant can document extraordinary circumstances warranting a grant of up to 75 percent. Federal funds (such as grants) generally may not be used as matching funds, except as provided by federal statute. If funds from a federal agency are to be used, the applicant should contact the federal agency that administers the funds in question and obtain documentation from that agency's Office of General Counsel to support the use of federal funds for matching purposes.

Universal Service Discounts

On May 8, 1997, the Federal Communications Commission (FCC) released a Report and Order on Universal Service. Section 254(h) of the Communications Act of 1934 (the Act), also known as the Snowe-Rockefeller-Exon-Kerrey Amendment, requires that schools, libraries, and public and non-profit rural health care providers receive access to telecommunications services at discounted rates. NTIA requires that all TIIAP awardees eligible for the discounts under section 254(h) of the Act apply for all available discounts prior to purchasing telecommunications services with grant funds. Neither federal funds nor matching funds may be used to cover costs that could be avoided through the use of available discounts. In addition, the discounts received through the Universal Service Fund may not be used as matching contributions.

Use of Program Income

Applicants are advised that any program income generated by a proposed project is subject to special conditions. Anticipated program income

[1] American Indian Tribes and Alaska Native Villages.

must be documented appropriately in the project budget. In addition, should an application be funded, unanticipated program income must be reported to TIIAP and the budget for the project must be renegotiated to reflect receipt of this program income. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award. In addition, federal regulations prohibit any recipient or subrecipient receiving federal funds from using equipment acquired with these funds to provide services to non-federal outside organizations for a fee that is less than private companies charge for equivalent services. This prohibition does not apply to services provided to outside organizations at no cost.

Policy on Sectarian Activities

Applicants are advised that on December 22, 1995, NTIA issued a notice in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be relevant should read the policy that was published in the **Federal Register** at 60 FR 66491, Dec. 22, 1995.

Completeness of Application

TIIAP will initially review all applications to determine whether all required elements are present and clearly identifiable. The required elements are listed and described in the Guidelines for Preparing Applications—Fiscal Year 1998. Each of the required elements must be present and clearly identified. Failure to do so may result in rejection of the application.

Application Deadline

As noted above, complete applications for the Fiscal Year 1998 TIIAP grant program must be received by NTIA no later than 9:00 P.M. EST, March 12, 1998. Postmark date is not sufficient. Applications which have been provided to a delivery service on or before March 11, 1998, with ''delivery guaranteed'' before 9:00 P.M. on March 12, 1998, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed above guaranteed prior to the closing date and time. Applications will not be accepted via facsimile machine transmission or electronic mail. NTIA anticipates that it will take between four and six months to complete the review of applications and make final funding decisions.

Scope of Proposed Project

Projects funded by TIIAP must meet the Program Funding Priorities described in this notice. Projects must involve innovative approaches to the delivery of useful, practical services in real-world environments within the grant award period. In Fiscal Year 1998, TIIAP will not support the following kinds of projects:

One-Way Networks

TIIAP will not support construction or augmentation of one-way networks, that is, networks which deliver information to a passive audience; all networks and services proposed for TIIAP support must be interactive.[2] For example, TIIAP will not fund one-way broadcast systems, tape duplication and/or delivery projects, or any project which does not permit the end user in some fashion to select the information he or she will receive.

Single-Organization Projects

TIIAP will not support projects whose primary emphasis is on the internal communications needs of a single organization, even if the organization may have a considerable number of offices in different cities or regions of the country. For example, TIIAP will not consider projects that create or expand Local Area Networks or internal e-mail systems whose end users are principally, or exclusively, staff members of a single organization. However, TIIAP will support applications that extend communications among multiple organizations and agencies within a governmental jurisdiction. Projects should, to the maximum degree feasible, include appropriate partnerships,[3] with plans for inter-organizational communications among the partners.

Replacement or Upgrade of Existing Facilities

TIIAP will not support any projects whose purpose is to upgrade or replace existing systems, add workstations or servers to existing networks, or complete the installation of a network.

In addition, NTIA will not support projects whose primary purpose is to develop content, hardware, or software, or to provide training on the use of the information infrastructure.[4] TIIAP will, however, support projects that include elements of content development,[5] training, and hardware and software development, as long as they are integral to a broader project that will deploy and use information infrastructure to address community problems.

Content Development Projects

Many projects necessarily involve some modification or development of content. Therefore, TIIAP will support projects in which the creation or conversion of content is part of a larger effort to utilize information infrastructure technologies to address real-world problems. However, TIIAP will not support projects whose primary activity is to develop data resources, or in any other way produce information content. For example, TIIAP will not consider projects which are designed only to develop curriculum, create databases, convert existing paper-based information to a digital format, digitize existing graphics collections, or establish World Wide Web sites.

Hardware or Software Development Projects

Some projects may require limited software development or the customization or modification of existing software or hardware in order to meet particular end-user requirements or to enable the exchange of information across networks. However, the creation of a software or hardware product cannot be a project's primary activity.

Training Projects

TIIAP will not support projects whose primary activity is to provide training in the use of information infrastructure technology. TIIAP does consider training to be an essential aspect of most implementation projects; therefore, a training component is, in most cases, a necessity. However, TIIAP will not support projects which propose nothing more than instruction on software

[2] ''Interactivity'' is defined as the capacity of a communications system to allow end users to communicate directly with other users, either in real time (as in a video teleconference) or on a store-and-forward basis (as with electronic mail), or to seek and gain access to information on an on-demand basis, as opposed to a broadcast basis.

[3] A ''partner'' is defined as an organization that supplies cash or in kind resources and/or plays an active role in the planning and implementation of the project.

[4] ''Information Infrastructure'' includes telecommunication networks, computers, other end-user devices, software, standards, and skills that collectively enable people to connect to each other and to a vast array of services and information resources.

[5] ''Content development'' refers to the creation of information resources, such as databases or World Wide Web sites, for the purpose of dissemination through one or more on-line services.

applications, Internet use, or other use of information infrastructure.

Program Funding Priorities

NTIA is committed to supporting innovative and exemplary projects that can serve as models for using information infrastructure in the public and non-profit sectors and thereby contribute to the development of an advanced National Information Infrastructure (NII).[6] NTIA believes that every project supported under TIIAP should be a nationally significant demonstration of how telecommunications and information technologies can be used to extend valuable services and opportunities to all Americans, especially the underserved. Underserved refers to individuals and communities that are subject to barriers that limit or prevent their access to the benefits of information infrastructure technologies and services. In terms of information infrastructure, these barriers may be technological, geographic, economic, physical, linguistic, or cultural. For example, a rural community may be physically isolated from circuits adequate to allow for data access; inner city neighborhoods may contain large numbers of potential end users for whom ownership of computer hardware is unlikely; or individuals with disabilities may have the need for different types of interfaces when manipulating hardware and software.

Each project should identify specific problems or needs in a community, use information infrastructure services and technologies to offer concrete solutions, and target measurable outcomes. TIIAP's emphasis is on the application of technology to meet the needs of end users, and not simply on the technology as an end in itself. In addition, the development of the NII depends upon the contribution of a wide variety of skills, ideas, and perspectives. Therefore, TIIAP-supported projects should, to the greatest degree possible, reach out to all members of a community and catalyze partnerships to help erase the distinction between information ''haves'' and ''have-nots.''

NTIA realizes that not every model will work equally well in every situation or region; therefore, TIIAP will continue to support a variety of model projects among different application areas, geographic regions, and underserved populations. However, as already noted, each application must be innovative in its application of technology. Innovation can be conceived broadly: it can involve the use of new or untested network technologies that extend end-user capabilities or enhance service delivery; an imaginative partnership or organizational model; a new application of proven technologies; a creative strategy for overcoming traditional barriers to access; or a new configuration of existing information resources. As a program with a national focus, TIIAP expects each project to offer potentially new and useful insights into the use of network technologies.

Projects must also be exemplary in the sense that they serve as genuine models that can be emulated, replicated, or adapted to local conditions by other organizations and communities facing similar challenges. For this reason, many excellent projects proposed to TIIAP may not be considered competitive either because they (1) focus on a problem or issue that confronts only a single applicant organization; (2) can only be replicated at a prohibitively high cost; or (3) propose a conventional approach that, while new to the applicant, has been demonstrated or attempted in similar circumstances. Moreover, in order to add to the national understanding of how the NII can be used to benefit the public and facilitate widespread diffusion of lessons learned from TIIAP projects, each application must include a rigorous evaluation plan and effective documentation and dissemination strategies.

In some previous fiscal years, TIIAP has supported planning projects whose primary goal was to develop strategies for the enhanced application of existing NII technologies, rather than for the actual deployment or use of information infrastructure. Due to the limited amount of funds available to the program, the emphasis for Fiscal Year 1998 is on projects that deploy, use, and evaluate the use of information infrastructure applications. NTIA will, however, also consider allocating a limited amount of funds to support outstanding planning projects that explore potential uses of next generation network technologies in an application area. Applications for such projects will be evaluated against the same criteria applied to all other applications.

In Fiscal Year 1998, TIIAP will support projects in five application areas: Community Networking; Education, Culture, and Lifelong Learning; Health; Public Safety; and Public Services. Each application will be reviewed with other applications in the same area. NTIA recognizes that many innovative projects cross the boundaries defined by these application areas and involve services and partnerships that combine different application areas. NTIA encourages the formation of such cross-cutting linkages.

Community Networking

This area focuses on multi-purpose projects that enable a broad range of community residents and organizations to communicate, share information, promote community economic development, and participate in civic activities. Community Networking projects typically involve multiple stakeholder organizations that wish to link services, reduce duplicative record-keeping, simplify and/or expand end-user access to a variety of information resources, engage in initiatives that would not have been possible without networking technologies, or provide information across various application areas within a specific geographic region.

Examples of Community Networking projects may include, but would not be limited to: community-wide information and communication services available to residents of a local community; projects enabling a diverse array of organizations to share information infrastructure and resources; and networks or information services that promote community or regional economic development.

Education, Culture, and Lifelong Learning

Projects in this area seek to improve education and training for learners of all ages and provide cultural enrichment through the use of information infrastructure in both traditional and non-traditional settings.

Examples of Education, Culture, and Lifelong Learning projects may include, but would not be limited to: projects that explore creative approaches to integrating computer-based learning and network resources in the classroom; projects that forge stronger links among educators, students, parents, and others in the community; projects linking workplaces and job-training sites to educational institutions; innovative distance learning networks providing educational, training, and literacy opportunities in remote areas; projects that enrich communities by delivering on-line informational, educational, and cultural services from public libraries,

[6] The National Information Infrastructure (NII) is a federal policy initiative to facilitate and accelerate the development and utilization of the nation's information infrastructure. The Administration envisions the NII as a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips. For more information on various aspects of the NII initiative, see The National Information Infrastructure: Agenda for Action, 58 FR 49,025 (September 21, 1993).

museums, and other cultural centers; and projects that allow users to collaborate in the creation of artistic works or participate actively in meaningful online cultural exchanges.

Health

Projects in this area involve the use of information infrastructure in the delivery of health and home health care services and the performance of core public health functions.

Examples of Health projects may include, but would not be limited to: systems that improve the care and treatment of patients in the home environment; telemedicine systems that offer new approaches to extending medical expertise to rural or underserved urban areas or non-traditional settings such as schools; projects designed to improve communication between health care providers and patients and enable consumers to participate more actively in their health care; projects to improve treatment of patients in emergency situations and extend trauma care services beyond the emergency room; and networks or information services aimed at disease prevention and health promotion.

Public Safety

Projects in this area will seek to increase the effectiveness of law enforcement agencies, emergency, rescue, and fire departments, or other entities involved in providing safety services that effectively respond to, prevent, or intervene in crises.

Examples of Public Safety projects may include, but would not be limited to: projects that facilitate information exchange among public safety agencies located in a single or multiple geographic area to increase efficiency and share resources; projects that provide information in a timely manner to ''first-response officials,'' such as police officers, emergency medical technicians, and firefighters; projects that help public safety agencies provide community outreach services; projects that develop innovative ways to share scarce spectrum resources; and projects that aim to increase the safety and security of children and reduce domestic violence.

Public Services

Projects in this area aim to improve the delivery of services to people or organizations with a range of social service needs. This area includes, for example, housing, child welfare, food assistance, employment counseling, and other services typically delivered by state, tribal, and local governments or by community-based non-profit organizations.

Examples of Public Services projects may include, but would not be limited to: projects that use information technology creatively to promote self-sufficiency among individuals and families; networks that facilitate coordination and collaboration among public and/or community-based agencies; electronic information and referral services that provide information on a variety of community-based or government services; projects that make public agencies more accessible and responsive to community residents; electronic benefits transfer projects; projects that employ geographic information systems to study demographic or environmental trends and target community strategies; and projects that focus on the needs of special communities, such as individuals with disabilities.

Review Criteria

Reviewers will review and rate each application using the following equally weighted criteria:

1. Project Purpose

Each application will be judged on the overall purpose of the proposed project and its potential impact on a community. In defining the purpose of the project, applicants must (1) identify a specific problem(s) or need(s) within the community to be served; (2) propose a workable and achievable means of addressing the community's problem(s) employing information infrastructure services and technologies; and (3) identify anticipated outcomes that are both realistic and measurable. The project purpose must convincingly link the three major elements—problem, solution, and outcomes—so that reviewers understand not only what the applicant proposes to do, but also (1) why the project needs to be done, (2) how the application will respond to the needs of targeted end users, and (3) how the community might be changed as a result of successful implementation of the project.

2. Significance

Each application will be rated on the degree to which the proposed project demonstrates innovation and is exemplary.

When rating the degree to which an application demonstrates innovation, reviewers will use their experience as experts in their respective fields to determine whether a proposed project introduces a unique or novel approach and extends the state-of-the-art in a given application area. As noted in the section on ''Program Funding Priorities,'' reviewers will assess innovation broadly, examining both the technology to be used and the application of technology in a particular setting, to serve a particular population, or to solve a particular problem. Reviewers will examine each project in a national context and ask what insight a proposed project will add to what is known about using network technologies in a given application area and how a project complements and/or improves upon other activities in their field.

With respect to identifying exemplary projects, reviewers will assess the degree to which a project has the potential for widespread replication. Applicants should describe how the needs or problems they propose to address are common or of interest to other organizations and communities. Reviewers will also assess the degree to which a project can be easily duplicated by or adapted to other organizations and communities. Applicants should discuss why a project would be easy to replicate and what types of organizations would be interested in copying the project.

3. Project Feasibility

Each application will be rated on the overall feasibility of the proposed project and its plan of implementation. In assessing project feasibility, reviewers will focus on the following issues: the technical approach; the qualifications of the applicant team; the proposed budget and implementation schedule; and the applicant's plan for sustaining the project beyond the grant period.

The technical approach should be consistent with the vision of a nationwide, seamless, interactive network of networks and must therefore address issues of interoperability[7] and scalability.[8] Applications must specify in detail how the proposed system would work, how it would operate with other systems, the technological alternatives that have been examined, and the plans for the maintenance and/or upgrading of the system. Applicants are expected to make use of existing infrastructure and commercially

[7] ''Interoperability'' refers to the condition achieved among information and communication systems when information (i.e., data, voice, image, audio, or video) can be easily and cost-effectively shared across acquisition, transmission, and presentation technologies, equipment, and services.

[8] ''Scalability'' refers to the ability of a system to accommodate a significant growth in the size of the system (i.e., services provided, end users served) without the need for substantial redesign. A scalable approach that is demonstrated on a small scale can also be applied on a larger scale.

available telecommunications services, unless extraordinary circumstances require the construction of new network facilities.

Applicants must describe the qualifications of the project team, including the applicant and its partners, to show that they have the resources, expertise, and experience necessary to undertake the project and complete it within the proposed period.

Reviewers will analyze the budget in terms of clarity and cost-effectiveness. The proposed budget must be appropriate to the tasks proposed and sufficiently detailed so that reviewers can easily understand the relationship of items in the budget to the project narrative. In addition to a clear and well-justified budget proposal, each application should contain a proposed implementation schedule that identifies major project tasks and milestones.

Reviewers will also examine the potential viability of the proposed project beyond the grant period. Applicants should therefore present a credible plan, including a discussion of anticipated ongoing expenses and potential sources of non-federal funds, to sustain the project after completion of the grant. In evaluating the plan, reviewers will consider the economic circumstances of the community or communities to be served by the proposed project.

