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Monday
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Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–16]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Clarksville and Chase City, Virginia, to become the consolidated market of Clarksville-Chase City. A mail referendum was conducted during the period of April 27–May 1, 1998, among tobacco growers who sold tobacco on these markets in 1997 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Therefore, for the 1998 and succeeding flue-cured marketing seasons, the Clarksville and Chase City, Virginia, tobacco markets shall be designated as and called Clarksville-Chase City. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: William O. Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: A notice was published in the April 20, 1998, issue of the **Federal Register** (63 FR,19415) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Clarksville or Chase City during the 1997 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Clarksville and Chase City, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1998 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in, Clarksville, Virginia, on November 7, 1997, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the April 27–May 1, 1998, referendum were mailed to 511 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 131 responses: 100 eligible producers voted in favor of the consolidation; 9 eligible producers voted against the consolidation; and 22 ballots were determined to be invalid.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. It has been determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR Part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat, 732, as amended, by Sec. 157(a)(1), 95 Stat. 374 (7 U.S.C. 511d).

Subpart D—Orders of Designation of Tobacco Markets

2. In § 29.8001, the table is amended by adding a new entry (ppp) to read as follows:

§ 29.8001 Designation of tobacco markets.

* * * * *

DESIGNATED TOBACCO MARKETS

Territory	Types of tobacco	Auction markets	Order of destination	Citation
*	*	*	*	*
(ppp)Virginia	Flue-Cured	Clarksville-Chase City	July 1, 1998.	(Insert **Federal Register** citation.)

Dated: May 26, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–14423 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA54

General Regulations and Standards for Certain Agricultural Commodities

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the Agricultural Marketing Act (Act) of 1946 to allow GIPSA and State cooperators to use contractors to perform specified inspection services. GIPSA has determined that private firms, institutions, and individuals, working under contract with GIPSA field offices and State cooperators, may be able to perform some inspection services, at certain locations, more effectively or at less cost than if those services were performed by Department or State employees. Consequently, GIPSA is amending the regulations to allow GIPSA and State cooperators to contract for service work and to license individual contractors and those employed by contractors.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA, GIPSA, Room 0623–S, Stop 3649, Washington, D.C. 20250–3649; FAX (202) 720–4628; or E-mail gwollam@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be nonsignificant for the purpose of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This final rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or application of its provisions.

Effects on Small Entities

GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). GIPSA believes that allowing contracts with private firms, institutions, individuals, and others for inspection work will foster more cost-effective operations. Many users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act. For example, the primary user of pulse inspection services is the U.S. Government. It is estimated that between 80 and 90 percent of all inspections are performed (directly or indirectly) at the request of either the USDA's Farm Service Agency or Foreign Agricultural Service, or the U.S. Agency for International Development. The action will allow GIPSA and the 13 State cooperators to use contractors to perform specified inspection services. Currently, contract samplers are used by both GIPSA and State cooperators which has resulted in reduced operating expenses and, in many cases, quicker services to applicants for services. It is expected that this action would result in similar benefits.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 868 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

GIPSA is committed to carrying out its statutory and regulatory mandates in a cost-effective manner that best serves the public interest. Concurrently, GIPSA is constantly seeking ways to reduce the cost of providing official services, without reducing the quality of that service. One measure that has proven effective is the use of contract samplers at outlying service points or during periods of peak demand. By judiciously using contract samplers, GIPSA field offices and State cooperators have been able to reduce their operating expenses and, in many cases, provide quicker service to their applicants for services. GIPSA believes that contract inspections may be equally beneficial in certain situations; e.g., providing quality inspections on an intermittent basis at geographically isolated service points.

On January 15, 1998, GIPSA published in the **Federal Register** (63 FR 2353) a proposal to amend the regulations under the Act of 1946 to allow GIPSA and State cooperators to use contractors to perform specified inspection services. The Act of 1946 provides authority to the Secretary of Agriculture to enter into contracts and agreements with States and agencies of States, private firms, institutions, and individuals for the purpose of performing specified inspection services. According to Section 868.1(b)(23) of the regulations, such services may include ''applying such tests and making examinations of a commodity and records by official personnel as may be necessary to determine the kind, class, grade, other quality designation, the quantity, or condition of commodity; performing condition of container, carrier stowage examination; and any other services as related to commodities, as necessary; and issuing an inspection certificate.'' However, Section 868.80(a)(1) of the regulations states that only persons employed by a cooperator may be licensed to inspect commodities or to perform related services. Consequently, GIPSA proposed to amend the regulations to provide for GIPSA and State cooperators to contract for quality (grading) inspection services and to license individual contractors and those employed by a contractor.

Comment Review

During the 60-day comment period, GIPSA received eight comments: One from a Midwest bean export company; one from a national association that represents grain, feed, and processing companies; one from a regional grain exchange; one from an animal welfare organization; and four from privately-owned official inspection and weighing agencies. Seven of the commenters supported the proposed action, as written. One commenter noted several concerns, but did not object to the proposed action.

Several of the commenters indicated that private firms, institutions, and individuals, working under contract with GIPSA field offices and State cooperators, would improve the timeliness of service. One commenter stated that allowing GIPSA to use contractors ''would eliminate time consumed by mailing samples to the field offices, which should result in quicker turnaround and be more cost-effective.'' Another indicated that this action ''would greatly simplify and speed up the process of exporting.''

The national grain industry association commented that, ''In today's highly competitive business environment, it is important that all service providers seek new ways to meet customer needs in the most cost-effective way possible. We are not surprised to learn that GIPSA has determined that private contractors can, in some cases, perform inspection services more effectively or, at least, at less cost than traditional service providers. For example, GIPSA reports that the use of private contractors has proven effective when using contract samplers at remote service points. Also, as GIPSA notes, the use of private contractors can increase the flexibility of GIPSA and State cooperators to meet customer needs during periods of peak demand.'' An official agency also commented that using contractors would help lower the cost of providing official services.

The animal welfare organization indicated several concerns about any type of inspection services which the Government is considering contracting out. The organization stated that it is imperative that ''All contractors, subcontractors, and employees of either must be properly trained and free of any financial or other business interest in any of the 'commodities' they inspect.'' They went on to state that ''Citizens expect that the law and its regulations will be enforced objectively, and the inspectors will be licensed using criteria which is designed to select only experienced and qualified men and women.'' We do note that all official inspection personnel, whether employed by GIPSA, a cooperator, or a contractor, will be held to the same standards of fitness; i.e., they must be fully trained, tested according to established GIPSA procedures, free of any conflicts of interest, and licensed/authorized by GIPSA to inspect graded commodities.

On the basis of these comments and other available information, GIPSA has decided to amend the regulations to allow GIPSA and cooperators to contract for service work and to license individual contractors and those employed by contractors.

Final Action

To provide for more responsive, cost-effective inspection services under the Act of 1946, GIPSA is revising:

1. Section 868.1(b)(13) to expand the definition of contractor to provide for cooperators to use contractors for specified services.

2. Section 868.80(a)(1) to add provisions for licensing individual contractors and employees of contractors.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set forth in the preamble, 7 CFR part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for Part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 868.1(b)(13) is revised to read as follows:

§ 868.1 Meaning of terms.

* * * * *

(b) * * *

(13) *Contractor.* Any person who enters into a contract with the Service or with a cooperator to perform specified inspection services.

* * * * *

3. Section 868.80(a)(1) is revised to read as follows:

§ 868.80 Who may be licensed.

(a) *Inspectors.* * * *

(1) Is employed by a cooperator, is a contractor, or is employed by a contractor.

* * * * *

Dated: May 21, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–14054 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV98–989–1 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 1997–98 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which established final volume regulation percentages for 1997–98 crop Natural (sun-dried) Seedless (Naturals) and Zante Currant (Zantes) raisins covered under the Federal marketing order for California raisins. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). The volume regulation percentages are 66 percent free and 34 percent reserve for Naturals and 44 percent free and 56 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. The volume regulation percentages are intended to help stabilize raisin supplies and prices and strengthen market conditions.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 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, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Natural and Zante raisins for the 1997–98 crop year, which began August 1, 1997, and ends July 31, 1998. This rule will not

preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. 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 in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the provisions of an interim final rule which established final volume regulation percentages for 1997–98 crop Natural and Zante raisins covered under the order. The volume regulation percentages are 66 percent free and 34 percent reserve for Naturals and 44 percent free and 56 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. The volume regulation percentages are intended to help stabilize raisin supplies and prices and strengthen market conditions. Final percentages were recommended by the Committee at a meeting on February 12, 1998.

Section 989.54 of the order prescribes the procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 14, 1997, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is a computed formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year and by adding the desirable carryout at the end of that crop year. As specified in § 989.154, the desirable carryout for each varietal type is equal to the shipments of free tonnage raisins of the prior crop year during the months of August and September. In accordance with these provisions, the Committee computed and announced 1997–98 trade demands for Naturals and Zantes at 252,398 and 2,058 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	Naturals	Zantes
Prior year's shipments	314,013	3,277
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	282,612	2,949
Minus carryin inventory	92,769	1,679
Plus desirable carryout	62,555	788
Equals computed trade demand	252,398	2,058

As required under § 989.54(b) of the order, the Committee met on October 2, 1997, and announced a preliminary crop estimate of 353,583 tons for Naturals. With the crop estimate much higher than the trade demand of 252,398 tons, the Committee determined that volume regulation was warranted. The Committee announced preliminary free and reserve percentages for Naturals which released 65 percent of the computed trade demand since the field price had not yet been established. The preliminary percentages were 46 percent free and 54 percent reserve. The Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand when the field price was established. The field price was established on October 17, 1997, and the preliminary percentages were thus modified to 61 percent free and 39 percent reserve. As discussed later in this rule, the 353,583 ton crop estimate was subsequently revised to 381,484 tons, the largest crop since 1993–94. The production of Naturals has exceeded market needs during the current crop year, as in most seasons. Volume regulation in such a large crop year should help stabilize prices and improve market conditions.

Also at its October 2, 1997, meeting, the Committee announced a preliminary crop estimate for Zantes at 4,812 tons. This compared to the trade demand of 2,058 tons. It was determined that a Zante reserve pool was warranted because estimated production exceeded the trade demand by a significant amount. The Committee computed preliminary percentages for Zantes at 36 percent free and 64 percent reserve which would have released 85 percent of the computed trade demand. However, as authorized under § 989.54(c), the Committee modified the computed preliminary percentages and established interim percentages to release slightly less than the full trade demand (98.8 percent) at 42.5 percent free and 57.5 percent reserve. Volume regulation for Zantes should also help stabilize prices and improve market conditions.

Also at that meeting, the Committee computed and announced preliminary crop estimates for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Sultana, Muscat, Monukka, and Other Seedless raisins. The Committee computed preliminary volume regulation percentages for these varieties, but determined that such regulation was only warranted for Naturals and Zantes. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietal types. As in past seasons, the Committee submitted its marketing policy to the Department for review.

The Committee met on February 12, 1998, and revised its crop estimates for both Naturals and Zantes as follows: for Naturals, the estimate was increased from 353,583 to 381,484 tons; and for Zantes, the estimate was increased from 4,812 to 4,955 tons. The Committee also announced interim percentages for Naturals at 65.75 percent free and 34.25 percent reserve. Regarding Zantes, the Committee modified its trade demand figure from 2,058 to 2,200 tons at an earlier meeting in November 1997. At its February meeting, the Committee revised its interim percentages for Zantes to 43.75 percent free and 56.25 percent reserve. As required under § 989.54(d) of the order, the Committee also recommended to the Secretary at its February meeting final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type. The Committee's calculations to arrive at final percentages for Naturals and Zantes are shown in the table below.

FINAL VOLUME REGULATION PERCENTAGES

[Tonnage as natural condition weight]

	Naturals	Zantes
Trade demand	252,398	2,200
Divided by crop estimate	381,384	4,955
Equals free percentage	66	44
100 minus free percentage equals reserve percentage	34	56

In addition, the Department's ''Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for Naturals and Zantes by the establishment of final percentages which released 100 percent of the trade demand and the offers of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. Handlers may sell their 10 plus 10 raisins to any market. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use.

For Naturals, the first 10 plus 10 offer was made available in December 1997 and about 31,000 tons of raisins were purchased by handlers. The second 10 plus 10 offer was made available to handlers in May 1998 at which time about another 31,000 tons of reserve Naturals were offered for sale to handlers. Adding the 62,000 tons of 10 plus 10 raisins to the 252,398 ton trade demand figure, plus 92,769 tons of 1996–97 carryin inventory equates to about 407,170 tons natural condition raisins or 381,750 tons packed raisins made available for free use, or to the primary market. This is 130 percent of the quantity of Naturals shipped in 1997 (314,013 natural condition tons or 294,406 packed tons).

For Zantes, both Zante 10 plus 10 offers were made available simultaneously in November 1997 and 656 tons of raisins were purchased by handlers. Adding the 656 tons of 10 plus 10 raisins to the 2,200 ton trade demand figure, plus 1,679 tons of 1996–97 carryin inventory equates to 4,535 tons natural condition raisins or about 3,970 tons packed raisins made available for free use, or to the primary market. This is 138 percent of the quantity of Zantes shipped in 1997 (3,277 natural condition tons or 2,868 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. These additional offers of reserve raisins would thus make even more raisins available to primary markets which is consistent with the Department's Guidelines.

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, 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.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (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. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

Pursuant to § 989.54(d) of the order, this rule continues in effect the provisions of an interim final rule which established final volume regulation percentages for 1997–98 crop Natural and Zante raisins. The volume regulation percentages are 66 percent free and 34 percent reserve for Naturals and 44 percent free and 56 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order. The volume regulation percentages are intended to help stabilize raisin supplies and prices and strengthen market conditions.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

In discussing the possibility of volume regulation for the 1997–98 crop year, the Committee considered the following factors:

	Naturals*	Zantes*
Estimated tonnage held by producers, handlers, and for the account of the Committee at the beginning of the crop year	92,769	1,679
Estimated tonnage of standard raisins which will be produced in 1997–98	381,484	4,955
Trade demand for raisins in free tonnage outlets for 1997–98	252,398	2,200
Estimated desirable carryout at the end of the 1997–98 crop year for free tonnage	58,875	545

*Natural condition tons.

The Committee also considered the estimated world raisin supply and demand situation; the current prices being received and the probable level of prices to be received for raisins by producers and handlers; and the trend and level of consumer income.

The Committee's review resulted in the computation and announcement in October 1997 of volume regulation percentages for Naturals and Zantes. Naturals are the major commercial varietal type of raisin produced in California. Volume regulation has been implemented under the order for Naturals for the past several seasons. With the crop estimate of 381,484 tons, much higher than the computed trade demand of 252,398 tons, the Committee determined that volume regulation was warranted.

In comparison, Zante production is much smaller than that of Naturals. Volume regulation was last implemented for Zantes during the 1995–96 crop year. Volume regulation was warranted for Zantes this season because the crop estimate of 4,955 tons exceeded the trade demand of 2,200 tons by a significant amount.

Raisin variety grapes can be marketed as fresh grapes, crushed for use in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather related factors, cause fluctuations in raisin supply. These supply fluctuations can cause producer price instability and disorderly market conditions. Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer returns for Naturals have remained fairly steady over the last 5 crop years although production has varied. As shown in the table below, production over the last 5 years has varied from a low of 272,063 tons in 1996–97 and to a high of 387,007 tons in 1993–94, or 42 percent. According to Committee data, total producer return per ton, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent.

NATURAL SEEDLESS PRODUCER RETURNS

Crop year	Production (natural condition tons)	Producer returns
1996–97	272,063	$1,049
1995–96	325,911	1,007
1994–95	378,427	928
1993–94	387,007	904
1992–93	371,516	901

Free and reserve percentages are established by variety, and only in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended only two of the nine raisin varieties defined under the order for volume regulation this season.

The free and reserve percentages release the full trade demand and apply uniformly to all handlers in the industry, regardless of size. Small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. All handlers are regulated based on the quantity of raisins which they acquire from producers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied last season. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget under OMB Control No. 0581–0178. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

An interim final rule concerning this action was published in the **Federal Register** on March 10, 1998. Copies of the rule were mailed by the Committee's staff to all raisin handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended on May 11, 1998. Interested persons were also invited to submit information on the regulatory and informational impacts of this action on small businesses. No comments were received.

After consideration of all relevant material presented, including the

Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 11585; March 10, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 63 FR 11585 on March 10, 1998, is adopted as a final rule without change.

Dated: May 26, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–14422 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150–AF64

Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to allow additional materials licensees and non-electric utility reactor licensees who meet certain financial criteria to self-guarantee funding for decommissioning. Certain commercial corporate licensees who issue bonds are presently allowed to self-guarantee funding if they meet stringent financial criteria. This rule allows nonprofit licensees, such as colleges, universities, and hospitals, as well as some commercial licensees who do not issue bonds, to self-guarantee funding provided they meet similarly stringent financial criteria. Allowing additional qualified licensees to use self-guarantee reduces licensee costs while providing adequate assurance that funds for decommissioning will be available when needed.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301)415–6203, e-mail cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

Licensees subject to 10 CFR parts 30, 40, 70, and 72, whose operations involve the use of substantial amounts of nuclear materials, and those subject to 10 CFR Part 50 who are applicants for, or holders of, operating licenses for production or utilization facilities must provide financial assurance for decommissioning funding by selecting from a variety of mechanisms: surety bond or letter of credit, prepayment, insurance, an external sinking fund coupled with a surety or insurance,[1] parent company guarantee for licensees that have a qualifying corporate parent, and, for certain financially strong corporations, self-guarantee. A statement of intent regarding obtaining funds to satisfy decommissioning obligations may be used by some licensees that are governmental entities (for example, public universities whose charter provides for a direct link to the State Government).

To date, self-guarantee has not been available to nonprofit licensees such as hospitals and universities, or to for-profit licensees who do not issue bonds, because the financial test for self-guarantee uses the rating of the bonds issued by the licensee as one measure of the licensee's financial resources and ability to fund decommissioning.

The NRC is extending the use of self-guarantee, previously limited to bond-issuing industrial corporations, to additional categories of qualified licensees. By selecting appropriate financial criteria for self-guarantee, this extension can be made without jeopardizing the present high level of financial assurance that the decommissioning obligation requires. Allowing qualified nonprofit and non-bond-issuing licensees to self-guarantee will reduce the costs of complying with NRC financial assurance requirements for those who meet the specified criteria.

Background

On December 29, 1993 (58 FR 68726), as corrected on January 12, 1994 (59 FR 1618), the NRC published a notice of final rulemaking that allows financially strong corporations with A or better bond ratings the option of using self-guarantee as a mechanism for complying with the regulations on financial assurance for decommissioning. Self-guarantee was added to the list of financial assurance mechanisms as a cost-saving option for licensees that are able to meet the stringent financial test.

The NRC's decision to add self-guarantee to the list of approved financial assurance mechanisms for qualified licensees came in response to a petition for rulemaking filed by General Electric and Westinghouse (PRM–30–59, Notice of receipt published September 25, 1991 (56 FR 48445)). The petition presented a case for allowing self-guarantee as a cost-saving option for corporate licensees that are able to pass a stringent financial test.

Subsequent to the December 29, 1993, final rule, the Commission initiated a study to determine whether criteria could be developed and applied by NRC for nonprofit licensees and non-bond-issuing commercial licensees to use self-guarantee while maintaining the required level of confidence regarding the availability of decommissioning funds when needed. The study, ''Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges and Universities and Hospitals and by Business Firms that Do Not Issue Bonds,'' NUREG/CR–6514[2] (June 1997), identified a variety of financial criteria that could be applied to additional categories of licensees regarding the use of self-guarantee. The financial criteria in this rule were selected by the NRC based on information in this report.