4. Community Involvement

Each application will be rated on the overall level of community involvement in the development of the project and the implementation of the proposed project. Reviewers will pay particular attention to the partnerships involved, the strength and diversity of support for the project within the community, and the support for the project's end users.[9]

Community involvement must include the development of partnerships among unaffiliated organizations, from the public, non-profit, or private sectors, as an integral part of each project. Partnerships must be clearly defined, mutually beneficial, and the commitments (including both cash and in-kind contributions) well documented in the application. Partners are defined as organizations that supply cash or in-kind resources and/or play an active role in the planning and implementation of the project.

Reviewers will examine the steps the applicant has taken to involve a wide variety of community stakeholders in the planning of the project and the plans for ongoing community involvement in the project. Each application should contain evidence of demand, from the community, the end users, and the potential beneficiaries, for the services proposed by the project.

Reviewers will consider the degree of attention paid to the needs, skills, working conditions, and living environments of the targeted end users. Reviewers will also consider the extent to which applicants involve representatives from a broad range of potential users and consider the varying degrees of abilities of all end users, including individuals with disabilities.

Plans for training end users, upgrading their skills, and building community awareness and knowledge of the project must be clearly delineated. The application should also include evidence of a significant degree of end-user involvement in the design and planning of projects. NTIA expects applicants to safeguard the privacy of the end users and beneficiaries[10] of the project. Where relevant, applications must address the privacy and confidentiality of user data. For example, an applicant proposing a project dealing with individually identifiable information (e.g., student grades, medical records, etc.) will be required to describe the technical and policy mechanisms to be used for protecting the confidentiality of such information and the privacy of the individuals involved.

5. Reducing Disparities

Every project proposed to TIIAP should target underserved communities specifically and/or reach out to underserved groups within a broader community. Underserved refers to individuals and communities that are subject to barriers that limit or prevent their access to the benefits of information infrastructure and services. In terms of information infrastructure, these barriers may be technological, geographic, economic, physical, linguistic, or cultural. For example, a rural community may be geographically isolated from information resources and lack local technical expertise to help install and manage the network infrastructure; inner city neighborhoods may contain large numbers of potential end users who lack the financial resources to access the information infrastructure; or people with disabilities may need a variety of special hardware or software interfaces to facilitate their use of the information infrastructure.

Each application will be rated according to the degree to which the proposed project will serve to reduce disparities in access to information infrastructure. Reviewers will assess each application by examining evidence of community need and the applicant's proposed strategies for overcoming traditional barriers to access. Disparities in access must be clearly described and supported by specific quantitative data. Beyond providing service to underserved communities, each application should also propose strategies for reaching out to targeted groups and for tailoring any services to their specific needs and circumstances. These strategies should reflect an understanding of why the barriers currently exist and a sensitivity to the learning mechanisms, attitudes, abilities, and customs of the community.

6. Evaluation, Documentation, and Dissemination

Each application will be rated on the quality of its plans for evaluation, documentation, and dissemination and their potential to measure both the effectiveness and efficiency of the proposed solution(s) and the anticipated outcomes of the project. Applications must include the qualifications of any proposed evaluators and provide sufficient funds and resources to evaluate the project, document project activities, and disseminate project findings and lessons learned.

First, each evaluation plan must include an evaluation design, an implementation plan for the evaluation, and a discussion of how resources will be allocated for evaluation (i.e., budget, staffing, and management). The evaluation design should address the evaluation questions; the methodological approach for answering the evaluation questions; how data will be collected; how the data will be analyzed; and how the evaluation findings will be reported and disseminated. The evaluation should be linked to the overall formulation of project goals and objectives; it should relate directly to the problem, solution, and anticipated outcomes identified in the ''Project Purpose'' section. Finally, the research questions and data collection plan should take into account each of the ''Review Criteria'' treated above.

[9] An ''end user'' is one who customarily employs or seeks access to, rather than provides, information infrastructure. An end user may be a consumer of information (e.g., a member of the public employing a touch-screen public access terminal); may be involved in an interactive communication with other end users; or may use information infrastructure to provide services to the public.

[10] Project beneficiaries are those individuals or organizations deriving benefits from a project's outcome(s). A project beneficiary may also, but not necessarily, be a project end user.

Documentation includes the basic record keeping for a project that will be required for analysis of the data and for meaningful reporting about the project. However, documentation goes beyond data collection to include information relevant to project history. The documentation plan should enhance evaluation and aid in information dissemination about the project. This plan should detail the methods and procedures of documentation. Although relevant documentation will vary with program type and application area, documentation should include, for example, demographic and background information on the population(s) to be served, implementation barriers, characteristics and descriptions of project partners, external databases, activity logs, and outreach efforts. Documentation will be very useful in the preparation of quarterly and final reports.

Applicants are also required to submit a plan for disseminating the knowledge gained as a result of implementing their projects. Such plans may include presentations at professional conferences, workshops, and symposia; hosting site visits and conferences; publications of findings in professional journals and World Wide Web sites; and other dissemination methods.

Selection Process

NTIA will publish a notice in the **Federal Register** listing all applications received by TIIAP. Listing an application in such a notice merely acknowledges receipt of an application that will compete for funding with other applications. Publication does not preclude subsequent return or disapproval of the application, nor does it ensure that the application will be funded. The selecting process will last four to six months and involves four stages:

(1) During the first stage, each eligible application will be reviewed by a panel of outside readers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The review panels will evaluate applications according to the review criteria provided in this notice and make non-binding written recommendations to the program.

(2) Upon completion of the external review process, program staff may analyze applications as necessary. Program staff analysis will be based on the degree to which a proposed project meets the program's funding scope as described in the section entitled ''Scope of Proposed Projects''; the eligibility of costs and matching funds included in an application's budget;[11] and the extent to which an application complements or duplicates projects previously funded or under consideration by NTIA or other federal programs. The analysis of program staff will be provided to the TIIAP Director in writing.

The TIIAP Director then prepares and presents a slate of recommended grant awards to the Office of Telecommunications and Information Applications' (OTIA)[12] Associate Administrator for review and approval. The Director's recommendations and the Associate Administrator's review and approval will take into account the following selection factors:

1. The evaluations of the outside reviewers;
2. The analysis of program staff;
3. The degree to which a proposed project meets the program's priorities as described in the section entitled ''Program Funding Priorities';
4. The geographic distribution of the proposed grant awards;
5. The variety of technologies and strategies employed by the proposed grant awards;
6. The extent to which the proposed grant awards represent a reasonable distribution of funds across application areas;
7. The promotion of access to and use of the information infrastructure by rural communities and other underserved groups;
8. Avoidance of redundancy and conflicts with the initiatives of other federal agencies; and
9. The availability of funds.

(3) Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the selection factors described above and the program's stated purposes as set forth in the section entitled ''Program Purposes.''

(4) After applications have been selected in this manner, negotiations will take place between TIIAP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TIIAP proposes to fund and, if necessary, to clarify items in the application. Not all applicants who are contacted for negotiation will necessarily receive a TIIAP award. Final selections made by the Administrator will be based upon the recommendations by the Director and the OTIA Associate Administrator and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled ''Program Purposes,'' upon the conclusion of negotiations.

Eligible Costs

Eligible Costs. Allowable costs incurred under approved projects shall be determined in accordance with applicable federal cost principles, i.e., OMB Circular A–21, A–87, A–122, or Appendix E of 45 CFR part 74. If included in the approved project budget, TIIAP will allow costs for personnel, fringe benefits, computer hardware and software, other end-user equipment, telecommunication services and related equipment, consultants and other contractual services, travel, rental of office equipment, furniture and space, supplies, etc. that are reasonable and directly related to the project. Costs associated with the construction or major renovation of buildings are not eligible. While costs for the construction of new network facilities are eligible costs, applicants are expected to make use of existing infrastructure and commercially available telecommunications services. Only under extraordinary circumstances will the construction of new network facilities be approved. Costs of the professional services, such as instruction, counseling, or medical care, provided via a network supported through this program are not eligible.

Note that costs that are ineligible for TIIAP support may not be included as part of the applicant's matching fund contribution. NTIA also requires that all TIIAP awardees eligible for the discounts under section 254(h) of the Communications Act of 1934 (the Act) apply for all available discounts prior to purchasing telecommunications services with grant funds. In addition, the discounts received through the Universal Service Fund may not be used as matching contributions.

Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant federal agency or 100 percent of the total proposed direct costs dollar

[11] See discussion of ''Eligible Costs'' and ''Matching Funds Requirements'' in this notice.

[12] The Office of Telecommunication and Information Applications is the division of the National Telecommunications and Information Administration that supervises NTIA's grant awards programs.

amount in the application, whichever is less.

Award Period

Successful applicants will have between 12 and 36 months to complete their projects. While the completion time will vary depending on the complexity of the project, NTIA has found that most applicants require at least two years to complete and fully evaluate their projects. Accordingly, NTIA encourages applicants to propose projects lasting between two to three years.

Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this notice. However, under extraordinary circumstances and when it is in the best interest of the federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this notice. Waivers may only be granted for requirements that are discretionary and not mandated by statute. Any request for a waiver must set forth the extraordinary circumstances for the request and be included in the application or sent to the address provided in the **ADDRESSES** section above. NTIA will not consider a request to waive the application deadline for an application until the application has been received.

Other Information

Electronic Information

Information about NTIA and TIIAP, including this document and the Guidelines for Preparing Applications—Fiscal Year 1998, can be retrieved electronically via the Internet using the World Wide Web.
Use http://www.ntia.doc.gov to reach the NTIA home page and follow directions to locating information about TIIAP. TIIAP can also be reached via electronic mail at tiiap@ntia.doc.gov.

Application Forms

Standard Forms 424 (OMB Approval Number 0348–0044), Application for Federal Assistance; 424A (OMB Approval Number 0348–0043), Budget Information—Non-Construction Programs; and 424B (OMB Approval Number 0348–0040), Assurances—Non-Construction Programs, (Rev 4–92), and other Department of Commerce forms shall be used in applying for financial assistance. These forms are included in the Guidelines for Preparing Applications—Fiscal Year 1998, which can be obtained by contacting NTIA by telephone, fax, or electronic mail, as described in the **ADDRESSES** section above. TIIAP requests one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. In addition, all applicants are required to submit a copy of their application to their state Single Point of Contact (SPOC) offices, if they have one. For information on contacting state SPOC offices, refer to the Guidelines for Preparing Applications—Fiscal Year 1998.

Because of the high level of public interest in projects supported by TIIAP, the program anticipates receiving requests for copies of successful applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. To assist NTIA in making disclosure determinations, applicants may identify sensitive information and label it ''confidential.''

Type of Funding Instrument

The funding instrument for awards under this program shall be a grant.

Federal Policies and Procedures

Recipients and subrecipients are subject to all applicable federal laws and federal and Department of Commerce policies, regulations, and procedures applicable to federal financial assistance awards.

Pre-Award Activities

If an applicant incurs any project costs prior to the project start date negotiated at the time the award is made, it does so solely at its own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any oral or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Past Performance

Unsatisfactory performance of an applicant under prior federal financial assistance awards may result in that applicant's proposal not being considered for funding.

Delinquent Federal Debts

No award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to the Department of Commerce are made.

Purchase of American-Made Products

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

Name Check Review

All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management, honesty, or financial integrity.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;
2. Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;
3. Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain federal contracting and financial

transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered federal action, such as the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'' (OMB Control Number 0348–0046), as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is a ''not significant'' rule under Executive Order 12866.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 98–41 Filed 1–2–98; 8:45 am]

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federal register

Monday
January 5, 1998

Part IV

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 960205021–7302–06]

RIN 0660–ZA01

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP).

Applicants for matching grants under the PTFP must file their applications on or before February 12, 1998. NTIA anticipates making grant awards by September 30, 1998. NTIA shall not be liable for any proposal preparation costs.

Approximately $21 million is available for FY 1998 for PTFP grants pursuant to Pub. L. 105–119, the Departments of Commerce, Justice, and State, and Related Agencies Appropriations Act, 1998. The amount of a grant award by NTIA will vary, depending on the approved project. For fiscal year 1997, NTIA awarded $14.2 million in funds to 97 projects. The awards ranged from $8,067 to $650,000.

The applicable Rules for the PTFP were published on November 8, 1996. These rules, 15 CFR part 2301 *et seq.* will be in effect for FY 1998 PTFP applications. Certain requirements of the PTFP at 15 CFR part 2301 are modified in this Notice. Copies of the 1996 Rules will be distributed as part of the PTFP Application Kit and applicants are cautioned not to use older versions of the PTFP Rules which were published in 1991.

Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

DATES: Pursuant to 15 CFR 2301.8(b), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1998 is February 12, 1998. Applications must be received prior to 8 p.m. on or before February 12, 1998. Applicants sending an application should submit an original and five copies to the place indicated in the **ADDRESS** section below. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th St side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current grant cycle and will be returned to the applicant. See 15 CFR 2301.8(c); but see also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (http://www.ntia.doc.gov).

SUPPLEMENTARY INFORMATION:

I. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on a current form approved by the Agency. The current application form will be provided to applicants as part of the application package. This form expires on November 30, 2000, and no previous versions of the form may be used. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.) Applications submitted by facsimile or electronic means are not acceptable.

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address or telephone, fax or Internet numbers noted above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred in FY 1997 will be mailed pertinent PTFP materials and instructions for requesting reactivation of their applications.

Based upon NTIA's experience in implementing the PTFP during the 1997 grant round, NTIA has determined that it is in the best interests of NTIA and applicants to modify or waive certain requirements contained in the PTFP regulations at 15 CFR part 2301. These changes, which are applicable to the FY 1998 PTFP applications and resulting awards only, are indicated in italics below. Dependent upon the effectiveness of these changes, amendments may be made to the PTFP regulations to implement these changes.

Section 2301.11 Service of Applications

Section 2301.11 provides that: 'On or before the closing date, all new or deferred applicants must serve a summary copy of the application on the following Agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission * * *.

(b) The state telecommunications agency(-ies) if any, having jurisdiction over the development of broadcast and/or non broadcast telecommunications in the state(s) and community(-ies) to be served by the proposed project * * *.

(c) The state office established to review applications under Executive Order 12372.'

Section 2301.11(a)—For the FY 1998 PTFP, applicants are not required to submit copies of their PTFP applications to the FCC, nor will they be required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of applications submitted for funding which require FCC authorizations.

Section 2301.11(b)—For the FY 1998 PTFP, applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. NTIA has found that state telecommunication agency input has been useful with regard to broadcast projects, but has received little input from state agencies with regard to distance learning projects. Since many distance learning applications propose projects which are nationwide in nature, NTIA believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will submit documentation that they have coordinated their project with appropriate state telecommunications agencies in their service area.

Section 2301.12 Federal Communications Commission Authorizations

Section 2301.12(a) provides, in part, that 'Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. NTIA recommends that its applicants submit PTFP-related FCC applications to the FCC at least 60 days prior to the PTFP closing date.'

For the FY 1998 PTFP, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

Section 2301.12(b) provides that 'In the case of FCC authorizations where it is not possible or practical to submit the FCC application with the PTFP application, such as C-band satellite uplinks * * * a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.'

For the FY 1998 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

Section2301.12(d) provides that ''Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.''

For the FY 1998 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the other organization's name. NTIA believes that such circumstances will be rare and, in our experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

Section 2301.12(g) provides that ''If the applicant fails to file the required FCC application(s) by the closing date * * * the Agency may reject or return the application.''

As noted above, for the FY 1998 PTFP applications, NTIA does not require that the FCC applications must be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) construction of broadcast station or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.''

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before February 12, 1998. Applicants are encouraged to contact the appropriate SPOC well before the PTFP closing date.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice.

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applicants/bidders for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' (OMB Control Number 0348–0046) as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of

Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they have received, there is no obligation on the part of the Department to cover preaward costs.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department are made.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Special Note: NTIA has established a policy which is intended to encourage stations to increase from 25 percent to 50 percent the matching percentage for those proposals that call for equipment replacement, improvement, or augmentation (PTFP Policy Statement, (56 FR 59168 (1991)). The presumption of 50 percent funding will be the general rule for the replacement, improvement or augmentation of equipment. Exceptions to this general policy direction are as follows: small community-licensee stations will not be subjected to this policy. The same is true of a station that is licensed to a large institution (e.g., a college or university) documenting that it does not receive direct or in-kind support from the larger institution. Also, a showing of extraordinary need or an emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost for such proposals.