Public Comments on the Proposed Rule

The NRC published a notice of proposed rulemaking on April 30, 1997, (62 FR 23394). In response to this notice, 16 comments were received; 2 from States, 6 from colleges and universities, 3 from associations, 3 from

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[1] Pursuant to 10 CFR 50.75(e)(3), an electric utility can satisfy the decommissioning funding requirements with an external sinking fund, standing alone. This rulemaking does not apply to electric utilities and does not affect the NRC's Notice of Proposed Rulemaking that addresses decommissioning funding assurance issues associated with electric utility restructuring (see Financial Assurance Requirements for Decommissioning Nuclear Power Reactors—62 FR 47588, September 10, 1997). As part of this proposed rule, the NRC is considering amending its definition of ''electric utility'' and clarifying the distinction between financial assurance mechanisms applicable to power reactor licensees and non-power reactor licensees.

[2] Single copies are available from the NRC contact. Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555–0001; telephone (202) 634–3273; fax (202) 634–3343.

private corporations, 1 from a hospital, and 1 from the United States Enrichment Corporation. The commenters all supported the extension of self-guarantee to qualified nonprofit and non-bond-issuing commercial licensees. Although some commenters urged NRC to adopt the proposed rule as written, most favored some type of change to the financial criteria.

1. Financial Criteria for Colleges and Universities

The financial test criteria proposed for colleges and universities were an A or better bond rating or, for those not having a bond rating, unrestricted endowment of at least $50 million or 30 times projected decommissioning costs, whichever was greater. There were no comments regarding the A or better bond rating, but several commenters objected to the non-bond criteria as too conservative.

Comment: A commenter stated that the selected multiple of 30 times decommissioning costs is excessively conservative. NRC's basis for the 30 multiple is that an amount of money 30 times decommissioning costs invested at 3 percent would yield an annual amount sufficient to fund those costs. The commenter said that it should not be difficult to obtain secure investments yielding 6 percent; thus an appropriate multiple would be 15 based on investment yield.

Response: NRC's objective in selecting financial criteria was to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. However, for colleges and universities that do not issue bonds, lack of appropriate data on default risk made a financial assurance risk analysis impossible. For these licensees, NRC deliberately chose financial criteria which are conservative.

NRC did state in the preamble to the proposed rule, at 62 FR 32296, that ''[the multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endowment invested at 3 percent.'' However, it is important to note that NRC was not assuming (1) that institutions will in fact finance decommissioning out of endowments; (2) that endowments can be expected in all circumstances to grow at a rate of at least 3 percent annually; or (3) that institutions can be expected to reallocate up to 3 percent of their spending from endowments in a one-year period. Rather, the criterion was selected to serve as a measure of the overall financial strength of the institution, indicating that NRC can reasonably assume that such a college or university can be allowed to self-guarantee for the costs of decommissioning because it possesses sufficient financial strength to obtain the necessary funds when they are needed.

Even assuming the premise of the commenter, NRC does not believe that reducing the multiple to 15, as the commenter suggests, is desirable. Although a real rate of return of 3 percent may appear low under the market conditions prevailing during certain periods, there is a substantial body of empirical evidence indicating that it is a reasonable assumption. If a licensee who has been relying on a self-guarantee is required to fully fund a trust fund for decommissioning in the year before the beginning of decommissioning, and the licensee relies on earnings from endowment to create the trust, it is the annual earnings of the endowment for the year immediately prior to the decommissioning that must equal the required amount. NRC has reviewed the information provided in Ibbotson Associates, Stocks, Bonds, Bills, and Inflation 1995 Yearbook, 1995, which published a summary of market results for the 69-year period from 1926 to 1995 for five categories of investments: small company stocks, large company stocks, long-term government bonds, long-term corporate bonds, and intermediate-term government bonds.

On a year-by-year basis, less risky investments, such as treasury bills, showed the most frequent positive returns, but their annual returns also were relatively low. Riskier investments showed a broad distribution of returns, from very good to very poor. Overall, however, with the exception of small and large company stocks, the average inflation-adjusted earnings (geometric mean) for these categories of investments were less than 3 percent. In a number of years, earnings for stocks also were less than 3 percent. Thus, real investment returns over a one-year period may not even match conservative earnings assumptions.

The study of endowment sponsored by the National Council of College and University Business Officers (NACUBO) published in 1995 also emphasized a concern for this earnings variability in its analysis of college and university endowment investment. First, NACUBO's study noted that current high rates of return cannot be expected to continue indefinitely. ''At a time when many public and private institutions are searching for ways to bridge the gap between revenues and expenditures, it is tempting to extrapolate these extraordinary returns into the future and to budget endowment spending accordingly. However, in this context it is instructive to note that for a representative group of institutions, the average annual real return after spending for the 10-year period ended June 30, 1994, is 4.1 percent, but for the 20 years ended June 30, 1994, it is 0.9 percent.'' (1994 NACUBO Endowment Study, National Council of College and University Business Officers, 1995, p. 4)

Therefore, the NACUBO study recommends strongly that institutions keep their spending from endowment below the rate proposed by the commenter. The report states that:

> Historical precedent indicates that a fund invested approximately 60 percent in domestic and foreign stocks, 30 percent in fixed income, and 10 percent in various other asset classes inevitably experiences recurring periods of absolute decline in market values over 3 years. Such a decline would trigger a reduction in spending for an institution sticking to a policy of spending a fixed percentage of a 3-year moving average of endowment market values * * * For fiscal year 1994, the average endowment spending rate reported by responding institutions is 6.0 percent. On average, the smallest endowments ($25 million and less) spent more (7.2 percent) than the largest (4.5 percent), and public institutions spent more (6.6 percent) than private institutions (5.7 percent) * * * With the sole exception of the 4.5 percent spent by the largest universities, these spending rates are not compatible with most institutions' stated intention to preserve the purchasing power of their endowment. Over time, it is possible (difficult, but possible) for the exceptionally well-managed institution to spend 6.0 percent of a 3-year moving average of endowment market values, and still preserve purchasing power. However, it is courting disaster to spend at an annual rate of 6.0 percent toward the tail end of a long bull market. (1994 NACUBO Endowment Study, 1995, p. 5)

Based on these considerations, the NRC continues to believe that a relatively conservative criterion, such as the 30 times requirement, is a reasonable criterion for the decommissioning self-guarantee test for colleges and universities. The NRC does not accept the commenter's recommendation to adopt a substantially less stringent criterion.

Comment: A commenter objected to the requirement that unrestricted endowment be at least $50 million or at least 30 times the decommissioning cost estimate, whichever is greater. The requirement should be compliance with either the $50 million figure *or* the 30 times decommissioning cost estimate, but not whichever is greater.

Response: As previously stated, NRC chose conservative financial criteria for

non-bond-issuing colleges and universities, aimed at assuring the financial viability of a licensee qualified to self-guarantee. This is the only requirement that would apply to non-bond-issuing colleges and universities, whereas non-bond-issuing hospitals or commercial licensees would be subject to multiple financial ratios as financial tests. It is designed to capture two measures of financial viability: (1) overall financial strength and (2) financial strength relative to size of decommissioning obligation. The overall financial strength of an institution is heavily dependent on the size of its unrestricted endowment. Specific ability to fund decommissioning expenses is measured by the ratio of unrestricted endowment to decommissioning costs. A financial test based only on ratio to decommissioning cost might allow an institution without adequate financial strength to pass if its decommissioning costs were low. A test based only on the size of the unrestricted endowment might be inadequate for those institutions with the highest decommissioning costs. Both threshold requirements are needed to provide assurance that an institution can meet decommissioning obligations when necessary.

Comment: A commenter stated that NRC's rationale for a multiple of 30 implies that decommissioning costs are paid from investment yields over a 1-year period. However, it is more realistic to assume that any decommissioning activities where financial assurance arrangements are involved will require considerable coordination with regulators and financial services involving 2 or 3 years to complete. This consideration also implies that the appropriate multiple should be 15 rather than 30.

Response: NRC recognizes that decommissioning may occur over a period longer than one year. The multiple of 30 was chosen without regard to how many years it would take to decommission a facility. The commenter is attempting to make this linkage the key factor in arriving at an appropriate multiple. However, following this line of reasoning, stretching out the time length of decommissioning would imply ever decreasing multiples.

NRC's objective is to ensure that decommissioning will take place on a timely basis. The financial assurance regulations are intended to assure that inadequate funding does not prevent timely decommissioning. Timely decommissioning may require that all decommissioning funding be available up front even though decommissioning activities are not completed within a single year. For this reason NRC's criteria for determining whether a licensee should be allowed to self-guarantee the costs of decommissioning must consider the possibility that the licensee will be required to fully fund decommissioning in the year immediately prior to the beginning of decommissioning activities. The licensee would fund a standby trust if either (1) the licensee no longer qualifies to use the self-guarantee to provide financial assurance for decommissioning, even if it was not yet required to conduct decommissioning, or (2) a licensee using a self-guarantee is required to carry out decommissioning. NRC currently does not allow licensees to consider the impact of earnings during the ''payout'' period (the period during which funds are being expended from the financial assurance standby trust to pay for decommissioning) in calculating the amount of funds that must be set aside for decommissioning. Therefore, the NRC disagrees with the commenter's suggestion that the expected duration of decommissioning activities should apply to the determination of the appropriate multiple.

Comment: A commenter recommends that [based on the combination of investment yield of 6 percent and investment yields over 2 to 3 years rather than 1 year] the multiplication factor [be] reduced from 30 to 10 with ample conservatism.''

Response: For the reasons stated in responses to the preceding comments, NRC does not accept this recommendation.

2. Financial Criteria for Hospitals

The financial test criteria proposed for hospitals was an A or better bond rating or, for hospitals not having a bond rating, a financial ratios test consisting of the following:

(a) Liquidity—(current assets and depreciation fund, divided by current liabilities) greater than or equal to 2.55.

(b) Net Revenue—(Total revenues less total expenditures divided by total revenues) greater than or equal to 0.04.

(c) Leverage—(Long term debt divided by net fixed assets) less than or equal to 0.67.

(d) Operating Revenues at least 100 times decommissioning costs.

There were no comments regarding the bond rating criterion but there were several comments on the non-bond criteria.

Comment: A commenter believed that the selected multiple of 100 [hospital operating revenues at least 100 times decommissioning costs] was excessively conservative. It appears to reflect an expectation that the decommissioning will take a short time whereas a realistic time frame should be 2 years or more. NRC should consider a multiple of 30 or less to be appropriate.

Response: The requirement that hospital operating revenues be at least 100 times decommissioning costs is a criterion that NRC is proposing to use to determine whether a licensee has sufficient financial strength to self-guarantee. However, a potential consequence of self-guaranteeing could be the need to fully fund a trust fund in a short period of time if the licensee ceases to be capable of passing the self-guarantee test or if decommissioning must be carried out. As discussed above, the operating revenues multiple criterion does not reflect any expectation concerning the length of time during which decommissioning will occur. Therefore, NRC does not accept this recommendation.

Comment: A commenter found the rationale that requires hospitals to meet all four financial ratios tests unclear. This commenter believed that using only the operating revenues/decommissioning costs ratio would appear to provide reasonable assurance of ability to provide decommissioning funding.

Response: The financial ratios test for hospitals in the rule was carefully selected to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. The four ratios in combination represent the financial test that best achieves this goal. A financial test using just one of these ratios would not represent the same level of risk and would not provide an adequate level of financial assurance. Using only the ratio of operating revenues to decommissioning costs would completely ignore such determinants of financial strength as liquidity, indebtedness, and profitability. The financial test used for non-bond-issuing commercial licensees includes several ratios, not just one. The non-bond financial test for colleges and universities does use a single ratio, but it is the ratio of unrestricted endowment to decommissioning costs. Unrestricted endowment is a fund readily available to meet decommissioning expenses. Hospital operating revenues are different because these funds may not be readily available to meet decommissioning expenses due to other hospital costs.

3. Prohibition on Using a Guarantee in Combination With Another Financial Assurance Mechanism

Comment: Some commenters noted that provisions in 10 CFR 30.35(f)(2), 40.36(e)(2), 50.75(e)(2)(iii), 70.25(f)(2), and 72.30(c)(2) provide that neither a parent company guarantee nor a guarantee by an applicant may be used in combination with other financial methods to satisfy financial assurance requirements. These commenters wanted to know the reasons for these restrictions.

Response: This rule makes no change in the already existing prohibition against combining a parent or self-guarantee with another type of financial assurance mechanism. The issue of whether or not to allow such a combination is broader than the focus of this rule. The NRC has limited experience with parent and self-guarantee to date. It is expected that the NRC will periodically reevaluate its financial assurance program in the future and could reassess the need for the prohibition.

4. Insured Bond Ratings

Comment: Some commenters objected to the proposed financial criteria which deal with bond ratings. As proposed, for institutions that issue bonds, only a bond issuance that is ''uninsured'' may be used; an ''insured'' bond rating would not be eligible. The justification for this limitation is not warranted because bond insurers evaluate the financial condition of the prospective issuers and avoid issuing policies to universities that are not creditworthy. Consequently, the presence of bond insurance indicates that the issuer is in sound financial condition.

Response: Bond insurers evaluate the financial condition of the issuers of the bonds at the time the debt is insured. Bond rating agencies, such as Moodys and Standard and Poors, typically assign such bonds a triple-A rating because of the insured status of the bond.

NRC's concerns with accepting insured bonds as a criterion of financial assurance arise from the possibility that, over time, the insured bond rating could mask adverse changes in the financial condition of the bond issuer after the debt has been insured. The rule includes a requirement that the licensee must ascertain whether it continues to pass the financial test for self-guarantee every year. Furthermore, if the licensee no longer meets the test criteria, it must notify NRC and establish alternative financial assurance. However, insured bonds would continue to hold their rating, despite declines in the financial condition of the issuer.

The problem with an insured bond from the standpoint of financial assurance is that there is no criterion by which NRC can identify when a licensee/issuer no longer qualifies to self-guarantee. The bond can retain its high rating despite a decline in the financial strength of the issuer. Furthermore, the insurance coverage provided by the bond insurer, which is a guarantee of payment of principal and interest in accordance with the insured bond issue's payment schedule, will not provide any additional source of funding for decommissioning. NRC does not agree with the commenter's suggestion that it accept ratings on insured bonds as an acceptable criterion for self-guarantee.

5. Requirements for Financial Statements

Comment: Some commenters objected to the proposed requirement in Appendices D and E to 10 CFR Part 30 that licensees must conduct accounting by U.S. generally accepted accounting principles (GAAP). This does not recognize the increasingly multi-national nature of materials licensees. Foreign ownership of major material licensees is currently a reality (e.g., Siemens, ABB, Framatome) and can be expected to increase in the future. The selection of accounting practices to be used is a significant corporate decision affected by many factors. It is unreasonable to require that corporate practices of major multi-national firms be changed for a licensee to be allowed to provide self-guarantee of decommissioning funding. The rule should allow licensees to certify adequate assurance that funds will be available by using other recognized and accepted accounting principles.

Response: Financial statements prepared in accordance with foreign accounting principles rather than U.S. GAAP pose two problems from the standpoint of a financial test for self-guarantee. First, the financial test was developed based on an analysis of financial data for U.S. firms. Consequently, the financial test criteria may not be applicable or effective when used in conjunction with financial data that were prepared in accordance with foreign accounting practices. Second, allowing firms to rely on financial statements prepared according to accounting principles in use in their own country could place a heavy administrative burden on NRC. The examples cited by the commenter, for instance, might require NRC to know and apply German, Swiss, and French accounting principles to assess compliance with a financial test designed using U.S. GAAP. Finally, the present financial assurance regulations allow the use of a broad range of financial assurance mechanisms in part to ensure that licensees that are unable to use a particular mechanism have other alternatives available. NRC does not expect firms to change their accounting practices in order to make use of the financial test because a number of other options are available.

6. Financial Criteria for Non-Bond-Issuing Commercial Licensees

The financial test proposed for non-bond issuing commercial licensees was:

(a) Cash flow divided by total liabilities greater than 0.15.

(b) Total liabilities divided by net worth less than 1.5.

(c) Net worth greater than $10 million or at least 10 times decommissioning costs, whichever is greater.

Comment: A commenter objected to the net worth criterion of net worth greater than $10 million or at least 10 times estimated decommissioning costs. This discriminates against well-funded smaller firms that could easily self-guarantee smaller decommissioning projects, but could not meet the $10 million net worth requirement.

Response: The NRC's objective in setting financial criteria for non-bond-issuing commercial licensees was to make the financial assurance risk of these criteria equal to the financial assurance risk of the financial criteria for licensees that issue bonds (estimated to be approximately 0.13 percent per year). According to the analysis of potential financial criteria carried out as part of the proposed rule, the financial criteria in the proposed rule meet this objective.[3] Firms with smaller net worth have a larger default risk than larger firms. Thus, the $10 million net worth requirement is an essential part of the overall financial test. The NRC has retained this requirement in the final rule.

7. Decommissioning Cost Estimates

Comment: Several commenters raised the issue of how decommissioning costs were estimated. The NRC should encourage best available information estimates of decommissioning costs, based on historic plant experience in decommissioning and renovation, rather than commercial estimates by contractors that tend to be too high.

[3] ''Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges, Universities, and Hospitals, and by Business Firms That Do Not Issue Bonds,'' NUREG/CR–6514, p. 4.7, June 1997.

Conservative assumptions, such as use of rates charged by contractors and high estimates of waste disposal costs, should not be used. A commenter also noted that assuming a period for short-lived isotopes to decay before decommissioning begins would be a realistic assumption. Also, a typical licensee will not have the maximum amount of material allowed by the license at the time of decommissioning.

Response: This rulemaking makes no changes in the requirements for how licensees estimate decommissioning costs. Decommissioning cost estimates, or use of the certification amounts in 10 CFR Part 30, are already required by existing regulations on financial assurance. This rule simply adds an additional financial assurance mechanism to those already permitted in NRC regulations.

8. Agreement State Compatibility Status of Financial Assurance Regulations

Comment: Some commenters believed that the proposed regulations should be assigned a compatibility status of Level 1 with Agreement States. This will ensure consistent requirements for financial surety arrangements and will preclude the unintended creation of competitive disadvantages between facilities in Agreement States and Non-Agreement States.

Response: When the proposed rule was published in the **Federal Register** (see 62 FR 23394, April 30, 1997), it was designated as a Division 2 compatibility item in accordance with the compatibility policy in effect at that time. A Division 2 level of compatibility allowed an Agreement State to promulgate equivalent, or more stringent, financial assurance regulations than those of NRC.

Under the new ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' (see 62 FR 46517, September 3, 1997) Agreement States must adopt NRC regulations having particular health and safety significance and those necessary to maintain compatibility with the Commission's regulatory program.

The NRC financial assurance regulations, in effect when the new policy was implemented, were designated as having health and safety significance. Specifically, sections (a), (b), and (d) of Parts 30.35, 40.36 and 70.25, which require that licensees must consider the cost of decommissioning their facilities and that those costs must be provided for through a financial assurance mechanism, have particular health and safety significance and were designated as category H&S. Under the H&S category, Agreement States should adopt the essential objectives of these sections in order to maintain an adequate program. The remaining sections of the rule, including those which allow self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria, were designated as compatibility Category D. Category D means the Agreement States do not need to adopt a compatible rule.

The final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as compatibility Category D. Under compatibility category D, Agreement States may choose to maintain a more stringent rule by not adopting the self-guarantee option.

9. Requirement for Annual Passage of Financial Test

Comment: A commenter stated that Section II.C.(2) of Appendix E to Part 30 should be modified so a qualifying licensee would not have to repeat passage of the financial test for self-guarantee every year. University endowments are very stable. In addition, Section II.C.(3) provides sufficient assurance that NRC will be notified when a licensee no longer meets the criteria for self-guarantee.

Response: Although it is true that university endowments are relatively stable and Section II.C.(3) provides for notification, the provision for qualifying licensees to annually pass the test is retained in the final rule. For a self-guarantee program to provide adequate assurance of decommissioning funding, the annual ''requalification'' provision is necessary. NRC must have assurance of financial strength on a timely basis. A self-guarantee relies solely on the licensee's ability to fund decommissioning. There is no backup such as that provided by a third-party financial assurance mechanism. The requirement for repeating the financial test yearly is not unduly burdensome on a licensee and gives NRC information on the financial condition of the licensee on a timely basis. This requirement is not unique to colleges and universities or to this rule. It is found in the self-guarantee financial tests applicable to other types of licensees, both profit and nonprofit.