A point of clarification is in order: NTIA expects to continue funding projects to activate stations or to extend service at up to 75 percent of the total project cost. NTIA will do this because applicants proposing to provide first service to a geographic area ordinarily incur considerable costs that are not eligible for NTIA funding. The applicant must cover the ineligible costs including those for construction or renovation of buildings and other similar expenses.

Since NTIA has limited funds for the PTFP program, the PTFP Final Rules published November 8, 1996 modified NTIA's policy regarding the funding of planning applications. Our policy now includes the general presumption to fund planning projects at no more than 75 percent of the project costs. NTIA notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. The new NTIA policy therefore codifies what already has become PTFP practice. NTIA, however, is mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new facilities in unserved areas. We therefore will continue to award up to 100 percent of total project costs in cases of extraordinary need (e.g. small community group proposing to initiate new public telecommunication service).

We wish to take this opportunity to restate the policy published in the November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)), regarding applicants' use of funds from the Corporation for Public Broadcasting (CPB) to meet the local match requirements of the PTFP grant. NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another Federally supported grant program for local matching funds. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of ''clear and compelling need'' (15 CFR 2301.6(c)(2)). NTIA intends to maintain that standard and to apply it on a case-by-case basis.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) also discussed a number of issues of particular relevance to applicants proposing nonbroadcast educational and instructional projects and potential improvement of nonbroadcast facilities. These policies remain in effect and will be distributed to all PTFP applicants as part of the Guidelines for preparing FY 1998 PTFP applications.

II. Eligible and Ineligible Costs

Eligible equipment for the 1998 grant round includes apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

The FCC's adoption of the Fifth Report and Order in April 1997 requires that all public television stations begin the broadcast of a digital signal by May 1, 2003. NTIA believes that it is critical that all public television applicants fully consider digital technology in any request for equipment replacement submitted to PTFP. Any public television applicant must describe whether it has a plan for digital conversion to meet the FCC's mandate and whether the requested equipment is consistent with that plan. If the applicant is developing a plan for digital conversion, the application should address how the requested equipment will be consistent with the overall objective of converting the facility for digital broadcasting.

NTIA recognizes that digital technology will be an important means for the more efficient creation and distribution of programming in the future. Consequently, public broadcasters seeking to replace, upgrade, and buy new equipment that employs digital technology will be permitted, when appropriate, to use PTFP funds for such purposes.

The following list provides clarification regarding several equipment and other cost areas that will be helpful in preparing applications. NTIA also reserves the right to eliminate any costs, whether specified here or not, that it determines are not appropriate prior to the awarding of a grant.

A. Equipment and Supplies

(1) Buildings and Modifications to Buildings. (a) Eligible: Small equipment shelters that are part of satellite earth stations, translators, microwave

interconnection facilities, and similar facilities. (b) Ineligible: Purchase or lease of buildings and modifications to buildings, including the renovation of space for studios intended to house eligible equipment; costs associated with removing old equipment.

(2) Land and Land Improvements. (a) Eligible: Site preparation necessary to construct towers and guy anchors for transmission and interconnection equipment. (b) Ineligible: Purchase or lease of land.

(3) Moving Costs. (a) Eligible: Shipping and delivery charges for equipment acquired within the award. (b) Ineligible: Moving costs required by relocation of any facilities.

(4) Reception Equipment. (a) Eligible: Fixed frequency demodulator, as required by good engineering practice for monitoring the off-air transmission of signals; subcarrier demodulator; telemetry transmitters and receivers; satellite receivers; and subcarrier decoders for the handicapped. (b) Ineligible: Consumer-type TV sets and FM receivers.

(5) Tower Modifications. (a) Eligible: Strengthening or modifying a commercial entity's tower to accommodate a public broadcasting entity (structural modifications on towers and/or antenna changes must meet EIA (Electronic Industries Association) and any required local standards). (b) Ineligible: Modifying or strengthening the applicant's tower to accommodate a commercial entity.

(6) Production and Control Room Equipment. (a) Eligible: Standard production studio and control room equipment for TV or radio program production. (b) Ineligible: Consumer-type mixers, tape recorders, turntables, CD players, etc; ancillary production devices such as stopwatches and stop-clocks, building lights, sound effects, scenery and props, cycloramas, sound insulation devices and materials, draperies and related equipment for production use, film and still photography processing, film sound synchronization editing.

(7) Video Equipment. (a) Eligible: Videotape editing and processing equipment that conforms to broadcast-standard quality equipment for field recording and production editing. (b) Ineligible: Consumer level videotape recording formats not accepted in the industry as broadcast-standard quality.

(8) Furniture and Office Equipment. (a) Eligible: Consoles required to mount equipment such as audio consoles and video switchers. (b) Ineligible: Such items as office furniture, office equipment, studio clocks and systems, blackboards, office intercoms, equipment inventory labels and label-makers, word processors, telephone systems, and printing and duplication equipment.

(9) Expendable Items and Spare Parts. (a) Eligible: A transmitter spare parts kit and one set of final and driver tubes for a transmitter awarded in the grant; a spare parts kit for video tape recorders awarded in the grant. (b) Ineligible: Spare lenses, spare circuit components, spare parts kits for studio equipment, except as noted above; recording tape, film, reels, cartridge tapes, records, compact discs, and record or tape cleaning equipment; art and graphics supplies; maintenance supplies, including replacement final and driver tubes normally considered in the industry as normal maintenance-budget-provided items and similar items.

(10) Backup Equipment. (a) Eligible: Hot standby or backup microwave for the main studio-to-transmitter link only; a backup or spare exciter for a television transmitter, as required by good engineering practice. (b) Ineligible: Redundant equipment, such as spare transmitters, or costs associated with them, as well as backup microwave equipment (except as noted above).

(11) Electric Power. (a) Eligible: Generally, all primary power costs from the output of the main power meter panel; regulators and surge protectors, as required by good engineering practice, to stabilize transmitter RF output. Where primary power is not available or is unusable for broadcast, then PTFP may provide funding for those devices needed to power the facility if the need for that equipment is fully documented in the application. (b) Ineligible: Costs of installing primary power to the facility, including transformers, power lines, gasoline or diesel powered generators, and related equipment.

(12) Test and Maintenance Equipment. (a) Eligible: Required test equipment, as indicated by good engineering practice for the maintenance of the project equipment. (b) Ineligible: Maintenance equipment such as hand and power tools, storage cabinets, and maintenance services.

(13) Air Conditioning and Ventilation. (a) Eligible: The costs to provide ventilation of eligible project equipment, such as ducting for transmitters, as required by good engineering practice. Transmitter air conditioning can be applied for and will be supported if the need is well-documented in the application. (b) Ineligible: Unless exceptionally well-documented, air conditioning for transmitters, control rooms, or equipment rooms, studios, mobile units, and other operational rooms and offices.

(14) Remote Vans. (a) Eligible: Items to equip a remote van for audio/video production. (b) Ineligible: All vehicles.

B. Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain ''pre-operational expenses'' are eligible for funding. (See 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of Section 392(c) of the Act. (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending more than $300,000 in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

Federal guidelines allow NTIA to include an amount for audit costs as part of a grant award. NTIA policy permits non-profit organizations to include up to $5,000 for audit costs in an application. Because audit costs may vary depending on the size and scope of an organ ization's operations, NTIA recommends that applicants obtain estimates from auditors to determine the appropriate amount to include in their applications. Construction Grant Applicants should list the amount requested for audit costs in Part II, Section B—Other Project Costs, p.3 of the PTFP Application Form. Planning Grant Applicants should include the amount on line 7, Other, in Part II—

Budget Information for Planning Grant Applicants, p. 4 of the PTFP Application Form.

III. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a notice in the **Federal Register** listing all applications received by the Agency. Listing an application in such a notice merely acknowledges receipt of an application to compete for funding with other applications. Publication does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The notice will also include a request for comments on the applications from any interested party.

IV. Evaluation Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

V. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval. The PTFP Director recommends the funding order for applications in three categories: ''Recommended for Funding,'' ''Recommended for Funding if Funds Available,'' and ''Not Recommended for Funding.'' See 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). These applications are negotiated between PTFP staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what PTFP proposes to fund. During negotiations, some applications may be dropped from the proposed slate, due to lack of Federal Communications Commission licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. When the negotiations are completed, the PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

VI. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range from one to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. §§ 390–393, 397–399(b) (Act).

(Catalog of Federal Domestic Assistance No. 11.550)

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

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federal register

Monday
January 5, 1998

Part V

Department of Energy

10 CFR Part 708

Criteria and Procedures for DOE Contractor Employee Protection Program; Proposed Rule

48 CFR Parts 922, 952, and 970

Acquisition Regulation; Department of Energy Management and Operating Contracts; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 708

[RIN 1901–AA78]

Criteria and Procedures for DOE Contractor Employee Protection Program

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes amendments for its contractor employee protection program which provides recourse to DOE contractor employees who believe they have been retaliated against for activities such as a disclosure of information regarding management of environmental, safety, health, and other matters, for participating in Congressional proceedings, or for refusing to engage in illegal or dangerous activities.

DATES: Written comments should be forwarded not later than March 6, 1998.

ADDRESSES: Comments (3 copies) may be submitted to William A. Lewis, Jr., Director, Office of Employee Concerns, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, 202–586–4034.

FOR FURTHER INFORMATION CONTACT: Richard S. Fein, Office of Employee Concerns, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, 202–586–4043.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

In the control and management of its nuclear weapon maintenance and environmental cleanup sites, research and development laboratories, test sites, and other Government-owned or -leased facilities, the DOE is responsible for safeguarding public and employee health and safety; ensuring compliance with applicable laws, rules, and regulations; and preventing fraud, mismanagement, waste, and abuse. To this end, the Secretary of Energy has taken vigorous action to assure that all such DOE facilities are well-managed and efficient, while at the same time operated in a manner that does not expose the workers or the public to needless risks or threats to health and safety. The DOE is endeavoring to involve both DOE and contractor employees in an aggressive partnership to identify problems and seek their resolution. In that regard, employees of DOE contractors are encouraged to come forward with information that reasonably and in good faith they believe evidences unsafe, unlawful, fraudulent, or wasteful practices. Employees providing such information are entitled to protection from consequent discrimination by their employers with respect to compensation, terms, conditions, or privileges of employment.

The original rule was published in the **Federal Register** on March 3, 1992 (57 FR 7533). In order to assure workplace conditions at DOE facilities that are harmonious with safety and good management, the rule was intended to improve the procedures for resolving complaints of reprisal by establishing procedures for independent fact-finding and hearing before a Hearing Officer at the affected DOE field installation, followed by an opportunity for review by the Secretary or designee. These new procedures were made available to those contractor employees who allege health and safety violations, but are not covered by the Department of Labor (DOL) procedures. In addition, contractor employees who alleged employment reprisal resulting from the disclosure of information relating to waste, fraud, or mismanagement, or from the participation in proceedings conducted before Congress or pursuant to the rule, or from the refusal to engage in illegal or dangerous activities, could also utilize the procedures regardless of whether they are covered by the health and safety protection procedures of DOL. This rule was not intended to cover complaints of reprisal stemming from or relating to other types of discrimination by contractors, such as discrimination on the basis of race, color, religion, sex, age, national origin, or other similar basis.

After the operation of the rule for more than four years, the Department took steps to obtain the views of interested parties on the operation of the rule. A Notice of Inquiry was published on October 25, 1996 (61 FR 55230), in which DOE invited members of the public, particularly those persons with experience under the DOE contractor employee protection program (e.g., contractors, claimants and attorneys), to recommend regulatory changes that might help to streamline the process and make it more responsive to the needs of both claimants and contractors. Comments were received from 28 individuals or organizations in response to the Department of Energy's Notice of Inquiry. These comments are summarized in III. below.

The procedures set forth in part 708 are designed specifically to deal with allegations of reprisals against contractor employees and to provide relief where appropriate. Reprisals against contractor employees may also lead to the imposition of penalties under the Price Anderson Amendments Act of 1988 (Pub. L. 100–49, August 20, 1988), implemented by DOE under 10 CFR part 820 (part 820). Pursuant to Part 820, to the extent a reprisal by a DOE contractor results from an employee's involvement in matters of nuclear safety in connection with a DOE nuclear activity, the reprisal could constitute a violation of a DOE Nuclear Safety Requirement. The reprisal could therefore be subject to the investigatory and adjudicatory procedures of both part 820 and part 708, and could result in relief to the employee under part 708 and the imposition of civil penalties on the DOE contractor under part 820. A full discussion of the relationship between this part and 10 CFR part 820 and the procedures that would be followed in situations where an alleged reprisal action fell under both this part and part 820 can be found in **Federal Register** Volume 57, No. 95, Friday, May 15, 1992, at 20796–20798.

II. Summary of Changes

A. The employee coverage would be modified in §§ 708.1, 708.2(b), 708.3 and 708.4 by eliminating the requirement that persons need to be employed by contractors performing their work on sites owned or leased by DOE. The proposed new language would instead cover employees of contractors performing work directly related to the operation of programs and activities at DOE-owned or -leased sites, even if the contractor is located, or the work is performed, off-site. An example would be involvement in the preparation of environmental impact statements related to programs and activities on DOE-owned and -leased sites. The definition of ''work performed on-site,'' currently found in § 708.4, would be deleted since it would no longer be used as a basis for determining jurisdiction under the rule.

B. In order to fully meet the intent of the current rule not to duplicate protections available under other Federal statutory provisions, the proposed rule, in §§ 708.2(b) and 708.6(a)(i), would continue to exclude from coverage employee complaints for which protection is provided under 29 CFR part 24, ''Procedures for the Handling of Discrimination Under Federal Employee Protection Statutes.'' This exclusion would also reflect coverage of DOE employees contained in the Energy Policy Act of 1992, (Public Law 102–486) which amended section 210(a), now 211(a), of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a). That Act added protection for employees of ''a contractor or

subcontractor of the Department of Energy that is indemnified by the Department of Energy under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order 12344.''

Additional protections were afforded to contractor employees under section 6006 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) against reprisals for engaging in certain protected activities. Section 6006 (implementing regulations found in 48 CFR part 3, Subpart 3.9) assigns responsibilities to Inspectors General (including the Inspector General for the Department of Energy), to implement these protections. The proposed regulation would also exclude from coverage complaints that fall within the scope of Section 6006, and its implementing regulations found in 48 CFR part 3, Subpart 3.9.

C. The Office of Contractor Employee Protection, and the position of Director of the Office of Contractor Employee Protection, no longer exist within DOE. Under the proposed rule, therefore, references to the Office of Contractor Employee Protection or the Director of the Office of Contractor Employee Protection would be removed.

Responsibilities for certain functions currently assigned to the Director of the Office of Contractor Employee Protection would be the responsibilities of other officials under the proposed rule. The responsibility for making determinations of jurisdictional coverage of complaints where the jurisdictional coverage is questioned, currently contained in § 708.7(a), would be the responsibility of the Director of the Office of Employee Concerns. Responsibility for conducting inquiries under the proposed § 708.8 (formerly designated as investigations) would be the responsibility of the Deputy Inspector General for Inspections. The Deputy Inspector General for Inspections, under proposed § 708.8(f), would have the responsibility for serving copies of Reports of Inquiry on the parties. The responsibilities of the Director of the Office of Contractor Employee Protection to serve copies of initial and final decisions on the parties would be the responsibility of the Director of the Office of Hearings and Appeals under §§ 708.10(a) and (b) of the proposed rule.

D. The proposed language in §§ 708.3 and 708.5(a)(i) would cover protections for disclosures of ''substantial'' violations of laws, rule or regulations and ''gross'' mismanagement. The criteria of ''substantial'' violations of law is consistent with Section 6006 of the Federal Acquisition Streamlining Act of 1994, (Public Law 103–355). Similarly, the criterion of ''gross'' mismanagement is consistent with the provisions of the Whistleblower Protection Act of 1989 (5 U.S.C. 2302(b)(8)). (See also Sen. Rep. No. 413, 100th Cong., 2nd Sess., 13, 26, 34.)

E. Section 708.5(a)(1) of the proposed rule would expand coverage of disclosures to include those made to other government officials, such as those from other Federal or state agencies who have responsibility for oversight of activities on DOE-owned or -leased sites.