10. Use of Self-Guarantee by the United States Enrichment Corporation

Comment: The United States Enrichment Corporation (USEC) proposed that the NRC modify the language of the rule to include certificates (regulated by NRC under 10 CFR Part 76). USEC stated that it would benefit from the opportunity to reduce the costs of complying with NRC financial assurance requirements, which USEC estimated would presently cost in excess of $100,000 per year for letters of credit and surety bonds.

Response: Under 10 CFR 76.35(n), USEC (or the Corporation) is required to establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities that are the financial responsibility of the Corporation. The funding mechanisms currently listed in the regulation as potentially acceptable for use by the Corporation include prepayment, surety, insurance, and an external sinking fund, but do not include self-guarantee or statement of intent. The rule provides that the funding mechanism must ''ensure availability of funds for any activities that are required to be completed'' by the Corporation.

USEC was created pursuant to the Energy Policy Act of 1992. It is a wholly owned government corporation, whose powers are vested in a five-member Board of Directors appointed by the President of the United States and confirmed by the Senate. However, on July 25, 1997 a plan was approved by the President under which USEC will be sold either to another corporation or to the public through a stock offering. Under the USEC Privatization Act, Congress set certain restrictions on foreign involvement in USEC's privatization and required that a ''reliable and economical domestic source of enrichment services'' exist following privatization.

Although the NRC is not currently aware of any reason why it would be inappropriate to consider expanding the category of funding mechanisms available to the Corporation to demonstrate the availability of funds for the actions required under 10 CFR 76.35(n), NRC does not believe that it would be feasible to do so in the current rule. First, USEC was not included in any of the analyses performed to evaluate potential self-guarantee tests for demonstrating financial assurance. NRC believes that detailed analyses should be undertaken to ensure that all critical factors have been considered. Second, USEC's current and future situation with respect to the costs that it might incur is substantially different from those of the licensees included in the current rulemaking. In particular, the scope and type of activities that USEC must carry out under 10 CFR 76.35(n) are very different from those

conducted by hospitals and universities, and the non-bond issuing firms covered by the proposed rule.

Third, the exact size of the obligations that USEC might be required to cover is uncertain and will not be determined until a later date, although it is known that many of the costs will remain the responsibility of the U.S. Department of Energy (DOE). Under 10 CFR 76.35(n), DOE is responsible for those aspects of decontamination and decommissioning of the gaseous diffusion plants (GDPs) assigned to DOE under the Atomic Energy Act. DOE also is responsible for all environmental liabilities associated with the operation of the GDPs before July 1, 1993. According to USEC's Annual Report for 1996, ''[e]xcept for certain accrued liabilities that will be specified in a memorandum of agreement entered into prior to privatization, all environmental liabilities of the Company through the date of privatization will remain obligations of the U.S. Government.'' (Notes to Financial Statements: 7. Environmental Matters). Furthermore, as of June 30, 1996, USEC had accrued liability of $303 million for transportation, conversion, and disposition of depleted uranium currently stored at the GDPs. The 1996 Annual Report states that ''USEC is evaluating various proposals for the disposition of depleted uranium, and depending on the outcome of such evaluations, the Company may be able to reduce future cost accruals * * *. Pursuant to the USEC Privatization Act, all costs and liabilities related to the disposition of depleted uranium generated prior to the privatization date are the responsibility of DOE.'' Fourth, until privatization has occurred, important information about USEC's future corporate structure and ownership will remain uncertain. As noted above, Congress has allowed USEC to be sold either to another corporation or to the public through a stock offering. Thus, the form in which privatization occurs could affect the NRC's analysis of financial assurance alternatives. Because of the need to evaluate all of these factors, NRC has determined not to include 10 CFR part 76 in the current rulemaking.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Section-by-Section Description of Changes

10 CFR Part 30

Section 30.35 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

Appendix D is added to 10 CFR Part 30 to establish requirements for self-guarantee by non-bond-issuing commercial licensees. Appendix E is added to 10 CFR Part 30 to establish requirements for self-guarantee for nonprofit college, university, and hospital licensees.

10 CFR Part 40

Section 40.36 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 50

Section 50.75 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 70

Section 70.25 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond issuing licensees.

10 CFR Part 72

Section 72.30 is amended to permit self-guarantee for financial assurance which can be used by qualified non-bond issuing licensees.

Compatibility of Agreement State Regulations

The current NRC regulation which allows self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria is designated as compatibility Category D. This final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as a compatibility Category D. Category D means the agreement States do not need to adopt a compatible rule. The Category D designation was determined in accordance with the new ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' approved by the Commission on June 30, 1997. The final rule change does not involve a basic radiation protection standard, activities that have direct and significant effects in multiple jurisdictions, or essential objectives which an Agreement State should adopt to avoid conflicts, gaps, or duplications in the regulation of agreement material on a nationwide basis. Therefore, Category D has been assigned to these rule provisions.

Finding of No Significant Environmental Impact: Availability

The amendments will allow qualified nonprofit and non-bond-issuing licensees the option of using self-guarantee as a mechanism for financial assurance for decommissioning. For-profit corporate licensees that issue bonds are already allowed to use self-guarantee if they meet the regulatory criteria. Other licensees currently may elect to use a variety of financial assurance mechanisms, such as surety bonds, letters of credit, and escrow accounts to comply with decommissioning regulations. This action is intended to offer nonprofit and non-bond-issuing nuclear materials licensees and non-electric utility reactor licensees greater flexibility by allowing an additional mechanism for licensees that meet the financial criteria for use of self-guarantee.

This revision to the NRC's regulations simply adds one more financial assurance mechanism to the mechanisms currently available. It does not affect the cost of decommissioning materials and non-power reactor facilities. Allowing self-guarantee for additional types of licensees does not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988, (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[4] Promulgation of this rule does not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted in making this determination. The NRC staff is not aware of any other documents related to the environmental

[4] Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343.

impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0017, –0020, –0011, –0009, and –0132.

The public reporting burden for this information collection is estimated to average 9 to 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a document used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6203.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would expand the number of options available to licensees to comply with the Commission's financial assurance requirements, thus enhancing the flexibility of these regulations. It is estimated that this rule would result in significant cost savings to qualifying licensees.

Backfit Analysis

The NRC has determined that backfitting provisions (10 CFR 50.109 and 72.62) in the parts of the Commission's regulations that are being amended by this rulemaking do not apply to this rule because the rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) or 72.62(a). The rule extends the self-guarantee alternative for demonstrating decommissioning financial assurance to qualified non-profit and non-bond-issuing licensees. Extending the availability of this option does not impose a new burden on licensees of commercial power reactors or independent spent fuel storage installations (ISFSI's). Accordingly, the rulemaking does not constitute a backfit and a backfit analysis was not prepared for this final rule.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 40, 50, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.8, paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, 30.56, and Appendices A, C, D, and E of this part.

* * * * *

3. In § 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a

financial test may be used if the guarantee and test are as contained in appendix A to this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to this part. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to this part. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to this part. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

4. New Appendices D and E to Part 30 are added to read as follows:

Appendix D to Part 30—Criteria Relating To Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have no Outstanding Rated Bonds

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test a company must meet the following criteria:

(1) Tangible net worth greater than $10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) A ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

B. In addition, to pass the financial test, a company must meet all of the following requirements:

(1) The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(2) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of paragraph II.A of this appendix, the licensee must send notice to the NRC of intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternative financial assurance within 120 days after the end of such fiscal year.

III. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the NRC. Cancellation may not occur until an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the regulations within 90 days following receipt by the NRC of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

Appendix E to Part 30—Criteria Relating to Use of Financial Tests and Self-Guarantee For Providing Reasonable Assurance of Funds For Decommissioning by Nonprofit Colleges, Universities, and Hospitals

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. For colleges and universities, to pass the financial test a college or university must meet either the criteria in Paragraph II.A.(1) or the criteria in Paragraph II.A.(2) of this appendix.

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least $50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

B. For hospitals, to pass the financial test a hospital must meet either the criteria in Paragraph II.B.(1) or the criteria in Paragraph II.B.(2) of this appendix:

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, all the following tests must be met:

(a) (Total Revenues less total expenditures) divided by total revenues must be equal to or greater than 0.04.

(b) Long term debt divided by net fixed assets must be less than or equal to 0.67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

C. In addition, to pass the financial test, a licensee must meet all the following requirements:

(1) The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test.

(2) After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of Section I of this appendix, the licensee must send notice to the NRC of its intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that—

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the Commission. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of ''A'' or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.36, the introductory text of paragraph (e)(2) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

8. In § 50.75, the introductory text of paragraph (e)(2)(iii) is revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(2) * * *

(iii) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a

guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In § 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

12. In § 72.30, the introductory text of paragraph (c)(2) is revised to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(c) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial corporations that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

Dated at Rockville, Maryland, this 22nd day of May, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–14385 Filed 5–29–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–32–AD; Amendment 39–10547; AD 98–11–22]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 series airplanes, that requires a one-time inspection to detect discrepancies of certain diode mounting assemblies on specified electrical panels; follow-on actions; and repair or replacement with serviceable components, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent overheating and possible failure of certain electrical diodes, which could result in loss of electrical service to one or more airplane electrical circuits.

DATES: Effective July 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on April 1, 1998 (63 FR 15798). That action proposed to require a one-time inspection to detect discrepancies of certain diode mounting assemblies on specified electrical panels; follow-on actions; and repair or replacement with serviceable components, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 88 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $73,920, or $840 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–11–22 Short Brothers, PLC: Amendment 39–10547. Docket 98–NM–32–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating and possible failure of certain electrical diodes, which could result in loss of electrical service to one or more airplane electrical circuits, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time visual inspection to detect discrepancies of certain diode mounting assemblies on electrical panels 1C, 2C, 12P, 27C, and 51C, in accordance with Shorts Service Bulletin SD360–39–04, Revision 1, dated January 12, 1998.

(1) If no discrepancy is found, prior to further flight, perform the follow-on actions specified in the service bulletin in accordance with the Accomplishment Instructions of the service bulletin.

(2) If any discrepancy is found, prior to further flight, repair or replace the discrepant diode mounting assembly component with a serviceable component in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(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. 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.

(d) The actions shall be done in accordance with Shorts Service Bulletin SD360–39–04, Revision 1, dated January 12, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 008–09–97.

(e) This amendment becomes effective on July 6, 1998.

Issued in Renton, Washington, on May 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14026 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–58–AD; Amendment 39–10546; AD 98–11–21]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–102, –103, and –301 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–102, –103, and –301 series airplanes, that requires a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. This amendment also requires installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights. This amendment is prompted by reports of chafing found on the electrical wiring of the cabin ceiling lighting system. The actions specified by this AD are intended to prevent the possibility of a fire on an airplane due to such chafing and consequent short circuiting, overheating, and smoking of the wires on the aircraft structure.

DATES: Effective July 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, New York Aircraft Certification Office, Systems & Flight Test Branch (ANE–172), FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581–1200; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–102, –103, and –301 series airplanes was published in the **Federal Register** on September 13, 1996 (61 FR 48437). That action proposed to require a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights, and replacement of any damaged wiring. That action also proposed to require installation of teflon spiral wrap on the wiring of the ceiling and sidewall lights.

Comments

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

One commenter, an aerospace lighting manufacturer, requests that the proposed rule be revised to require, as a first step, an initial inspection of the entire cabin lighting system, and repetitive inspections of the entire cabin lighting system after a fixed number of flight hours after a trigger event such as any lighting component failure. The commenter contends that, despite initial inspections and installation of secondary insulation, cases of fire or smoke caused by arcing from fluorescent lighting high voltage wiring have continued in other airplane models. Further, the commenter notes that an existing AD [AD 95–08–04, amendment 39–9193, (60 FR 19348, April 18, 1995)] was issued for a similar electrical arcing problem of the fluorescent lighting system connector and requires an inspection and modification of some connectors. However, the commenter asserts that the requirement for repetitive inspections is not the total answer in preventing cases of fire or smoke due to arcing from fluorescent lighting high voltage wiring. An additional step would be to require certain protection circuitry for the fluorescent lighting systems that would provide for terminating action of the repetitive inspections. The commenter suggests that, since certain protection circuitry for fluorescent lighting components has been approved by the FAA, is in use on several different airplanes, and has had no negative in-service reports, the FAA should consider requiring installation of such protection circuitry as a terminating action for the requirements of the proposed rule.

The FAA does not concur that installation of protection circuitry should be required in this case. The FAA finds that, based on information provided by the airplane manufacturer, installation of the Teflon spiral wrap will provide an adequate level of safety. No change to the final rule is necessary. However, the FAA may approve a request for an alternative method of compliance under the provisions of paragraph (b) of this final rule if data are submitted to substantiate that an equivalent level of safety would be provided.

In regard to the commenter's reference to AD 95–08–04, the FAA acknowledges that the unsafe condition of both AD's are similar (possibility of a fire on an airplane). However, the FAA has determined that the causes of the unsafe condition are not the same. The earlier existing AD addresses a component failure in the high voltage circuitry of

the lighting system as the cause of the unsafe condition; this AD addresses chafed wires in the 28VdC supply side of the lighting system as the cause of the unsafe condition. Therefore, the FAA finds that it is logical and practical that the actions required to correct the unsafe condition are not necessarily identical to each other.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 73 de Havilland Model DHC–8–102, –103, and 301 series airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $149,650, or $2,050 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–11–21 De Havilland, Inc.: Amendment 39–10546. Docket 96–NM–58–AD.

Applicability: Model DHC–8–102, –103, and –301 series airplanes; serial numbers 002 though 010 inclusive, 012 through 201 inclusive, 203 through 209 inclusive, 211 through 215 inclusive, 217 through 220 inclusive, 222, and 223; on which de Havilland Modification 8/1114 or 8/1110 (reference de Havilland Service Bulletin S.B. 8–33–35) has not been accomplished; 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 the possibility of a fire on an airplane due to chafing of the electrical wiring of the cabin ceiling lighting system, accomplish the following:

(a) Within 1,000 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995.

(1) Perform a one-time inspection for wear and breakage of wire segments of the individual lighting units of the ceiling and sidewall lights. Prior to further flight, replace any damaged wiring.

(2) Install teflon spiral wrap on the wiring of the ceiling and sidewall lights (Modification 8/2158).

(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.

(d) The actions shall be done in accordance with de Havilland Service Bulletin S.B. 8–33–35, dated September 1, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–95–18, dated December 15, 1995.

(e) This amendment becomes effective on July 6, 1998.

Issued in Renton, Washington, on May 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14025 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 255

RIN 3220–AB34

Recovery of Overpayments

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations regarding recovery of overpayments to explain what actuarial tables and interest rates are used to calculate an actuarial adjustment in an

individual's annuity in order to recover an overpayment of benefits. The regulation also adds a provision to explain when an actuarial adjustment in an annuity takes effect when an annuity is paid by electronic funds transfer (EFT).

DATES EFFECTIVE: July 1, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 255.8 of the Board's regulations (62 FR 64164) provides for recovery of an overpayment by means of an actuarial adjustment. In accordance with this provision, an overpayment may be recovered by permanently reducing the annuity payable to the individual from whom recovery is sought. The calculation of the reduction is performed using actuarial tables. Formerly, the authority for the use of these tables is contained in a Board Order which is not readily available to the public. This amendment adds language specifying that the Board will use the tables and interest rate adopted in accordance with the triennial evaluation of the railroad retirement trust funds as required by section 15(g) of the Railroad Retirement Act.

Previously, where an annuity is paid by check, an actuarial reduction takes effect, and the overpayment is recovered, upon negotiation of the first check which reflects the adjustment. The amendment adds language to provide that, in the case of an annuity paid by electronic funds transfer, the adjustment is effective when the first payment reflecting the actuarially adjusted rate is deposited.

The rule was published as a proposed rule February 12, 1998 (63 FR 7088) requesting comments on or before April 13, 1998. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR 255.8

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, part 255 of the Code of Federal Regulations is amended as follows:

PART 255—RECOVERY OF OVERPAYMENTS

1. The authority citation for part 255 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231(i).

2. Section 255.8 is revised to read as follows:

§ 255.8 Recovery by adjustment in connection with subsequent payments.

(a) Recovery of an overpayment may be made by permanently reducing the amount of any annuity payable to the individual or individuals from whom recovery is sought. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment becomes effective and the debt is considered recovered when, in the case of an individual paid by electronic funds transfer, the first annuity payment reflecting the annuity rate after actuarial adjustment is deposited to the account of the overpaid individual, or, in the case of an individual paid by check, the first annuity check reflecting the annuity rate after actuarial adjustment is negotiated.

Example. An annuitant agrees to recovery of a $5,000 overpayment by actuarial adjustment. However, the annuitant dies before negotiating the first annuity check reflecting the actuarially-reduced rate. The $5,000 is not considered recovered. If the annuitant had negotiated the check before he died, the $5,000 would be considered fully recovered.

(b) In calculating any adjustment under this section, beginning with the first day of January after the tables and long-term or ultimate interest rate go into effect under section 15(g) of the Railroad Retirement Act (the triennial evaluation), the Board shall use those tables and long-term or ultimate interest rate.

Dated: May 21, 1998.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–14326 Filed 5–29–98; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F–0162]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sulfosuccinic acid 4-ester with polyethylene glycol nonylphenyl ether, disodium salt (alcohol moiety produced by the condensation of 1 mole of nonylphenol and an average of 9 to 10 moles of ethylene oxide) for use as an emulsifier in the manufacture of polyvinyl acetate and vinyl-acrylate copolymers intended for use in coatings for paper and paperboard that will contact food. This action responds to a petition filed by American Cyanamid Co.

DATES: The regulation is effective June 1, 1998; written objections and requests for a hearing by July 1, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of June 4, 1987 (52 FR 21122), FDA announced that a food additive petition (FAP 6B3908) had been filed by American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470. The petition proposed to amend the food additive regulations in § 178.3400 *Emulsifiers and/or surface-active agents* (21 CFR 178.3400) to provide for the safe use of sulfosuccinic acid 4-ester with polyethylene glycol nonylphenyl ether, disodium salt for use as a surfactant in contact with food.

The agency has determined that the data submitted in the food additive petition provided information for a more specific identification of the additive as sulfosuccinic acid 4-ester with polyethylene glycol nonylphenyl ether, disodium salt (alcohol moiety

produced by the condensation of 1 mole of nonylphenol and an average of 9 to 10 moles of ethylene oxide). Therefore, FDA is using this description of the additive in the codified section of the final rule. The agency has also determined that the data submitted in the petition are adequate to support its limited use as a surfactant in the manufacture of polyvinyl acetate and vinyl-acrylate copolymers intended for use in coatings for paper and paperboard food packaging.

Subsequent to the filing of the petition, American Cyanamid Co. was acquired by Cytec Industries, Inc., Five Garret Mountain Plaza, West Paterson, NJ 07424. As a result of this change in ownership, FDA was informed in a letter dated September 20, 1995, that the petition and all related records be amended to reflect this change in ownership for this food additive petition.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted ethylene oxide and minute amounts of 1,4-dioxane as impurities resulting from its manufacture. These chemicals have been shown to cause cancer in test animals. Residual amounts of impurities are commonly found as constituents of chemical products, including food additives.

II. Determination of Safety

Under the so-called ''general safety clause'' of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

III. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, sulfosuccinic acid 4-ester with polyethylene glycol nonylphenyl ether, disodium salt (alcohol moiety produced by the condensation of 1 mole of nonylphenol and an average of 9 to 10 moles of ethylene oxide) as an emulsifier/surfactant in the manufacture of polyvinyl acetate and vinyl-acrylate copolymers intended for use in coatings for paper and paperboard food packaging, will result in exposure of no greater than 120 parts per billion (ppb) of the additive in the daily diet (3 kilograms (kg)), or an estimated daily intake (EDI) of 0.36 milligrams per person per day (mg/p/d) (Refs. 1 and 2).