F. Section 708.5(a)(1) would further define the nature of the disclosure, requiring that the employee's disclosure involves information he or she ''reasonably and in good faith believes'' is true. The current rule in § 708.5(a)(1) only requires that the complainant ''in good faith believes'' the information he or she discloses. The additional criterion, that the complainant ''reasonably'' believes the information, is consistent with the Whistleblower Protection Act of 1989 and many State statutes which afford protection to both public and private sector employees against reprisal for whistleblowing activities.

G. Section 708.6(c) of the proposed rule would increase the time limit for filing a complaint from 60 to 90 days. The time limit for filing a complaint would still be tolled during the time a complainant is seeking remedial action through internal contractor procedures. The use of internal grievance procedures would still be required under the rule, but the proposed rule would permit individuals to file a complaint if they have not received a response on a grievance relating to the subject of the complaint within 120 days of the filing of the grievance.

H. Under § 708.6(d), the proposed rule would not cover allegations of reprisal for having engaged in protected activities if those issues had been ruled upon in binding arbitration pursuant to a collective bargaining agreement. Such binding arbitration would be considered the pursuit of a remedy under ''other applicable law.'' This approach respects the labor-management relationship that applies to many DOE contractor employees, and is consistent with the deference given to binding arbitration decisions issued pursuant to collective bargaining agreements.

I. Section 708.7(a) would continue to encourage informal resolution, and language has been added to specify the use of mediation as a means for resolving disputes. Settlement agreements under the rule would be between the parties; the language in the current rule that ''the Head of the Field Elements or designee shall enter into a settlement agreement which terminates the complaint'' has been deleted.

J. Section 708.7(b)(3) and (c) of the proposed rule would give complainants the right, if informal resolution is unsuccessful, to elect to have the complaint submitted directly to the Office of Hearings and Appeals for a hearing, thereby bypassing the inquiry phase. Under the current rule, all complaints that are accepted for processing and which have not been informally resolved are investigated prior to the parties having the right to request a hearing.

K. Section 708.8(a) of the proposed rule would grant discretion to the Deputy Inspector General for Inspections whether or not to direct the conduct of an inquiry into a complaint.

L. Section 708.8(c) would provide for complainants to be advised of their right to request a hearing on their complaint in cases where the Deputy Inspector General for Inspections decides not to conduct an inquiry into the complaint.

M. Under § 708.8(g) of the proposed rule, complainants would have a right to request a hearing if a Report of Inquiry has not been issued within 240 days of the date the Deputy Inspector General for Inspections was advised that informal resolution of the complaint was not reached.

N. Language would be added to § 708.8(d) that would provide for the taking of sworn statements as part of inquiries conducted at the direction of the Deputy Inspector General for Inspections, when deemed appropriate by the inspector.

O. Language would be added in § 708.9(c)(2) authorizing the Hearing Officer to provide for reasonable discovery by the parties as part of hearing proceedings.

P. Section 708.9(b) would extend the time for holding a hearing from 60 to 90 days after the complaint file is received by the Office of Hearings and Appeals.

Q. Section 708.10(b) would extend the time for the issuance of a decision by the Office of Hearings and Appeals from 30 to 60 days after the receipt of the transcript of the hearing or after post-hearing briefs or other evidence permitted under § 708.9(h), whichever is later.

No changes are being proposed with respect to §§ 708.13, 708.14 or 708.15, and those sections are therefore not included in this notice.

Consideration is being given to publishing the final rule in a different format, which might make the requirements and procedures of the

program more easily understood by users of the program. One possible alternative is to use a question and answer format. An example of this format might be as follows:

Which Contractor Employees Are Covered?

This part applies to any contractor employee if the employee works for a contractor responsible for the conduct of DOE programs or the operation of DOE-owned or leased facilities, regardless of the employee's work location.

III. Summary of Public Comments Received Pursuant to the October 25, 1996, Notice of Inquiry

Substantive comments were received from 28 individuals or organizations in response to the Department of Energy's Notice of Inquiry, published in the **Federal Register** on October 25, 1996. For purposes of summarizing the comments, references made to the Office of Contractor Employee Protection (OCEP) by the commenters have been retained, even though that office was abolished and its functions were absorbed into existing Office of Inspector General functions as of October 1, 1996.

Comments 1–11

One commenter, a public interest group that represents whistleblowers, submitted eleven comments regarding possible modifications to the contractor employee protection program. Twenty-four other commenters specifically endorsed four of these recommendations (comments 1, 3, 5 and 9 below). The rationales for the comments of these 24 other commenters parallel those contained in the comments submitted by the public interest organization. The eleven comments submitted by the public interest organization were:

Comment 1: Reconstitute the Office of Contractor Employee Protection under the newly created Office of Employee Concerns, and have it ensure ''independent investigations; performed in a timely manner; supported by a verifiable report of investigation, with supporting evidence in the way of relevant records and sworn statements attached;'' and ''aggressively pursue its mandate to attempt to mediate and resolve concerns at an early stage.''

Response: Since the Office of Contractor Employee Protection became a part of the Office of Inspector General on October 1, 1996, the Office of Inspector General has provided a significant amount of training to its inspection staff on the review of complaints under the DOE Contractor Employee Protection Program. The proposed revisions to the regulations institutionalize the responsibility for conducting inquiries (formerly referred to as investigations) under the Deputy Inspector General for Inspections. The Department believes the continuation of this responsibility in the Office of Inspector General will meet the needs of the parties to a complaint in an effective and efficient manner. This includes the specific goals cited by the commenter, i.e., the availability of independent, timely investigations, with reports of investigation containing supporting evidence.

Attempts at informal resolution remain a crucial aspect of the rule. DOE is proposing amendments to section 708.7(a) to further encourage the use of various Alternative Dispute Resolution mechanisms, primarily mediation.

Comment 2: Expand the coverage of the OCEP to include DOE employees, not just contractor employees, change the definition of a protected disclosure to include reports to any governmental agency, not just to Congress or the DOE, clarify the protections under Part 708 to be extended to employees of contractors performing work at or related to DOE-owned or leased facilities, and clarify that the ''disclosure of a 'substantial and specific danger to employee or public health and safety' includes current dangers as well as dangers arising in the future as a result of action or inaction at DOE sites.''

Response: The Department does not believe that it is either necessary or appropriate to duplicate protections of Federal employees beyond those specifically provided to Federal employees by the Whistleblower Protection Act of 1989, implemented by the Merit Systems Protection Board and the Office of Special Counsel.

The coverage of the scope of disclosures would be modified in section 708.5(a) to include disclosures to other governmental officials who have responsibility for the oversight of activities at DOE sites.

The scope of the rule would be modified to cover employees engaged in work related to activities on DOE-owned or -leased sites, and would not require that the employee or the contractor actually be located at the DOE site. The tests for employee coverage would be the nature of the work being performed and the substance of the disclosure.

With respect to the issue of the required specificity of disclosures related to the environment, safety or health, the proposed rule would retain the current language. The language is consistent with the provisions of the whistleblower protections available to Federal employees. The Senate Report accompanying the Civil Service Reform Act of 1978 explained that general criticisms or complaints, or those of a non-substantial nature, were not intended to be covered. The Report stated that ''the Committee intends that only disclosures of public health and safety dangers which are both *substantial* and *specific* are to be protected. Thus, for example, general criticism by an employee of the Environmental Protection Agency that the Agency is not doing enough to protect the environment would not be protected under this subsection.'' (S. Rep. No 969, 95th Cong., 2nd Sess. 21 (1978) *reprinted* in 1978 U.S. Code Cong. & Ad. News 2730.)

Comment 3: Guarantee employees a right to a timely investigation, and provide employees the right to request a full hearing if a report has not been issued on a complaint within 180 days of its having been filed.

Response: One of the primary goals of the proposed rule is to streamline the process in order to provide a timely review of complaints. A proposed provision would permit a complainant to request a hearing if a report of inquiry has not been issued within 240 days of the complaint being referred to the Deputy Inspector General for Inspections. While this time frame is slightly longer than recommended by the commenter, the Department believes it provides a more realistic time frame for the issuance of a report of inquiry. In addition, complainants would have the option under the proposed rule to elect to bypass the inquiry phase and go directly to a hearing if informal resolution is unsuccessful.

Comment 4: Require DOE investigators to take sworn testimony from all witnesses interviewed, or, in the alternative, produce an affidavit from the investigator certifying that the notes reflect the substance of the witness interview.

Response: The Department believes that inspectors of the Office of Inspector General must retain the discretion to determine when sworn statements will be taken. Language has been added to the rule specifying that sworn statements may be part of the record of inspection when deemed appropriate.

Comment 5: Guarantee the right of employees to engage in reasonable discovery at the hearing stage, including the right for parties at the hearing stage to obtain documentary and other physical evidence through interrogatories and requests for production, to take depositions of necessary witnesses, enter and examine premises of contractors where necessary and relevant, and the right to obtain continuances in order to engage in

reasonable discovery. The commenter noted that discovery is permitted under whistleblower hearings before Department of Labor Administrative Law Judges, reflected in 29 CFR 18.13 through 18.24.

Response: Discovery has been available as part of the hearing process before the Office of Hearings and Appeals, and additional, clarifying language has been added to the rule recognizing the availability of discovery at the hearing stage.

Comment 6: Require that DOE Office of Hearings and Appeals Hearing Officers have a Juris Doctorate from an accredited law school and/or relevant and significant amounts of legal training in order to protect the procedural and substantive due process rights of the parties.

Response: The Department believes that the part 708 hearing process must be conducted with professionalism, the highest integrity and demonstrated competence. The expressed concern that hearing officers are not now required to possess law degrees might be a valid concern if evidence indicated that an unfair, inadequate or unprofessional adjudications have occurred as a consequence of this fact. This has not been the case. In addition, there is no such positive educational requirement for Federal employees serving in the capacity of Hearing Officer.

Comment 7: Abolish the requirement that employees first exhaust available corporate grievance processes or certify the futility of doing so. This is an unnecessary, and usually fruitless and often counterproductive step that facilitates coverups.

Response: The Department continues to believe that allegations of whistleblower reprisal should be resolved at the lowest possible levels, and that this includes seeking remedies through procedures made available by contractors to its employees. The current and proposed rules require the use of internal procedures first, but provide for bypassing such procedures if they are, as the commenter argues, futile. The Department believes that the complainant who does not wish to utilize available internal procedures must establish that available procedures are not operated in good faith. The proposed rule would, however, allow an employee to file a complaint under the rule where internal grievance procedures exist, but where the employee has not received a final decision on the grievance within 120 days of having filed the grievance with the contractor.

Comment 8: Expand the period for filing a complaint from the present 60-day requirement to 180 days, with a provision that if the contractor has failed to adequately notify employees of provisions of part 708, the limitation period would be waived. The commenter cited Congress' extension of the period for filing whistleblower complaints under the Energy Reorganization Act to 180 days (42 U.S.C. 2000e-5(e)(1)).

Response: The time for filing would be increased from 60 to 90 days under the proposed rule. Because the rule tolls the period for filing while a complainant seeks remedial action through internal contractor procedures, the time frame for filing in essence would extend the 90-day filing requirement. In addition, since the implementation of the Contractor Employee Protection Program in April 1992, the 60-day filing requirement has not been applied where good cause was shown for extending the filing deadline.

Comment 9: Include, in the definition of discrimination, the abuse of the security clearance process against an employee who falls within the category of a protected employee under the rule, and permit the investigation of personnel security abuses to be investigated and remedied under part 708.

Response: Allegations that the security clearance procedure has been abused may be raised in the regulatory process, found in 10 CFR Part 710, provided to employees for challenging adverse security determinations. There is no need to duplicate that process under this rule, especially since remedial action under this rule cannot include determinations that an adverse security clearance determination should be changed. In addition, personnel security actions are taken by DOE officials, not contractor management, and neither the current nor this proposed rule includes the review of actions taken by DOE officials.

Comment 10: Specify that the rule is additive, rather than substitutive or a precondition for the exercise of other rights and remedies.

Response: The current rule was intended to provide whistleblower protection for contractor employees who lacked standing to raise allegations of reprisal under statute, specifically, Department of Labor procedures. The current rule excludes from coverage employees who have the ability to raise allegations of whistleblower reprisal to the Department of Labor. The proposed rule would continue that policy, and also exclude from coverage complaints that fall within the statutory jurisdiction of the Office of Inspector General under section 6006 of the Federal Acquisition Streamlining Act of 1994. The Department believes that it should not duplicate remedies available to contractor employees under statute.

Comment 11: Expand available remedies to allow for the award of compensatory damages, including damages for mental anguish, pain and suffering, and emotional distress resulting from an contractor's wrongful actions.

Response: The current rule provides make whole remedies, primarily in the area of unwarranted personnel actions, and to prevent the continuation of discrimination against employees in reprisal for their having engaged in protected activities. DOE presently is unaware of substantial policy reasons or other justifications for revising and expanding the remedies available under part 708. The proposed rule would therefore continue the make whole damages available under the rule.

Recommendations received from other commenters were:

Comment: A commenter recommended that complainants should be required to document their certifications that internal procedures have been exhausted or that such procedures are nonexistent, ineffectual or expose the employee to reprisal.

Response: This comment has been addressed in response to Comment 7 above.

Comment: A commenter recommended that final orders on whistleblower complaints should be subject to judicial review, either under a provision of the Wunderlich Act found at 41 U.S.C. 321, due to the contractual basis for part 708, or under the Administrative Procedure Act provisions found at 5 U.S.C. 701–706, if part 708 was promulgated under statute, i.e., the Atomic Energy Act.

Response: The Department believes that the determination as to the availability of judicial review for complaints processed under this rule is a subject for courts to rule upon, and therefore the rule is silent on the issue.

Comment: A commenter recommended that DOE streamline the intake process by assigning an individual to determine whether the claimant has stated a prima facie case.

Response: Initial determinations of jurisdiction, including the establishment of a prima facie case, is a basic part of the processing of complaints. This function, under the proposed rule, would rest initially with the Director of the Office of Employee Concerns, the Heads of Field Elements, or their designees, with complainants having the right to seek a review of adverse jurisdictional determinations

from the Secretary or designee. The assignment of particular individuals or staffing levels to this function would not be appropriate under the rule.

Comment: A commenter recommended that bargaining unit employees be required to make use of grievance provisions, including binding arbitration. Where there is a finding for the employee, or the employee does not believe he or she has not been made whole, the employee should be able to file with DOE; if the ruling is in favor of the company, the employee should not be permitted to file a complaint with DOE.

Response: The proposed rule would continue the policy that the use of negotiated grievance procedures is required as an available internal grievance process. The proposed rule would also provide that determinations under binding arbitration, pursuant to a bargaining unit agreement, will be considered dispositive of the issues under appropriate statute, to the extent the arbitration included the allegation that an action was taken against the employee in reprisal for activities protected under this rule.

Comment: A commenter recommended that a contractor be allowed 30 days to respond to a complaint, or an extension of 30 days upon request of both parties. Following that period, investigations should be completed within 60 days and a preliminary decision issued.

Response: The proposed rule would continue to provide a 30-day period during which the parties are encouraged to seek informal resolution of the issues presented in a complaint. The rule would not preclude these efforts from extending beyond the 30-day period, and extensions can be sought for these efforts where it appears progress on resolution is possible. The proposed rule would eliminate some of the timeframes for processing specified in the original rule because they created unrealistic expectations, and therefore a 60-day time frame for the completion of inquiries is not included in the proposed rule.

Comment: A commenter recommended that settlements should not be encouraged immediately, but should be addressed after a preliminary decision has been issued.

Response: Experience had shown that complaints are often settled successfully when the parties engage in informal resolution, especially mediation, early in the process. The President has also directed the use of alternative dispute resolution when appropriate in Executive Order 12988. Mediation provides an excellent means for the parties to address the issues raised and their interests. Where cases are not resolved early in the process, further attempts at resolution are always available, including after the issuance of an initial decision.

Comment: A commenter recommended that from the time a complaint is filed until there is a preliminary decision, complainants or their representatives should not be permitted to have access to OCEP or other DOE offices without advance notice to the other party, and an opportunity for the opposing counsel to participate and rebut either in person or by telephone conference allegations raised by a complainant. The commenter also stated that remedies should be reinstatement for wrongful discharge; back pay for the discharged employee to the date of reinstatement or the offer of reinstatement; or transfer preference. It was also recommended that there be a $10,000 cap on complainant attorney fees and that no front end or extended benefits should be permitted as remedies.

Response: It is often necessary to follow-up with complainants in order to clarify the issues presented to make jurisdictional determination, or to determine appropriate parties who need to be contacted in order to pursue informal resolution. The Department believes these initial contacts are necessary for the effective implementation of the rule, but recognizes that they must be carried out in a manner that does not unfairly prejudice either party.

The remedies in the rule are intended to be make whole remedies, and the Department therefore is not proposing to set arbitrary limits on possible remedies.

Comment: A commenter recommended that if DOE will be disallowing costs to contractors found to have violated the rule, complainants who lose should be required to reimburse the contractor or DOE.

Response: The rule has been established to provide a mechanism for employees who believed they have been subjected to wrongful discriminatory acts to obtain appropriate remedies. The Department believes the adoption of the recommendation would discourage employees from coming forward with allegations of wrongdoing, and therefore has not included it in the proposed rule.

Comment: A commenter recommended that regulatory revisions to the Contractor Employee Protection Program should become fully effective on publication, and not be dependent on the inclusion of the rule in contractual agreements.

Response: The Department believes that the provisions of the proposed rule would not create an undue burden on DOE contractors whose contracts include a clause requiring compliance with Part 708. The proposed rule would therefore not require renegotiation of the contract clause in order to become effective with respect to contractors currently subject to the rule.

Comment: A commenter recommended that DOE make the punishment of the contractors severe by permitting compensatory damages and require action against managers found to have discriminated against whistleblowers.

Response: The comment regarding compensatory damages has been addressed in response to Comment 11 above. The focus of the rule is corrective, and not punitive. With respect to requiring action against management officials, as noted in the comments that accompanied the publication of the current rule, the Department believes it is within the contractor's managerial responsibility and discretion to address matters associated with employees found to have participated in discriminatory conduct. The proposed rule therefore does not contain provisions for the Department to require disciplinary action against contractor employees.

Comment: A commenter recommended that employees should be kept informed as to the status of their cases.

Response: The recommendation of the commenter is an operational suggestion that does not rise to the level of an issue that needs to be included in the rule, but is a suggestion that will be fully considered by the various offices responsible for the implementation of the rule.

Comment: A commenter recommended that time frames contained in Part 708 should be followed.

Response: The original rule contained time frames for complaint processing that were not realistic, and therefore led to dissatisfaction with the process. One primary goal of the proposed rule is to streamline, and therefore speed up, the complaint process. The proposed rule therefore has more realistic time frames, and in some cases, processing time frames have been removed where they cannot be estimated.

Comment: A commenter recommended that attorneys should be assigned to assist whistleblowers whose cases go to the Office of Hearings and Appeals for a hearing due to the limited funds available to whistleblowers. Another commenter recommended that

OCEP receive additional staffing and resources in order to improve the timeliness of whistleblower complaint processing.

Response: The Department may not assist whistleblowers in processing their cases since this would constitute providing Government attorneys to private citizens. It would also be impermissible with respect to the requirement that the Department remain neutral in these matters. The staffing requirements within the Department are dependent on a number of factors, and it is neither possible nor appropriate to reflect staffing decisions as part of the rule.

Comment: A commenter recommended that outcomes of investigations under Part 708 should be made public similar to the publication of Office of Hearing and Appeals decisions on the World Wide Web.

Response: The processing of complaints under this rule almost always involves highly personal information about the complainant and other individuals, including witnesses and co-workers. As a result, consideration must be given to the protection of personal privacy of individuals involved in the complaints. This comment is not being adopted, but comments on this issue may be submitted under this Notice of Proposed Rulemaking.

Comment: A commenter recommended that contractors should be required to adhere to agreements made in settlement of whistleblower complaints.

Response: Under the proposed rule, settlement agreements, as well as their enforcement, would be between the parties. The language in the current rule that ''the Head of the Field Elements or designee shall enter into a settlement agreement which terminates the complaint'' has been deleted.

Comment: A commenter recommended that DOE cease paying litigation costs to contractors in whistleblower cases.

Response: This issue has been considered by the Department and is the subject of a separate Notice of Proposed Rulemaking.

Comment: A commenter recommended that any disclosure of official or incidental misconduct anywhere in the course of DOE contractor business by any person should be protected under Part 708, including disclosures of business or scientific fraud, waste of government resources, abuse or misuse of staff or resources, and false claims in the course of program proposals.

Response: The coverage of protected disclosures in the proposed rule is consistent with those found in almost all whistleblower protection statutes, including the Whistleblower Protection Act of 1989, as amended, which provides protections for Federal employee whistleblowers. In Senate Report No. 413, 100th Congress, 2nd Session, page 12, it was stated that

> While the Committee is concerned about improving the protection of whistleblowers, it is also concerned about the exhaustive administrative and judicial remedies . . . that could be used by employees who have made disclosures of trivial matters. CSRA [Civil Service Reform Act of 1978] specifically established a de minimus standard for disclosures affecting the waste of funds by defining such disclosures as protected only if they involved ''a gross waste of funds.'' Under S.508, the Committee establishes a similar de minimus standard for disclosures of mismanagement only if they involve ''gross mismanagement.''

Comment: A commenter recommended that whistleblowers should be granted protection against reprisal after bringing charges of reprisal under part 708, and investigations should be reopened, regardless of initial findings, if a negative personnel action is taken against an employee who had filed a complaint under part 708.

Response: Both the current and proposed rule would protect employees from discriminatory acts, including retaliation for having previously filed a complaint.

Comment: A commenter recommended that complainants be required only to show that retaliatory consequences followed a protected disclosure, and not be required to prove, by a preponderance of the evidence, a linkage between the disclosure and the negative action.

Response: Whistleblower protection programs consistently require a *prima facie* showing by a complainant that his or her protected activity was a consideration in the alleged discriminatory act taken against them. This usually consists of proving, by a preponderance of the evidence, that the complainant had engaged in a protected activity; that they were subjected to a discriminatory act; that the person taking the discriminatory act was aware of the protected activity; and that from the circumstances, a reasonable inference can be drawn that the protected activity was a consideration in taking the alleged discriminatory act. Once a *prima facie* case is established, the contractor must provide by a more difficult burden of proof, i.e., clear and convincing evidence, that it would have taken the same action absent the protected activity. The proposed rule would not change the burdens of proof currently applicable to the parties.

Comment: A commenter recommended that in order to avoid the need for employees to ''blow the whistle,'' a procedure could be followed that provides a ''due process'' for resolving ethical conflict and dissent. The procedure, which was to be submitted, was published in the Professional Ethics Report of the American Association for the Advancement of Science and in the Ethics Update by the National Institute of Engineering Ethics.

Response: In some situations, differences of professional opinion may not in fact constitute disclosures protected under the rule, but are issues that require consideration and resolution between employees and contractors. The availability of these and similar procedures aimed at resolving differences of professional opinions are encouraged by the Department both to deal with important issues that are raised and as a means for informally resolving differences.

IV. Public Comments

A. Consideration and Availability of Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed modifications to the provisions of the DOE Contractor Employee Protection Program, 10 CFR Part 708, set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 am and 4 pm, Monday through Friday, except Federal holidays. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

B. Public Hearing Determination

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that

the proposed rule should not have a substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on the proposed rule. However, should a sufficient number of people request a public hearing, the Department will reconsider its determination.

V. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have a significant economic impact on substantial numbers of small entities. The contracts and employees to which this rulemaking would apply are for the most part covered by the current DOE Contractor Employee Protection Program, which prohibits discrimination against employees who engage in protected activities relating to the disclosure of certain types of information or for refusing to engage in unsafe or illegal practices. Many of the proposed changes are procedural in nature aimed at streamlining the process, and the nature of available remedies has not changed. The emphasis on the use of early resolution through Alternative Dispute Resolution, primarily mediation, may in fact lessen adverse economic impacts.

Similarly, the expected shortening of the overall processing time of complaints may well result in remedies to be less than under the current rule where violations are found. Accordingly, DOE certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are proposed to be imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is an employee-relations mechanism and deals only with administrative procedures regarding reprisal protection for employees of DOE contractors and subcontractors. Accordingly, DOE has determined that this is not a major Federal action with significant impact on the quality of the human environment and, therefore, the preparation of neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule, when finalized, would only affect employee-contractor relations with respect to the operation of the DOE Contractor Employee Protection Program. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct impact on the institutional interests or traditional functions of the States.

List of Subjects in 10 CFR Part 708

Administrative Practice and Procedure, Energy, Fraud, Government contracts, Health and safety, Whistleblowing.

Issued in Washington, on December 22, 1997.

Federico Peña,

Secretary of Energy.

For the reasons set forth in the preamble, Chapter III of title 10 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 708—DOE CONTRACTOR EMPLOYEE PROTECTION PROGRAM

1. The authority citation for part 708 is revised to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i), and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254 7255, and 7256; and 5 U.S.C. Appendix 3.

Subpart A—General Provisions

2. Section 708.1, Purpose, is revised to read as follows:

§ 708.1 Purpose.

This part establishes procedures for timely and effective processing of complaints by employees of contractors performing work on behalf of the

Department of Energy (DOE), concerning alleged discriminatory actions taken by their employers in retaliation for the disclosure of information involving danger to health and safety, gross mismanagement, and other matters as provided in § 708.5(a), for the participation in proceedings before Congress or pursuant to this part, or for the refusal to engage in illegal or dangerous activities.

3. Section 708.2, Scope, is revised to read as follows:

§ 708.2 Scope.

(a) This part is applicable to complaints of reprisal filed after [the effective date of the final rule] that stem from disclosures, participations, or refusals involving health and safety matters, if the underlying procurement contract described in § 708.4 contains a clause requiring compliance with all applicable safety and health regulations and requirements of 48 CFR (DEAR) 970.5204–2. For all other complaints, this part is applicable to acts of reprisal when, after [the effective date of the final rule], a clause requiring compliance with this part is included in the underlying procurement contract.

(b) This part is applicable to employees of contractors performing work on behalf of DOE, directly related to activities at DOE-owned or -leased sites, unless the procedures contained in 29 CFR part 24, ''Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes,'' or 48 CFR part 3, ''Federal Acquisition Regulation; Whistleblower Protection for Contractor Employees (Ethics),'' are applicable. The procedures of this part do not apply to complaints of reprisal stemming from, or relating to, discrimination by contractors on a basis such as race, color, religion, sex, age, national origin, or other similar basis not specifically discussed in this part. The protections afforded by this part are not applicable to any employee who, acting without direction from his or her employer, deliberately causes, or knowingly participates in the commission of, any misconduct set forth in § 708.5 that is the subject of the disclosure.

(c) For complaints not covered by § 708.5(a), the Director, for good cause shown, may accept a complaint for processing under this part. However, in no event will coverage under this part be extended to employees of contractors over whom DOE does not exercise enforcement authority with respect to the requirements of this part. A determination by the Director not to accept a complaint pursuant to this section may be appealed to the Secretary.

4. Section 708.3, Policy, is revised to read as follows:

§ 708.3 Policy.

(a) It is the policy of DOE that employees of contractors performing work on behalf of DOE related to activities at DOE-owned or -leased sites should be able to:

(1) Provide information to DOE, to Congress, to other governmental officials who have responsibility for the oversight of the conduct of operations at DOE sites, or to their contractors, concerning substantial violations of law, danger to health and safety, or matters involving gross mismanagement, gross waste of funds, or abuse of authority;

(2) Participate in proceedings conducted before Congress or pursuant to this part; and

(3) Refuse to engage in illegal or dangerous activities, without fear of contractor reprisal.

(b) Contractor employees who believe they have been subject to such reprisal may submit their complaints to DOE for review and appropriate administrative remedy as provided in §§ 708.6 through 708.11 of this part.

5. Section 708.4, Definitions, is amended by revising the definitions for *Contractor, Director, Employee or employees, and Head of field element;* by revising the definition heading *Discrimination or discriminatory acts* to read *Discriminatory acts* and revising the definition; by removing the definition for *Work performed on site;* and by adding definitions for *Deputy Inspector General for Inspections,* and *Secretary,* in alphabetical order to read as follows:

§ 708.4 Definitions.

* * * * *

Contractor means a seller of goods or services who is a party to a procurement contract as follows:

(1) A Management and Operating Contract or other types of contracts with DOE involving responsibility for the conduct of DOE programs or the operation of DOE-owned or -leased facilities, or

(2) Subcontracts under paragraph (1) of this definition; but this part shall apply to such subcontracts only with respect to work involving responsibility for the conduct of DOE programs or the operation of DOE-owned or -leased facilities.

* * * * *

Deputy Inspector General for Inspections means, unless otherwise indicated, the Deputy Inspector General for Inspections, Office of Inspector General, or any official to whom the Inspector General delegates the functions of the Deputy Inspector General for Inspection under this part.

Director, unless otherwise specified, means the Director of the Office of Employee Concerns, or any official to whom the Director of the Office of Employee Concerns delegates his or her functions under this part.

Discriminatory act(s) means action(s) taken by a contractor with respect to employment, e.g., discharge, demotion, or other actions with respect to the employee's compensation, terms, conditions or privileges of employment, or intimidation, threats, restraining, coercing or other similar negative action taken against a contractor employee by a contractor, as a result of the employee's disclosure of information, participation in proceedings, or refusal to engage in illegal or dangerous activities, as set forth in § 708.5(a) of this part.

Employee or *employees* mean(s) any person(s) employed by a contractor having responsibility for the conduct of DOE programs or the operation of DOE-owned or -leased facilities, and any person(s) previously employed by a contractor if such prior employee's complaint alleges that employment was terminated in violation of § 708.5.

* * * * *

Head of Field Element means an individual who is the manager or head of a DOE operations office or field office or any official to whom the Head of the Field Element delegates his or her functions under this part.

* * * * *

Secretary means the Secretary of Energy or any official to whom the Secretary delegates his or her functions under this part.

Subpart B—Procedures

6. In § 708.5, Prohibition against reprisals, paragraphs (a) introductory text, (a)(1) and (a)(3)(iii) are revised to read as follows:

§ 708.5 Prohibition against reprisals.

(a) A DOE contractor covered by this part may not engage in discriminatory acts as defined in § 708.4 because the employee has—

(1) Disclosed to an official of DOE, to a member of Congress, to other governmental officials who have responsibility for the oversight of the conduct of operations at DOE sites, or to the contractor (including any higher tier contractor), information that the employee reasonably and in good faith believes evidences—

(i) A substantial violation of any law, rule, or regulation;

(ii) A substantial and specific danger to employees or public health or safety; or

(iii) Fraud, gross mismanagement, gross waste of funds, or abuse of authority;

* * * * *

(3) * * *

(iii) The employee, within 30 days following such refusal, discloses to an official of DOE, a member of Congress, a government official who has responsibility for the oversight of the conduct of operations at the DOE site, or the contractor, information regarding the violation or dangerous activity, policy, or practice, and explaining why he has refused to participate in the activity.

* * * * *

7. Section 708.6, Filing a complaint, is revised to read as follows:

§ 708.6 Filing a complaint.

(a) *Who may file a complaint.* An employee who believes that he or she has been discriminated against in violation of this part, and who does not have a statutory right to raise the issue under 29 CFR part 24, ''Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes,'' or 48 CFR part 3, ''Federal Acquisition Regulation; Whistleblower Protection for Contractor Employees (Ethics),'' or has not, with respect to the same facts, pursued a remedy available under State or other applicable law, including binding arbitration pursuant to a collective bargaining agreement, may file a complaint with DOE through the Head of the Field Element at the field organization with jurisdiction over the contract under which the complainant was employed or with the Director of the Office of Employee Concerns with respect to a contract that is the responsibility of a contracting officer located in DOE Headquarters. The identity of an employee who files a complaint under this part cannot be kept confidential. Two copies of the complaint, with all attachments, must be filed. Within 15 days of receipt of a complaint, the Director or the Head of a Field Element, shall provide notification of the filing of the complaint and a statement of the issues raised in the complaint, to the contractor or person named in the complaint.

(b) *Content of complaint.* A complaint filed under paragraph (a) of this section need not be in any specific form provided it is signed by the complainant and contains the following: a statement setting forth specifically the nature of the alleged discriminatory act, and the disclosure, participation or refusal giving rise to such act; a statement that the complainant has not, as described in paragraph (f) of this section, pursued a remedy available under State or other applicable law; and an affirmation that all facts contained in the complaint are true and correct to the best of the complainant's knowledge and belief.