FDA concludes that the currently regulated use of the additive in adhesives (21 CFR 175.105) and the petitioned use in polyvinyl acetate and vinyl-acrylate copolymers intended for use as coatings for paper and paperboard will result in a cumulative exposure no greater than 148 ppb, or an EDI of 0.44 mg/p/d.

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 3), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the proposed use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by ethylene oxide and 1,4-dioxane, the carcinogenic chemicals that may be present as impurities in the additive. The risk evaluation of ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. Ethylene Oxide

FDA has estimated the cumulative exposure to ethylene oxide from both the regulated use of the additive in adhesives and the petitioned use of the additive as an emulsifier/surfactant in the manufacture of polyvinyl acetate and vinyl-acrylate copolymers intended for use in paper and paperboard coatings that will contact food to be no more than 1.5 parts per trillion (pptr) in the daily diet (3 kg) or 4.5 nanograms (ng)/person/day (Ref. 2). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 4) to estimate the upper-bound limit of lifetime human risk from the cumulative exposure to this chemical resulting from the currently regulated use and the proposed use of the additive. The results of the bioassay on ethylene oxide demonstrated that ethylene oxide was carcinogenic for female rats under the conditions of the study. The author reported that the rodent bioassay showed that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on the agency's estimate that the cumulative exposure to ethylene oxide will not exceed 4.5 ng/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the regulated and proposed uses of the subject additive is 8.4×10^{-9} or 8.4 in one billion (Refs. 2 and 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

B. 1,4-Dioxane

FDA has estimated the cumulative exposure to 1,4-dioxane from both the regulated use of the additive in adhesives and the petitioned use of the additive as an emulsifier/surfactant for paper and paperboard coatings in contact with food to be no more than 0.15 pptr of the daily diet (3 kg), or 0.45 ng/person/day (Refs. 2 and 5). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 6) to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the regulated use of the additive in adhesives and the proposed use of the additive. The results of the bioassay on

1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The authors reported that the rodent bioassay showed that the test material caused a significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.45 ng/person/day, FDA estimates that the upper-bound limit of lifetime human risk from both the regulated and proposed uses of the subject additive is 1.6×10^{-11}, or 1.6 in 100 billion (Refs. 2 and 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to 1,4-dioxane would result from the proposed use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of ethylene oxide and 1,4-dioxane present as impurities in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which ethylene oxide and 1,4-dioxane may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to ethylene oxide and 1,4-dioxane are very low, 8.4 in 1 billion and 1.6 in 100 billion, respectively.

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as an emulsifier/surfactant for use in polyvinyl acetate and vinyl-acrylate copolymers intended for use as coatings for paper and paperboard food packaging is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 178.3400 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 1, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. Paperwork Reduction Act of 1995

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

VIII. 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. Memorandum dated September 3, 1986, from the Regulatory Food Chemistry Branch (HFF–458), to the Indirect Additives Branch (HFF–335), entitled ''FAP 6B3908—American Cyanamid Co. Undated submission received July 18, 1986. Sulfosuccinic acid 4-ester with polyethylene glycol nonylphenyl ether disodium salt.''

2. Memorandum dated June 26, 1997, from the Division of Product Policy, Scientific Support Branch (HFS–207), Chemistry and Environmental Review Team (CERT), to the Regulatory Policy Branch (HFS–206), entitled ''FAP 6B3908 (MATS #223, M2.10)-Cytec Industries, Inc. (through Keller & Heckman). Update of exposure estimates for Aerosol A–103. Regulatory Policy Branch (RPB) request dated 3–31–97 and Division of Health Effects Evaluation (DHEE) memorandum dated 3–27–97.''

3. Kokoski, C. J., ''Regulatory Food Additive Toxicology'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

4. Dunkelburg, H., ''Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats,'' *British Journal of Cancer*, 46, pp. 924–933, 1982.

5. Memorandum dated July 16, 1997, from the Regulatory Policy Branch (HFS–206), to Sara H. Henry, Executive Secretary, Quantitative Risk Assessment Committee (HFS–308), entitled ''Re-evaluate Estimation of the Upper-Bound Lifetime Risk of Ethylene Oxide and 1,4-Dioxane in Sulfosuccinic Acid 4-Ester With Polyethylene Glycol Nonylphenyl Ether, Disodium Salt as an Emulsifier for Latex Coatings for Food-Contact Applications: Subject of Food Additive Petition FAP 6B3908 (Cytex Industries, Inc.)''.

6. ''Bioassay of 1,4-Dioxane for Possible Carcinogenicity,'' National Cancer Institute, NCI–CG–TR–80, 1978.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

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

2. Section 178.3400 is amended in the table in paragraph (c) by alphabetically adding a new entry under the headings

''List of substances'' and ''Limitations'' to read as follows:

§ 178.3400 Emulsifiers and/or surface active agents.

* * * * *

(c) * * *

List of substances	Limitations
* * *	* * * *
Sulfosuccinic acid 4-ester with polyethylene glycol nonylphenyl ether, disodium salt (alcohol moiety produced by condensation of 1 mole nonylphenol and an average of 9–10 moles of ethylene oxide) (CAS Reg. No. 9040–38–4).	For use only at levels not to exceed 5 percent by weight of the total coating monomers used in the emulsion polymerization of polyvinyl acetate and vinyl-acrylate copolymers intended for use as coatings for paper and paperboard.
* * *	* * * *

* * * * *

Dated: May 15, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14296 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for an approved new animal drug application (NADA) from Deprenyl Animal Health, Inc., to Pfizer, Inc.

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Deprenyl Animal Health, Inc., 7101 College Blvd., suite 580, Overland Park, KS 66210, has informed FDA that it has transferred the ownership of, and all rights and interests in, the approved NADA 141–080 (selegiline hydrochloride tablets) to Pfizer, Inc., 235 East 42d St., New York, NY 10017. The agency is amending 21 CFR 510.600(c)(1) and (c)(2) to remove the sponsor name for Deprenyl Animal Health, Inc., because the firm no longer is the holder of any approved NADA's. The agency is also amending 21 CFR 520.2098 to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Deprenyl Animal Health, Inc.''; and in the table in paragraph (c)(2) by removing the entry for ''063248''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.2098 [Amended]

4. Section 520.2098 *Selegiline hydrochloride tablets* is amended in paragraph (b) by removing ''063248'' and by adding in its place ''000069''.

Dated: May 12, 1998.

Andrew J. Beaulieu,

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

[FR Doc. 98–14299 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lufenuron Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for subcutaneous use of lufenuron suspension in cats for control of flea populations.

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 26402, Greensboro, NC 27404–6402, is the sponsor of NADA 141–105 that provides for the subcutaneous use of Program™ (lufenuron) 10 percent sterile suspension for cats for the control of flea populations. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of March 13, 1998, and the regulations are amended by adding § 522.1289 to reflect the approval. The basis of

approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 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.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning March 13, 1998, because the application contains substantial evidence of the effectiveness of the drug involved or studies of target animal safety required for approval of the application and conducted or sponsored by the applicant.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.1289 is added to read as follows:

§ 522.1289 Lufenuron suspension.

(a) *Specifications*. Each milliliter of sterile aqueous suspension contains 10 milligrams of lufenuron.

(b) *Sponsor*. See No. 058198 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Cats*—(i) *Amount*. 10 milligrams per kilogram (4.5 milligrams per pound) of body weight every 6 months, subcutaneously.

(ii) *Indications for use*. For use in cats 6 weeks of age and older, for control of flea populations. Lufenuron controls flea populations by preventing the development of flea eggs and does not kill adult fleas. Concurrent use of insecticides may be necessary for adequate control of adult fleas.

(iii) *Limitations*. For subcutaneous use in cats only. The safety of this product in reproducing animals has not been established. Do not use in dogs. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: May 12, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–14298 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 96N–0119]

Amended Economic Impact Analysis of Final Rule Requiring Use of Labeling on Natural Rubber Containing Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; amended economic analysis statement.

SUMMARY: The Food and Drug Administration (FDA) is issuing an amended economic analysis statement relating to a final rule that published in the **Federal Register** of September 30, 1997 (62 FR 51021), requiring labeling statements concerning the presence of natural rubber latex in medical devices. This rule was issued in response to numerous reports of severe allergic reactions and deaths related to a wide range of medical devices containing natural rubber. The final rule becomes effective on September 30, 1998. In order to allow further comment on the economic impact of the September 30, 1997 final rule, FDA is publishing an amended economic impact statement, including an amended initial regulatory flexibility analysis (IRFA) that it has prepared under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA). FDA will respond to comments to this amended economic analysis statement, and publish in the **Federal Register** an amended final economic impact statement prior to the effective date of the September 30, 1997 rule.

DATES: Submit written comments by July 1, 1998 on this amended economic analysis statement.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket numbers found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301–443–2444, FAX 301–443–2296.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 30, 1997 (62 FR 51021), FDA published a final rule (to be codified at 21 CFR 801.437), under its authority in section 505(a) and (f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(a) and (f)), requiring certain labeling statements on medical devices that contain or have packaging that contains natural rubber. This rule becomes effective on September 30, 1998. The agency issued this rule because medical devices composed of natural rubber may pose a significant health risk to some consumers and health care providers who are sensitized to natural latex proteins. FDA has received numerous reports about adverse effects related to reactions to natural latex proteins contained in medical devices, including 16 deaths following barium enemas. These deaths were associated with anaphylactic reactions to the natural rubber latex cuff on the tip of barium enema catheters. Scientific studies and case reports have documented sensitivity to natural latex proteins found in a wide range of medical devices. It is estimated that 5 to 17 percent of health care workers are sensitive to latex proteins (Refs. 1 through 5).