(c) *Affirmations required.* The complaint must contain a statement affirming that:

(1) All attempts at resolution through an internal company grievance procedure have been exhausted; or

(2) The company grievance procedure is ineffectual or exposes the complainant to contractor reprisals; or

(3) An internal grievance was filed, but a final decision on the grievance has not been issued within 120 days of its filing; or

(4) The company has no such procedure.

(d) *Factual basis for affirmation.* The complaint must state the factual basis for such affirmation; and, if applicable, the date on which internal company grievance procedures were terminated and the reasons for termination. A failure to provide this information is a basis to dismiss the complaint for lack of jurisdiction under 708.8(a)(5).

(e) *Time frame for filing a complaint.* A complaint filed pursuant to paragraph (a) of this section must be filed within 90 days after the alleged discriminatory act occurred or within 90 days after the complainant knew, or reasonably should have known, of the alleged discriminatory act, whichever is later. If a complaint is not filed within the 90-day time limit, the complainant will be provided an opportunity to show a good reason for the delay. In cases where the employee has attempted resolution through internal company grievance procedures, the 90-day period for filing a complaint shall be tolled during such resolution period and shall not again begin to run until the day following termination of such dispute-resolution efforts, or 120 days after the filing of an internal grievance where a final decision on the grievance has not been issued, whichever is sooner.

(f) *Tolling of filing deadline.* The limitations period specified in paragraph (e) of this section is suspended upon the filing of a complaint pursuant to State or other applicable law, and the mere filing of a complaint pursuant to State or other applicable law does not bar the employee from re-instituting or filing a complaint with DOE if the matter cannot be resolved under State or other applicable law due to a lack of jurisdiction. For purposes of this part, a complaint is deemed to have been pursued under State or other applicable law if the employee has, pursuant to proceedings established or mandated by State or other applicable law, at any time prior to, or concurrently with, the filing of a complaint with DOE, or at any time during the processing of a complaint filed with DOE, filed or submitted a timely complaint, or other pleading with respect to that same matter. The pursuit of a remedy under a negotiated collective bargaining agreement is considered to be the pursuit of a remedy through internal company grievance procedures and not the pursuit of a remedy under State or other applicable law. However, to the extent a decision is rendered in binding arbitration, pursuant to a collective bargaining agreement, on issues related to alleged reprisal for having made disclosures or engaging in protected activities covered by this part, such arbitration decision is considered to be a resolution of the matter under applicable law.

8. Section 708.7 is revised to read as follows:

§ 708.7 Acceptance of a complaint and informal resolution.

(a) *Jurisdictional determinations.* (1) If the Head of Field Element has cause to believe the complaint does not meet the requirements of this part, or for other good cause does not merit further review, the jurisdictional determination will be made by the Director in accordance with paragraphs (a)(2) through (5) of this section. Reasons for dismissing complaints for good cause would include determinations that the facts, as alleged by the complainant, do not present issues for which relief can be granted under this part; the complaint or disclosure is frivolous, on its face without merit; the issues presented have been rendered moot; or the contractor has made a formal offer to provide remedial action that the complainant has requested or that is equivalent to what could be provided as a remedy under § 708.10(c) as an appropriate resolution of the complaint. The Director shall have the authority to issue determinations of jurisdiction with respect to complaints filed with the Office of Employee Concerns.

(2) The Head of Field Element, within 15 days from the date of receipt of the complaint, shall request a determination from the Director as to whether attempts at informal resolution should be undertaken pursuant to this part, or the complaint should be dismissed The

request should include a statement as to the basis for questioning the jurisdictional coverage of the complaint.

(3) If the Director determines to dismiss the complaint summarily, the complaint shall be dismissed and the parties notified by certified mail of the specific reasons for such dismissal. If the Director determines preliminarily that there is jurisdiction, he or she shall, within 15 days from the date he or she received the request for a jurisdictional determination, so advise the Head of the Field Element and return the complaint to the Head of the Field Element who shall thereupon have 30 days to attempt informal resolution of the complaint.

(4) Request for review of dismissal of complaint. If the Director dismisses a complaint pursuant to paragraph (a)(3) of this section, the administrative process is terminated unless within 10 calendar days of receipt of the notice of dismissal the complainant files a written request for review by the Secretary. Copies of any request for review shall be served by the complainant on all parties by certified mail, and the Director shall promptly send a copy to the Secretary.

(5) If the Secretary determines that the complaint should be considered further, the Secretary shall order the Director or Head of the Field Element to reinstate the complaint and resume the administrative process.

(b) *Informal resolution.* (1) If the complaint is within the jurisdiction of this part, the Director or the Head of Field Element shall have 30 days from the date of receipt of a complaint in which to attempt an informal resolution of the complaint. To this end, the Director or Head of Field Element may attempt to resolve the complaint through various Alternative Dispute Resolution techniques, primarily by encouraging the parties to engage in mediation.

(2) If informal resolution is reached, the Director or the Head of Field Element shall obtain a copy of the settlement agreement which terminates the complaint, or a written statement from the complainant withdrawing the complaint. The agreement or withdrawal of the complaint shall be made part of the complaint file, with a copy provided to all parties.

(3) If informal resolution cannot be reached, the Director or Head of Field Element shall advise the complainant of his or her right to elect to either have a copy of the complaint forwarded to the Deputy Inspector General for Inspections for further processing in accordance with § 708.8; have a copy of the complaint forwarded to the Director of the Office of Hearings and Appeals for processing in accordance with § 708.9; or withdraw his or her complaint.

(4) The complainant, within 10 days of receipt of the notice of a right to make an election under paragraph (b)(3) of this section, shall indicate his or her election to the Director or the Head of the Field Element.

(c) The Director or the Head of the Field Element shall advise the Deputy Inspector General for Inspections or the Director of the Office of Hearings and Appeals, of the election within 5 days of receipt of the complainant's response, and shall provide a copy of the complaint to the appropriate official for further processing. A copy of this notification shall also be provided to the complainant and the contractor named in the complaint.

9. Section 708.8 is revised to read as follows:

§ 708.8 Acceptance of complaint for inquiry.

(a)(1) Following receipt of notification from the Director or Head of Field Element that attempts at informal resolution under § 708.7 have been unsuccessful, and that the complainant has elected to have the complaint referred in accordance with this section, the Deputy Inspector General for Inspections, unless he or she declines to conduct an inquiry, may direct the conduct of an inquiry of the complaint.

(2) If informal resolution is reached while an inquiry is being conducted by the Deputy Inspector General for Inspections, the Director or the Head of Field Element shall obtain a copy of the settlement agreement which terminates the complaint, or a written document from the complainant referencing a final settlement and requesting withdrawal of the complaint. This document shall be made part of the file. The Deputy Inspector General for Inspections shall be advised in writing of the withdrawal of the complaint.

(b)(1) *Determination not to conduct an inquiry.* If the Deputy Inspector General for Inspections declines to process a complaint for inquiry, either after an initial review of the complaint or based upon information acquired during the inquiry of a complaint, the Deputy Inspector General of Inspections shall notify the complainant and contractor, by certified mail or by personal service, that an inquiry into the complaint will no longer be pursued by that office and that the complainant has the right to request a hearing on the complaint in accordance with the provisions of § 708.9. A copy of such notice declining to pursue an inquiry shall be sent to the Director of the Office of Hearings and Appeals, and the Director of the Office of Employee Concerns or the Head of Field Element, as appropriate. Requests for a hearing under this paragraph must be filed with the Director of the Office of Hearings and Appeals within 15 days of the receipt of the determination of the Deputy Inspector General for Inspections that an inquiry will not be conducted or continued. Copies of any request for a hearing shall be served by the complainant on all parties by certified mail.

(2) The authority of the Deputy Inspector General for Inspections to make the determination not to pursue an inquiry is wholly independent from jurisdictional determinations made by the Director, Heads of Field Elements, or the Secretary. Such a determination by the Deputy Inspector General for Inspections is not subject to review by the Office of Hearings and Appeals or appealable to the Secretary.

(c) *Conducting an inquiry—obtaining information.* In conducting an inquiry under this part, the inspector, for the purpose of determining whether a violation of § 708.5 has occurred, may enter and inspect places and records (and make copies thereof), may question persons alleged to have been involved in discriminatory acts and other employees of the charged contractor, may take sworn statements, as deemed necessary, and may require the production of any documentary or other evidence deemed necessary. At interviews conducted on behalf of the Deputy Inspector General for Inspections under this part, the person being interviewed shall have the right to be represented by a person of his or her own choosing. Parties to the complaint do not have an independent right to be present at such interviews. The contractor shall cooperate fully with the inspector in making available employees and all pertinent evidence.

(d) *Confidentiality.* The identity of a person, other than the complainant, requesting confidentiality shall not be released by the Office of Inspector General unless the Inspector General determines that it is unavoidable. The inspector shall advise the person to whom confidentiality is granted that such a grant of confidentiality is limited to mean that the Office of Inspector General will not disclose his or her identity as the source of information to anyone outside the Office of Inspector General, as required by statute, or as determined by the Inspector General to be unavoidable.

(e) *Reports of inquiry.* Upon completion of an inquiry, the Deputy Inspector General for Inspections shall

issue a Report of Inquiry that shall present the findings reached by the Deputy Inspector General for Inspections resulting from the conduct of the inquiry. The Report of Inquiry may also contain recommendations for remedial action, where appropriate, consistent with the remedies available under §§ 708.10(c) and 708.11(c). The Deputy Inspector General for Inspections shall provide the Report of Inquiry to the parties involved by certified mail, or by personal service, and provide a copy to the Director of the Office of Hearings and Appeals.

(f) If a Report of Inquiry has not been issued within 240 days of the date the Deputy Inspector General for Inspections was advised by the Director or Head of the Field Element that attempts at informal resolution were unsuccessful, the complainant may request a hearing in accordance with § 708.9. When a complainant exercises his or her right to request a hearing under this section, the Deputy Inspector General for Inspections will usually terminate any activities related to the inquiry being conducted on that complaint.

10. Section 708.9, Hearing, is revised to read as follows:

§ 708.9 Hearing.

(a) *Request for a hearing.* (1) Within 15 days of receipt of notification of his or her right to elect to proceed to a hearing if informal resolution efforts are not successful, pursuant to § 708.7(b)(3), a complainant may, in writing to the director of the Office of Hearings and Appeals, request a hearing.

(2) Within 15 days of receipt of the Report of Inquiry, a party may, in writing to the Director of the Office of Hearings and Appeals, request a hearing on the complaint. If a request for a hearing is not submitted by either party after the Deputy Inspector General for Inspections has completed an inquiry, the Director of the Office of Hearings and Appeals shall issue an initial agency decision pursuant to § 708.10.

(3) A complainant may, in writing to the Director of the Office of Hearings and Appeals, request a hearing on the complaint within 15 days of receipt of a notification of a decision by the Deputy Inspector General for Inspections not to open or continue an inquiry. If a hearing is not requested, the Director of the Office of Hearings and Appeals shall dismiss the complaint.

(4) A complainant may, in writing to the Director of the Office of Hearings and Appeals, request a hearing if a Report of Inquiry has not been issued within 240 days of the date the Deputy Inspector General for Inspections was advised by the Director or Head of the Field Element of the complainant's election to request an inquiry, pursuant to § 708.7(b)(3), after attempts at informal resolution were unsuccessful.

(b) If a request for a hearing is filed, the Director of the Office of Hearings and Appeals shall appoint, as soon as practicable, a Hearing Officer to conduct a hearing. Hearings will normally be held at or near the appropriate DOE field organization, within 90 days from the date the complaint file is received by the Hearing Officer unless the Hearing Officer determines that another location would be more appropriate, or unless the complaint is earlier settled by the parties. The Hearing Officer may, at his or her discretion, recommend to the parties that they attempt informal resolution of the complaint, through various Alternative Dispute Resolution techniques, including mediation, prior to the conduct of the hearing.

(c)(1) *Requests for discovery.* Upon the request of a party, the Hearing Officer may order discovery based upon a showing that the requested discovery is designed to produce evidence that will materially advance the proceeding. The parties may engage in reasonable discovery regarding any matter, not privileged, that is relevant to the subject matter of the complaint. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission.

(2) *Hearing procedures.* In all proceedings under this part, the parties shall have the right to be represented by a person of their own choosing. Formal rules of evidence shall not apply, but shall be used as a guide for application of procedures designed to assure production of the most probative evidence available. The Hearing Officer may exclude evidence which is immaterial, irrelevant, or unduly repetitious. The Hearing Officer is specifically prohibited from initiating or otherwise engaging in ex parte discussions on a complaint matter at any time during the pendency of the complaint proceeding under this part.

(d) *Burdens of proof.* The complainant shall have the burden of establishing by a preponderance of the evidence that there was a disclosure, participation, or refusal described under § 708.5, and that such act was a contributing factor in the alleged discriminatory action(s) taken or intended to be taken against the complainant. Once the complainant has met this burden, the burden shall shift to the contractor to prove by clear and convincing evidence that it would have taken the same action(s) absent the complainant's disclosure, participation, or refusal.

(e) *Testimony.* Testimony of witnesses shall be given under oath or affirmation, and the witnesses shall be subject to cross-examination. Witnesses shall be advised of the applicability of 18 U.S.C. 1001 and 1621, dealing with the criminal penalties associated with false statements and perjury.

(f) *Subpoenas.* The Hearing Officer may subpoena witnesses to attend the Hearing on behalf of either party, or for the production of specific documents or other physical evidence, provided a showing of the necessity for such witness or evidence has been made to the satisfaction of the Hearing Officer.

(g) *Recording of hearings.* All hearings shall be mechanically or stenographically reported. All evidence upon which the Hearing Officer relies for the recommended decision under § 708.10(b) shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits and other pertinent documents or records, either in whole or in material part, introduced as evidence, shall be marked to identification and incorporated into the record.

(h) *Post-hearing submissions.* Any party, upon request, may be allowed a reasonable time to file with the Hearing Officer a brief or statement of fact or law. A copy of any such brief or statement shall be filed with the Hearing Officer and shall be served by the submitting party upon each other party. The parties may make oral closing arguments, but post-hearing briefs will only be permitted at the direction of the Hearing Officer. When permitted, any such brief shall be limited to the issue or issues specified by the Hearing Officer and shall be due within the time prescribed by the Hearing Officer.

(i) At the request of any party, the Hearing Officer may, at his or her discretion, extend the time for any hearing held pursuant to this § 708.9. Additionally, the Hearing Officer may, at the request of any party, or on his or her own motion, dismiss a claim, defense, or party and make adverse findings—

(1) Upon the failure without good cause of any party or his or her representative to attend a hearing; or

(2) Upon the failure of any party to comply with a lawful order of the Hearing Officer.

(j) In any case where a dismissal of a claim, defense, or party is sought, the Hearing Officer shall take such action as is appropriate to rule on the dismissal,

which may include an order dismissing the claim, defense, or party. An order dismissing a claim, defense, or party may be appealed to the Secretary for reconsideration within 15 days of the dismissal order.

11. Section 708.10 is revised to read as follows:

708.10 Initial and final agency decision.

(a) If a hearing is not requested, the Director of the Office of Hearings and Appeals, within 60 days of expiration of the time set forth in § 708.9(a) for request of a hearing, shall issue an initial agency decision based upon the record, which decision shall be served upon the parties by certified mail. The initial agency decision shall contain appropriate findings, conclusions, and an order, and shall set forth the factual basis for each and every finding with respect to each alleged discriminatory act. In making such findings, the Director of the Office of Hearings and Appeals, may rely upon, but shall not be bound by, the findings contained in the Report of Inquiry. The burdens of proof set forth in § 708.9(d) are applicable to decisions made under this paragraph.

(b) If a hearing has been held, the Hearing Officer shall issue an initial agency decision within 60 days after the receipt of the transcript of the hearing or within 60 days after receipt of any post-hearing briefs or other information permitted under § 708.9(h), whichever is later. The initial agency decision shall contain appropriate findings, conclusions, and an order, and shall set forth the factual basis for each and every finding with respect to each alleged discriminatory act. In making such findings, the Hearing Officer may rely upon, but shall not be bound by, the findings contained in the Report of Inquiry. The Hearing Officer shall promptly serve the initial agency decision upon all parties to the proceeding by certified mail, and send a copy of the initial agency decision to the Deputy Inspector General for Inspections.

(c) The initial agency decision shall award such relief as is necessary to abate the violation, including, but not limited to, an award of reinstatement, transfer preference, back pay, and reimbursement to the complainant up to the aggregate amount of all reasonable costs and expenses (including attorney and expert-witness fees) reasonably incurred by the complainant in bringing the complaint upon which the decision was issued.

(1) If the initial agency decision contains a determination that the complaint is without merit, it shall also include a notice stating that the decision shall become the final decision of DOE denying the complaint unless, within 15 days of its receipt, a written request for review by the Secretary is filed with the Director of the Office of Hearings and Appeals. Copies of any request for review shall be served by the requesting party upon all parties.

(2) If the initial agency decision contains a determination that a violation of § 708.5 has occurred, it shall also include an appropriate order to the contractor to abate the violation and to provide the complainant with relief, as well as notice to the parties that the decision shall become the final decision of DOE unless, within 15 days of its receipt, a written request for review by the Secretary is filed with the Director of the Office of Hearings and Appeals. Copies of any request for review shall be served by the requesting party upon all parties by certified mail.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, if the agency decision contains a determination that a violation of § 708.5 has occurred, it may contain an order requiring the contractor to provide the complainant with interim relief, including but not limited to reinstatement, pending the outcome of any request for review. This paragraph shall not be construed to require the payment of any monetary award before the DOE decision is final.

(d) If a request for review of the initial agency decision is not filed pursuant to paragraphs (c)(1) or (2) of this section, the Director of the Office of Hearings and Appeals, shall notify the parties by certified mail that the initial agency decision is the final agency decision. A copy of the notification shall be sent to the Director or the Head of the Field Element, as appropriate.

12. Section 708.11 is revised to read as follows:

§ 708.11 Secretarial review and final decision.

(a) Upon receipt of a request for review of an initial agency decision by the Secretary, the Director of the Office of Hearings and Appeals shall forward the request, along with the entire record, to the Secretary.

(b) Within 60 days after the Director of the Office of Hearings and Appeals has sent the record in a case to the Secretary, the Secretary shall either direct further processing of the complaint or, pursuant to paragraph (c) or (d) of this section, issue a final decision, based on the record, including the Report of Inquiry. The final decision shall be forwarded by the Secretary to the Director of the Office of Hearings and Appeals who shall serve it upon all parties by certified mail.

(1) If the Secretary determines that further processing of the complaint is necessary, the Secretary will return the case to the Director of the Office of Hearings and Appeals for appropriate action.

(2) Except to the extent prohibited by law, regulation, or Executive Order, all parties will be provided copies of any information compiled as a result of actions taken under paragraph (b)(1) of this section.

(c) If the Secretary determines that a violation of § 708.5 has occurred, the Secretary shall issue a final decision and shall instruct the Director of the Office of Hearings and Appeals to take appropriate action to implement that decision in accordance with § 708.12. The Secretary may provide such relief as is necessary to abate the violation, including, but not limited to, an award of reinstatement, transfer preference, back pay, and reimbursement to the complainant up to the aggregate amount of all reasonable costs and expenses (including attorney and expert-witness fees) reasonably incurred by the complainant in bringing the complaint upon which the decision was issued or such other relief as is deemed necessary to abate the violation and provide the complainant with relief.

(d) If the Secretary determines that the party charged has not committed a discriminatory act in violation of § 708.5, the Secretary shall so notify the Director of the Office of Hearings and Appeals and issue a final decision dismissing the complaint. If the Secretary determines that there has been no discrimination, the complainant shall not receive reimbursement for the costs and expenses provided in paragraph (c) of this section.

13. Section 708.12, Implementation of decision, is revised to read as follows:

§ 708.12 Implementation of decision.

(a) Upon receipt of the final decision of the Secretary under § 708.11, or if the initial agency decision becomes the final decision pursuant to § 708.10(c) (1) or (2), the Director of the Office of Hearings and Appeals shall serve the final decision upon all parties by certified mail, and upon the head of the program or field office with jurisdiction over the contract under which the complainant was employed. The DOE official so served shall take all necessary steps to implement the final decision.

(b) For purposes of sections 6 and 7 of the Contract Disputes Act (41 U.S.C. 605 and 606), a decision implemented by DOE pursuant to this part shall not be considered a ''claim by the

government against a contractor'' or ''a decision by the contracting officer.'' However, a contractor's disagreement, and refusal to comply, with a final decision under this part could result in the contracting officer's decision to disallow certain costs or terminate the contract for default. In such case, the contractor could file a claim under the disputes procedures of the contract.

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DEPARTMENT OF ENERGY

48 CFR Parts 922, 952, and 970

RIN 1991–AB36

Acquisition regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) to implement a recommendation of its Department-wide contract reform initiative concerning costs in whistleblower actions. The effect of the rule, when finalized, will be to clarify those costs that are allowable and those that are unallowable in processing whistleblower cases.

DATES: Written comments should be forwarded no later than March 6, 1998.

ADDRESSES: Comments are to be submitted to P. Devers Weaver, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0705, facsimile 202–586–0545.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0705, telephone 202–586–8250.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
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H. Review Under the Unfunded Mandates Reform Act of 1995
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I. Background

An action item under the Department's Contract Reform Team Report was the development of an explicit policy concerning the allowability of defense costs in ''whistleblower'' cases. On October 17, 1994, the Secretary of Energy publicly released and solicited comments on a set of proposals concerning whistleblower reforms. These proposals were designed to strengthen the ability of the Department's federal and contractor employees to raise concerns relating to waste, fraud and abuse; environment, safety and health; and other matters. One of these proposals called for the development of provisions to limit the Department's reimbursement of contractor litigation costs in whistleblower cases. This rulemaking contains a new clause, Costs Associated with Whistleblower Actions, which is a proposal for implementation of the contractor employee whistleblower reform initiative in the Department's contracting activities.

II. Section-by-Section Analysis

Section 922.7101 and subsection 952.222–70 are amended to add a new clause prescription.

Section 970.3103, Contract clauses, is amended to add a new paragraph (e) to prescribe the use of the new clause.

Section 970.5204–13, Allowable costs and fixed-fee (management and operating contracts), is amended to add a new paragraph (e)(3__).

Section 970.5204–14, Allowable costs and fixed-fee (support contracts), is amended to add a new paragraph (e)(3__).

Section 970.5204–XX, Costs Associated with Whistleblower Actions, is added.

III. Procedural Requirements

A. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

B. Review Under Executive Order 12866

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

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

D. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its

compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

F. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule is intended to provide policies for the Department of Energy's management and operating contractors, who generally have been large businesses. While this requirement will flowdown to subcontractors, it is anticipated that they generally will be cost-reimbursement type subcontracts. Based on this review the Department certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

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

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

IV. Opportunities for Public Comment

Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section. In addition, it is requested that you provide a copy of your comments on a WordPerfect 6.1 or ASCII diskette. All comments received will be available for public inspection upon request. All written comments received on or before the date specified in the beginning of this proposed rule and all other relevant information will be considered by the Department before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. The Department reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information which has been submitted in a document and may be exempt from public disclosure are set forth in 10 CFR 1004.11.

V. Opportunity for Public Hearing

The Department has concluded that this rule does not involve any significant issues of law or fact. Therefore, consistent with 42 U.S.C. 7191 and 5 U.S.C. 553, the Department has not scheduled a public hearing. However, upon the receipt of a written request received at the address in the ADDRESSES section near the beginning of this rule on or before January 20, 1998 a public hearing on the proposed rule will be scheduled in the Forrestal Building, Washington, DC. The date, time, and exact place of the hearing and procedures governing the conduct of the hearing will be published in advance in the **Federal Register**.

List of Subjects in 48 CFR Parts 922, 952, and 970

Government procurement.

Issued in Washington, D.C., on December 22, 1997.

Federico Peña,

Secretary of Energy.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation for Parts 922 and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

§ 922.7101 [Amended]

3. The heading of Section 922.7101 is revised to read ''Clauses,'' the existing text is designated ''(a)'' and a paragraph (b) is added as follows:

922.7101 Clauses.

(b) The contracting officer shall insert the clause at 970.5204–XX, Costs Associated with Whistleblower Actions, in cost reimbursement type contracts that involve work to be performed on-site at a DOE-owned or -leased facility. The contracting officer may amend the clause by deleting references to clauses applicable only to management and operating contracts.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.222–70 [Amended]

4. Subsection 952.222–70 is amended by designating the existing text as ''(a)'' and adding a paragraph (b) as follows:

952.222–70 Whistleblower protection for contractor employees.

(b) As prescribed in 922.7101, insert the clause at 970.5204–XX, Costs Associated with Whistleblower Actions, in cost reimbursement type contracts for work to be performed on-site at a DOE-owned or -leased facility. The contracting officer may amend the clause by deleting references to clauses applicable only to management and operating contracts.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.3103 [Amended]

5. Section 970.3103, Contract clauses, is amended to add the following paragraph (e):

970.3103 Contract clauses.

* * * * *

(e) The contracting officer shall insert the clause at 970.5204–XX, Costs Associated with Whistleblower Actions,

in cost reimbursement type contracts for the management and operation of a DOE facility or for work to be performed on-site at a DOE-owned or -leased facility.

970.5204–13 [Amended]

6. In subsection 970.5204–13, Allowable costs and fixed-fee (management and operating contracts), the parenthetical date following the clause title is revised and a paragraph (e)(3—) is added as follows:

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

ALLOWABLE COSTS AND FIXED-FEE (MANAGEMENT AND OPERATING CONTRACTS) (XXX and XXXX)

* * * * *

(e) * * *

(3__) Costs incurred in connection with any employee action, as provided in the clause entitled ''Costs Associated with Whistleblower Actions.''

970.5204–14 [Amended]

7. In subsection 970.5204–14, Allowable costs and fixed-fee (support contracts), the parenthetical date following the clause title is revised and a paragraph (e)(3__) is added as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

* * * * *

ALLOWABLE COSTS AND FIXED-FEE (SUPPORT CONTRACTS) (XXX and XXXX)

* * * * *

(e) * * *

(3__) Costs incurred in connection with any employee action, as provided in the clause entitled ''Costs Associated with Whistleblower Actions.''

970.52 [Amended]

8. 970.5204–XX, Costs Associated with Whistleblower Actions, is added to read as follows:

970.5204–XX Costs Associated with Whistleblower Actions

As prescribed in 970.3103(e), insert the following clause.

COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS (XXX and XXXX)

(a) Definitions.

(1) ''Adverse determination'' means

(i) A recommended decision under 29 CFR part 24 by an administrative law judge that the Contractor has violated the employee protection provisions of the statutes for which the Secretary of Labor has been assigned responsibility;

(ii) An initial agency decision under 10 CFR 708.10 that the Contractor has engaged in conduct prohibited by 10 C.F.R. 708.5; or

(iii) A decision against the Contractor by the Secretary under 41 U.S.C. 265(c)(1).

Note: In contracts with a non-standard paragraph (h) in the Insurance-Litigation and Claims clause, add the following subparagraph (iv):

(iv) A judgment or other determination of liability against the Contractor and in favor of the employee in an action in a judicial forum.

(2) ''Costs'' include any costs or expenses relating to an employee action, as defined below, including but not limited to back pay, damages or other award in the form of relief to the employee; administrative and clerical expenses; the cost of legal services, including litigation costs, whether provided by the Contractor or procured from outside sources; the costs of services of accountants, consultants or other experts retained by the Contractor; all elements of related compensation, costs and expenses of employees, officers and directors; and any similar costs incurred after the commencement of the employee action.

(3) ''Employee action'' means an action brought by an employee of the Contractor under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265, or an action filed in federal or state court for redress of discrimination or discriminatory action by a Contractor based on activities that would be actionable under 29 CFR part 24, 10 CFR part 708, or 41 U.S.C. 265.

(4) ''Litigation costs'' include attorney, consultant and expert witness fees associated with the defense of an employee action, but exclude the costs of implementing a settlement, judgment, or Secretarial Order.

(b) Segregation of costs. All litigation costs incurred in the investigation and defense of an employee action under this clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(c) Allowability of litigation and other costs. (1) Litigation costs, including the use of alternative dispute resolution, and settlement costs incurred in connection with an employee action under this clause are allowable if the employee action is resolved prior to an adverse determination, provided such costs are otherwise allowable under the clauses entitled ''Insurance-Litigation and Claims,'' ''Cost Prohibitions Related to Legal and Other Proceedings,'' and other relevant provisions of this contract.

(2) In actions in which an adverse determination is issued, litigation, settlement, and judgment costs, as well as the cost of complying with any Secretarial Order, are not allowable, unless:

(i) The Contractor prevails in a proceeding subsequent to the adverse determination at which a final decision is rendered in the action; or

(ii) The Contracting Officer has, on the basis that it is in the best interest of the Government, approved the Contractor's request to proceed with defense of an action rather than entering into a settlement with the employee or accepting an adverse determination or other interim decision prior to a final decision.

(3) Subsequent to an adverse determination, litigation costs, as well as costs associated with any interim relief granted, may not be paid from contract funds; provided, however, that the Contracting Officer may, in appropriate circumstances, provide for conditional payment from contract funds upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs, plus interest, if they are subsequently determined to be unallowable.

(4) Litigation costs incurred to defend an appeal by the employee from an interim or final decision in the Contractor's favor are allowable provided they are otherwise allowable under the clauses entitled ''Insurance Litigation and Claims'' and ''Cost Prohibitions Related to Legal and Other Proceedings,'' and other relevant provisions of the contract.

(d) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under section 2 of the Major Fraud Act of 1988 as amended. (See the clause entitled ''Cost Prohibitions Related to Legal and Other Proceedings.'')

[FR Doc. 98–81 Filed 1–2–98; 8:45 am]

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Monday
January 5, 1998

Part VI

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Special Research Grants Program, Potato Research

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice.

SUMMARY: The Cooperative State Research, Education, and Extension Service announces the availability of grant funds and requests proposals for the Special Research Grants Program, Potato Research for fiscal year (FY) 1998. Subject to the availability of funds, the anticipated amount available for support of this program in FY 1998 is $1,134,814.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Potato Research Project grant. To obtain application forms, please contact the Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

DATES: Applications must be received on or before February 19, 1998. Proposals received after February 19, 1998, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Dr. James Parochetti, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2220; telephone (202) 401–4354; Internet: jparochetti@reeusda.gov.

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Part I—General Information

A. Legislative Authority

The authority for this program is contained in section 2(c)(1)(B) of the Act of August 4, 1965, Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(B)). The administrative regulations at 7 CFR part 3400 for Special Grants Programs awarded under the authority of section 2(c)(1)(A) of this Act (7 U.S.C. 450i(c)(1)(A)) do not apply to grants solicited and awarded under this RFP.

In accordance with the statutory authority, grants awarded under this program will be for the purpose of facilitating or expanding ongoing State-Federal food and agricultural research programs that—(i) promote excellence in research on a regional and national level; (ii) promote the development of regional research centers; (iii) promote the research partnership between the Department of Agriculture, colleges and universities, research foundations, and State agricultural experiment stations for regional research efforts; and (iv) facilitate coordination and cooperation of research among States through regional research grants.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) Administrator means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) Authorized departmental officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) Authorized organizational representative means the president, chief executive officer or functional equivalent of the applicant organization or the official, designated by the president, chief executive officer or functional equivalent of the applicant organization, who has the authority to commit the resources of the organization.

(4) Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) Department or USDA means the United States Department of Agriculture.

(6) Grantee means the entity designated in the grant award document as the responsible legal entity to which a grant is awarded.

(7) Peer review panel means a group of experts qualified by training and experience in particular fields to give expert advice on the scientific and technical merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(8) Principal Investigator/Project Director means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project. Note that a proposal may have multiple secondary co-principal investigators/project directors but only one principal investigator/project director.

(9) Prior approval means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(10) Project means the particular activity within the scope of the program supported by a grant award.

(11) Project period means the total length of time that is approved by the Administrator for conducting the research project, as stated in the award document and modifications thereto, if

any, during which Federal sponsorship begins and ends.

(12) Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, land-grant colleges and universities, research foundations established by land-grant colleges and universities, colleges and universities receiving funds under the Act of October 10, 1962, as amended (16 U.S.C. 582a *et seq.*), and accredited schools or colleges of veterinary medicine. The proposals must be directly related to potato varietal development/testing. Although an applicant may be eligible based on its status as one of these entities, other factors may exclude an applicant from receiving Federal assistance under this program (e.g., debarment or suspension, a determination of non-responsibility based on submitted organizational management information).

Part II—Program Description

A. Purpose of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Potato Research for fiscal year (FY) 1998. The purpose of this grant program is to support potato research that focuses on varietal development/testing. As used herein, varietal development/testing is research using traditional and biotechnological genetics to develop improved potato variety(ies). Aspects of evaluation, screening and testing must support or compliment the development of improved varieties. This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of USDA.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support regional research projects that are composed of potato research that focuses on varietal development/testing. For purposes of this program, regional research means research having application beyond the immediate State in which the awardee resides and performs the project. The total amount of funds available in FY 1998 for support of this program is approximately $1,134,814. Each proposal submitted in FY 1998 shall request funding for a period not to exceed one year. Funding for additional years will depend upon the availability of funds and progress toward objectives. FY 1998 awardees would need to recompete in future years for additional funding.

Under this program, and subject to the availability of funds, the Secretary may make grant awards for the support of research projects available for up to five years to further the program.

In addition, section 716 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105–86, encourages entities receiving Federal financial assistance to use grant funds to purchase only American-made equipment or products in the case of any equipment or product authorized to be purchased with funds provided under this program.

Part III—How to Obtain Application Materials

Copies of this solicitation and the Application Kit may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., S.W.; Washington D.C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the FY 1998 Special Research Grants Program, Potato Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Part IV—Content of a Proposal

All applications should be typed on 8½ × 11 white paper, single-spaced, and on one side of the page only. It would be helpful if the name of the submitting institution were typed at the top of each page for easy identification in the event the proposal becomes disassembled while being reviewed. All proposals must contain the following forms and narrative information to assist CSREES personnel during the review and award processes:

A. ''Application for Funding'' (Form CSREES–661)

Each copy of each grant proposal must contain an ''Application for Funding.'' One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed principal investigator or co-principal investigator whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the ''Application for Funding'' form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

1. Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as ''investigation of'' or ''research on'' should not be used.

2. Program to Which You Are Applying (Block 7). ''Special Research Grants Program, Potato Research'' should be inserted in this block. You may ignore the reference to a **Federal Register** announcement.

3. Program Area and Number (Block 8). The name of the program area, ''Potato Research,'' should be inserted in this block. You should ignore references to the program number and the **Federal Register** announcement.

4. Type of Award Request (Block 13). If the project being proposed is a renewal of a grant that has been supported under the same program at any time during the previous five fiscal years, it is important that you show the latest grant number assigned to the project by CSREES.

5. Principal Investigator(s) (Block 15). The designation of excessive numbers of co-principal investigators creates problems during final review and award processes. Listing multiple co-principal investigators, beyond those required for genuine collaboration, is therefore discouraged.

6. Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory,

or other organizational unit of an agricultural experiment station, box ''03'' should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

7. Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

B. Table of Contents

For consistency and ease of locating information, each proposal submitted should contain a Table of Contents.

C. Objectives

Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals. For renewal applications, a restatement of the objectives outlined in the active grant also should be provided.

D. Progress Report

If the proposal is a renewal of an existing project supported under the same program, include a clearly identified summary progress report describing the results to date. The progress report should contain the following information:

1. A comparison of actual accomplishments with the goals established for the active grant;
2. The reasons for slippage if established goals were not met;
3. Other pertinent information, including, when appropriate, cost analysis and explanation of cost overruns or unexpectedly high unit costs.

E. Procedures

The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

1. A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;
2. Techniques to be employed, including their feasibility;
3. Kinds of results expected;
4. Means by which data will be analyzed or interpreted;
5. Pitfalls which might be encountered; and
6. Limitations to proposed procedures.

F. Justification

This section should include in-depth information on the following, when applicable:

1. Estimates of the magnitude of the problem and its relevance to ongoing State-Federal food and agricultural research programs;
2. Importance of starting the work during the current fiscal year, and
3. Reasons for having the work performed by the proposing institution.

G. Cooperation and Institutional Units Involved

Cooperative and multi-state applications are encouraged. Identify each institutional unit contributing to the project. Identify each state in a multiple-state proposal and designate the lead state. When appropriate, the project should be coordinated with the efforts of other state and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

H. Literature Review

A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

I. Current Work

Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

J. Facilities and Equipment

All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project also should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

K. Project Timetable

The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

L. Personnel Support

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

1. An estimate of the time commitment involved;
2. Vitae of the principal investigator(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings; and
3. A chronological listing of the most representative publications during the past five years. This listing must be provided for each professional project member for whom a vita appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

M. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. A letter of intent from the individual or organization will satisfy this requirement. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the

providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, as amended by 62 FR 45934, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR Part 3019 Sections 40–48 (''Procurement Standards'') and Appendix A (''Contract Provisions'') should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension. This latter requirement is explained further under subsection ''Q'' of these guidelines.

N. ''Budget'' (Form CSREES–55)

Each proposal must contain a detailed budget for up to 12 months of support. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is sought is allowable under the enabling legislation and the applicable Federal cost principles and can be identified as necessary and reasonable for the successful conduct of the project.

The following guidelines should be used in developing your proposal budget(s):

1. *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with OMB Circular No. A–21, Cost Principles for Educational Institutions. Administrative and Clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

Note: In accordance with Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3319, tuition remission is not an allowable cost under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose.

2. *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

3. *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

Note: For projects awarded under the authority of Sec. 2(c)(1)(B) of Pub. L. No. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

4. *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

7. *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, e-mail, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the ''Instructions for Completing Form CSREES–55, Budget,'' of the Application Kit for detailed guidance relating to this budget category.

9. *Indirect Costs.* Pursuant to Section 1473 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3319, indirect costs are not allowable costs under Section 2(c)(1)(B) projects, and no funds will be approved for this purpose. Further, costs that are a part of an institution's indirect cost pool (e.g., administrative or clerical salaries) may not be reclassified as direct costs for the purpose of making them allowable.

10. *Cost-sharing.* Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

O. ''Current and Pending Support'' (Form CSREES–663)

All proposals must contain Form CSREES–663 listing this proposal and any other current or pending support to which key project personnel have committed or are expected to commit portions of their time, whether or not salary support for the person(s) involved is included in the budget. This proposal should be identified in the pending section of this form.

P. ''Assurance Statement(s)'' (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is

expected that some applications submitted in response to these guidelines will include the following:

1. *Recombinant DNA or RNA Research.* As stated in 7 CFR Part 3015.205(b)(3), all key personnel identified in the proposal and all signatory officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the ''yes'' box in Block 19 of Form CSREES–661 (''Application for Funding'') and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

2. *Animal Care.* Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all signatory officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1996, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, as amended by 62 **Federal Register** 43272 and 50244, 2, 3, as amended by 62 **Federal Register** 43272 and 50244, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the ''yes'' box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

3. *Protection of Human Subjects.* Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations established by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the ''yes'' box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

Q. Certifications

Note that by signing the Application for Funding form the applicant is providing the required certifications set forth in 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

R. Compliance With the National Environmental Policy Act

As outlined in 7 CFR Part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA, which includes determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions. To assist CSREES in this determination, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one of the exclusions.

Form CSREES–1234, ''NEPA Exclusions Form'' (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as ''NEPA Considerations'' and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, ''Application for Funding,'' in the proposal.

The following Categorical Exclusions apply:

(1) USDA Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES Categorical Exclusions (7 CFR 3407.6(a)(2))

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project if substantial controversy on

environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

S. Additions to Project Description

Each project description is expected to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in Part V(A) below. Each set of such materials must be identified with the title of the project and the name(s) of the principal investigator(s)/project director(s) as they appear on the ''Application for Funding.'' Examples of additional materials include photographs that do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the body of the proposal.

Part V—Submission of a Proposal

A. What to Submit

An original and three copies of each grant proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½ x 11 white paper, single-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. Staple each copy of the proposal in the upper left-hand corner. Please do not bind copies of the proposal.

B. Where and When To Submit

Proposals must be received on or before February 19, 1998, and submitted to the following mailing address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Ave., SW., Washington, DC 20250–2245, Telephone (202) 401–5048.

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; CSREES/USDA; Room 303, Aerospace Center; 901 D Street, SW., Washington, DC 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain a proposal identification number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part VI—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a review panel.

The individual panel members will be selected from among those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer reviewers, and the proposed principal investigator(s), to the extent permitted by law.

B. Evaluation Criteria

1. Overall scientific and technical quality of the proposal—10 points.

2. Scientific and technical quality of the approach—10 points.

3. Relevance and importance of proposed research to solution of specific areas of inquiry, and application of expected results for States beyond the State in which the grantee resides and will perform the work—30 points.

4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment; the cooperation and involvement of multiple institutions or states—50 points.

Part VII—Supplementary Information

A. Access to Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the principal investigator of the reasons for its decision on a proposal.

B. Grant Awards

1. General: Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area and procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, as amended by 62 FR 45947, and 3019, as amended by 62 FR 45934, of 7 CFR).

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant if such information has not been provided previously under this or another program for which the sponsoring agency, CSREES, is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by CSREES as part of the pre-award process.

3. Grant Award Document: The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under this program;

b. Title of Project;

c. Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

d. Grant identification number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Departmental financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

4. Notice of Grant Award: The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

5. CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without any guarantee of additional support at a future date.

C. Use of Funds; Changes

Unless otherwise stipulated in the terms and conditions of the grant award, the following provisions apply:

1. Delegation of Fiscal Responsibility: The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans:

a. The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Authorized Departmental Officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Authorized Departmental Officer prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the Authorized Departmental Officer determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the Authorized Departmental Officer, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal costs principles, Departmental regulations, or in the grant award document.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3, as amended by 62 FR 40924 and 60451—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015, as amended by 62 FR 45947—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019, as amended by 62 FR 45934—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052, 62 FR 45947—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794, section 504 of the Rehabilitation Act of 1973, and *7 CFR Part 15B* (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of CSREES's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by CSREES for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been

approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 24th day of December 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–119 Filed 1–2–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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Title	Stock Number	Price	Revision Date
●**1, 2 (2** Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
●**3** (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●**4**	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
●1–699	(869–032–00004–2)	34.00	Jan. 1, 1997
●700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
●1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
●0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
●27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
●53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
●210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
●300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
●400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
●700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
●900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
●1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
●1200–1499	(869–032–00016–6)	33.00	Jan. 1, 1997
●1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
●1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
●1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
●1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
●2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
●**8**	(869–032–00022–1)	30.00	Jan. 1, 1997
9 Parts:			
●1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
●200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
●0–50	(869–032–00025–5)	39.00	Jan. 1, 1997
●51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
●200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
●500–End	(869–032–00028–0)	42.00	Jan. 1, 1997
●**11**	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
●1–199	(869–032–00030–1)	16.00	Jan. 1, 1997
●200–219	(869–032–00031–0)	20.00	Jan. 1, 1997
●220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
●300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
●500–599	(869–032–00034–4)	24.00	Jan. 1, 1997
●600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
●**13**	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
●1–59	(869–032–00037–9)	44.00	Jan. 1, 1997
●60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
●140–199	(869–032–00039–5)	16.00	Jan. 1, 1997
●200–1199	(869–032–00040–9)	30.00	Jan. 1, 1997
●1200–End	(869–032–00041–7)	21.00	Jan. 1, 1997
15 Parts:			
●0–299	(869–032–00042–5)	21.00	Jan. 1, 1997
●300–799	(869–032–00043–3)	32.00	Jan. 1, 1997
●800–End	(869–032–00044–1)	22.00	Jan. 1, 1997
16 Parts:			
●0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
●1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
17 Parts:			
●1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
●200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
●240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
●1–399	(869–032–00051–4)	46.00	Apr. 1, 1997
●400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
●1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
●141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
●200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
●1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
●400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
●500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
●1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
●100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
●170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
●200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
●300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
●500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
●600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
●800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
●1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
●1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
●300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
●**23**	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
●0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
●200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
●500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
●700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
●1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●**25**	(869–032–00076–0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0-1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
●§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
●§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
●§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
●§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
●§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
●§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
●§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
●§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
●§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
●2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
●40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
●50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
●300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
●600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
●1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

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●200–End	(869–032–00097–2)	17.00	Apr. 1, 1997
28 Parts:			
●1-42	(869–032–00098–1)	36.00	July 1, 1997
●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0–99	(869–032–00100–5)	27.00	July 1, 1997
●100–499	(869–032–00101–4)	12.00	July 1, 1997
●500–899	(869–032–00102–2)	41.00	July 1, 1997
●900–1899	(869–032–00103–1)	21.00	July 1, 1997
●1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
●1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
●1911–1925	(869–032–00106–5)	19.00	July 1, 1997
●1926	(869–032–00107–3)	31.00	July 1, 1997
●1927–End	(869–032–00108–1)	40.00	July 1, 1997
30 Parts:			
●1–199	(869–032–00109–0)	33.00	July 1, 1997
●200–699	(869–032–00110–3)	28.00	July 1, 1997
●700–End	(869–032–00111–1)	32.00	July 1, 1997
31 Parts:			
●0–199	(869–032–00112–0)	20.00	July 1, 1997
●200–End	(869–032–00113–8)	42.00	July 1, 1997
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
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●1–190	(869–032–00114–6)	42.00	July 1, 1997
●191–399	(869–032–00115–4)	51.00	July 1, 1997
●400–629	(869–032–00116–2)	33.00	July 1, 1997
●630–699	(869–032–00117–1)	22.00	July 1, 1997
●700–799	(869–032–00118–9)	28.00	July 1, 1997
●800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
●1–124	(869–032–00120–1)	27.00	July 1, 1997
●125–199	(869–032–00121–9)	36.00	July 1, 1997
●200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
●1–299	(869–032–00123–5)	28.00	July 1, 1997
●300–399	(869–032–00124–3)	27.00	July 1, 1997
●400–End	(869–032–00125–1)	44.00	July 1, 1997
●35	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
●1–199	(869–032–00127–8)	20.00	July 1, 1997
●200–299	(869–032–00128–6)	21.00	July 1, 1997
●300–End	(869–032–00129–4)	34.00	July 1, 1997
●37	(869–032–00130–8)	27.00	July 1, 1997
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●0–17	(869–032–00131–6)	34.00	July 1, 1997
●18–End	(869–032–00132–4)	38.00	July 1, 1997
●39	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
●1–49	(869–032–00134–1)	31.00	July 1, 1997
●50–51	(869–032–00135–9)	23.00	July 1, 1997
52 (52.01–52.1018)	(869–032–00136–7)	27.00	July 1, 1997
●52 (52.1019–End)	(869–032–00137–5)	32.00	July 1, 1997
●53–59	(869–032–00138–3)	14.00	July 1, 1997
●60	(869–032–00139–1)	52.00	July 1, 1997
●61–62	(869–032–00140–5)	19.00	July 1, 1997
●63–71	(869–032–00141–3)	57.00	July 1, 1997
●72–80	(869–032–00142–1)	35.00	July 1, 1997
●81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–032–00144–8)	50.00	July 1, 1997
●87-135	(869–032–00145–6)	40.00	July 1, 1997
●136–149	(869–032–00146–4)	35.00	July 1, 1997
●150–189	(869–032–00147–2)	32.00	July 1, 1997
●190–259	(869–032–00148–1)	22.00	July 1, 1997
●260–265	(869–032–00149–9)	29.00	July 1, 1997
●266–299	(869–032–00150–2)	24.00	July 1, 1997
●300–399	(869–032–00151–1)	27.00	July 1, 1997
●400–424	(869–032–00152–9)	33.00	[5] July 1, 1996
●425–699	(869–032–00153–7)	40.00	July 1, 1997
●700–789	(869–032–00154–5)	38.00	July 1, 1997
●790–End	(869–032–00155–3)	19.00	July 1, 1997
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		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	(869–032–00156–1)	14.00	July 1, 1997
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●102–200	(869–032–00158–8)	17.00	July 1, 1997
●201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
●200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
●500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
●500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–032–00191–0)	31.00	Oct. 1, 1997
●100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997
Complete 1998 CFR set		951.00	1998
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Subscription (mailed as issued)		247.00	1998
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Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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 Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.