The September 30, 1997 rule (hereinafter referred to as the final rule) specifically requires that devices that contain natural rubber that is intended to contact or is likely to contact the health care worker or patient bear one or more of four labeling statements, depending on the type of natural rubber in the device and depending on whether the natural rubber is in the device itself or in its packaging. These statements are as follows: ''This Product Contains Dry Natural Rubber.''; ''Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.''; ''The Packaging of This Product Contains Dry Natural Rubber.''; and ''The Packaging of This Product Contains Natural Rubber Latex Which

May Cause Allergic Reactions.'' The final rule also prohibits the use of the word ''hypoallergenic'' on devices that contain natural rubber latex.

FDA, in response to a comment on the proposed latex labeling regulation (61 FR 32618, June 24, 1996) concerning the application of the rule to combination products, stated in the preamble to the final rule that it intended to require combination products (i.e., drug/device and biologic/device combinations) that contain natural rubber device components to be labeled in accordance with the final rule (62 FR 51021 at 51026).

After publication of the final rule, the agency received numerous inquiries about, and objections to the application of the natural rubber labeling requirements to combination drug/device products, and combination biologic/device products that currently are regulated under drug and biologic authorities. In the **Federal Register** of May 6, 1998 (63 FR 24934), FDA issued a notice stating that upon consideration of these comments, and the need to provide a uniform labeling approach for all drug and biological products, including combination products, FDA had decided that further opportunity for public comment should be provided on how natural rubber labeling requirements should be applied to all products regulated as drugs and biologics. Accordingly, FDA announced that it does not intend to apply the final rule to combination products currently regulated as drugs or biologics, and instead intends to initiate a separate proceeding to propose rulemaking requirements for labeling statements on natural rubber-containing products regulated as drugs and biologics, including combination products, currently regulated under drug or biologic authorities.

In the June 24, 1996 proposed rule, FDA stated that it did not believe that the proposed rule would be a significant regulatory action as defined by Executive Order 12866, and certified under the Regulatory Flexibility Act (5 U.S.C. 601–602) that the rule would not have a significant economic impact on a substantial number of small entities. FDA stated that it believed the rule's proposed effective date 180 days after publication would allow manufacturers to exhaust their existing labeling supplies.

FDA received comments concerning the economic impact of the proposed rule stating that the requirement would have a major impact on multinational companies, costing at least $15,000 per device for labeling. Another comment stated that the agency underestimated the impact of the proposed rule, as each manufacturer will need to draft, review, and relabel primary and secondary packages of hundreds, if not thousands of devices.

Based on FDA's information, the agency responded that it did not agree that the regulation would require the relabeling of hundreds or thousands of devices, and that agency estimates of relabeling costs were between $1,000 to $2,000 for each type of device. The agency also noted that the extended 1 year effective date should allow most manufactures to exhaust their current labeling stock prior to the effective date of the regulation. On this basis, the agency stated that the final rule was not a significant regulatory action under the Executive Order, and certified that although a substantial number of small entities would be affected by the rule, the estimated $1,000 to $2,000 cost of implementing the final rule would not have a significant economic impact on those entities.

On October 7, 1997, the Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration submitted a comment stating that the agency had not supplied data in the preamble to the final rule to support its cost estimates. The agency also received information from industry, subsequent to the issuance of the final rule, identifying additional products that would be subject to the final rule. On the basis of this information, FDA has decided to issue an amended economic impact analysis, including an Initial Regulatory Flexibility Analysis (IRFA), and offer opportunity for further comment before the implementation of the rule. If comments received persuade the agency that the conclusions of its amended economic analysis are erroneous, FDA will decide whether to issue the rule on its current effective date, to stay the effective date of the final rule, and/or repropose the rule. In any event, FDA will respond, in the **Federal Register**, to comments received in response to this amended economic impact statement.

II. Federal Rules that May Duplicate, Overlap, or Conflict with the Final Rule

FDA does not believe that the final rule duplicates, overlaps, or conflicts with any existing Federal rules. Although 21 CFR 801.5 defines adequate directions for use, and lists certain situations where directions for use may be considered inadequate, there is no regulation requiring a specific labeling statement that reduces the risks associated with natural rubber products by informing consumers about the presence natural rubber. Without the final regulation, manufacturers may provide a wide variety of information about natural rubber that may not be adequate to provide consumer protection, or may provide no information at all. FDA believes that this regulation will assure that necessary safety information is provided to the public, and that standardized information is the best method to inform the public about risks presented by natural rubber containing products.

III. Public Outreach

Each of the **Federal Register** documents concerning these products is available to small businesses on FDA's website. In addition to the publication in the **Federal Register** of the proposed rule, the final rule, and this amended economic analysis, FDA has conducted extensive outreach to a wide audience, including small businesses, on labeling requirements for products containing natural rubber.

Prior to the issuance of any proposal, FDA has discussed agency concerns about latex allergies and the need for labeling on products containing natural rubber at numerous public meetings, including several meetings of the American Society for Testing Materials (ASTM), a major consensus standards development organization in the United States. After the proposal was published, FDA continues a public dialogue on the labeling regulations at a variety of meetings, including meetings with the U.S. Pharmacopeia, the ASTM, and representatives of the Health Industry Manufacturers Association (HIMA), a trade association representing medical device manufacturers, including many that qualify as small businesses. FDA's Division of Small Manufacturers Assistance (DSMA) handled numerous telephone inquiries from businesses that were interested in obtaining information about the proposal.

At the same time the final labeling regulation was published, DSMA faxed correspondence to 100 industry organizations for further broadcast to their membership. That correspondence provided information about the labeling requirements as well as agency contacts who would handle inquiries and comments about the regulation. FDA then held further meetings concerning the rule with standards setting organizations whose membership includes small businesses as well as additional meetings with HIMA members. FDA also sponsored a national conference devoted to latex issues that reached the largest audience of any teleconference previously produced by FDA. Interested

individuals and businesses at 5,000 downlinks had an opportunity at that teleconference to exchange views with agency staff and industry experts on the subject of latex allergies and the implementation and impact of FDA's labeling requirements.

IV. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (2 U.S.C 1501 *et. seq.*). 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). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (21 U.S.C. 1532) requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation).

The agency believes that this rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. The purpose of this rule is to add labeling statements that will help ensure the safe and effective use by health care workers and patients of natural rubber devices. Potential benefits include early recognition of symptoms that could develop into severe natural latex allergies, and the prevention of severe allergic reactions and death that may occur if persons who are allergic to natural rubber inadvertently use natural rubber devices. The agency contracted with Eastern Research Group, Inc., (ERG), Lexington, MA, to conduct an economic analysis of this rule. The substantive portions of the ERG analysis are reproduced in their entirety in Appendix 1.

Based on other information referenced in this document, and on the analysis performed by the ERG, FDA has prepared an amended economic analysis statement, including an amended IRFA. Since the rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an expenditure in any 1 year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act. The rule is not a significant regulatory action as defined by the Executive Order.

The ERG analysis estimated that this rule will affect approximately 1,110 small businesses. Total annualized compliance costs for small businesses are estimated at $1.3 million, which represent 0.04 percent of revenues for small medical device manufacturers. Although this economic analysis indicates that this rule will not have a significant economic impact on a substantial number of small entities, the agency is soliciting comments on this IRFA. In the event that FDA, after receiving further comments to this amended analysis, determines that the rule does have a significant effect on a substantial number of small entities, FDA is providing the following discussion and analysis of alternatives that minimize effects on small businesses.

V. Alternatives

A. Voluntary Compliance

FDA could have issued guidance stating that FDA considered statements about the presence of natural rubber necessary to comply with existing general statutory and regulatory prohibitions against false and misleading labeling (21 U.S.C. 352(a)), and failure to provide adequate directions for use (21 U.S.C. 352(f)). Given the significant health risks associated with natural rubber products, FDA does not believe that existing general statutory labeling authority and regulations provide adequate protection to ensure that health care workers and patients are warned about the risks associated with natural rubber.

Without the final regulation, manufacturers may not provide any information at all. The ERG report and FDA's own experience indicate that some manufacturers never voluntarily revise their labeling. Even if it could be assumed that all manufacturers would voluntarily provide some labeling information about the presence of natural rubber, such information is likely to be presented in a variety of ways that may confuse consumers and limit the effectiveness of the natural rubber statement. FDA believes that the provision of consistent, accurate information to consumers is critical. FDA believes that this regulation, which provides accurate, consistent information in a standardized manner, will assure that the safety information is communicated effectively to the public.

B. Implementation Periods

FDA considered various implementation periods for the effective date after the issuance of the final rule. The June 24, 1996, proposed rule proposed an effective date 6 months after the publication of the final rule. The final rule has reduced the impact on small businesses by extending the effective date to 1 year after issuance of the final rule. Based on the ERG report figures, the total industry cost of compliance for this rule with a 1 year implementation period is $48.7 million. The total annualized costs are calculated at $3.2 million per year. The costs for a 1 year effective date are 28 percent lower than a 6 month effective date. Allowing a 24 month implementation date would reduce costs by 40 percent. FDA rejected the 6 month implementation period and extended the implementation period to 1 year to allow manufacturers of products containing natural rubber latex, including small businesses, to reduce costs by depleting existing inventories and coordinating this labeling change with other planned labeling changes. Although costs could further be reduced by allowing a 24 month implementation period, FDA believes that the public need for this information about devices that pose serious risks justifies rejecting this alternative.

C. Exempting Small Businesses

FDA has considered the option of exempting small businesses from the final regulation. The ERG report estimates that approximately 83 percent of the manufacturers of natural rubber latex products are small businesses. FDA believes that given that the large majority of manufacturers of products containing natural rubber latex are small businesses, and given the risks associated with these devices, exempting small businesses from this regulation would result in a significant decrease of consumer protection. Accordingly, FDA does not believe that small businesses should be exempt from this regulation.

D. Allowance of Supplementary Labeling

FDA could have chosen a regulatory alternative that would require that all labeling be directly printed on the existing packaging and labeling. Such a regulatory provision would decrease the possibility that the required statement would become dislodged during distribution. Instead, the final rule

allows the use of supplementary labeling (stickers) to provide the required labeling information. As noted in the ERG report, this will allow a number of firms, including small businesses, to reduce costs by avoiding extensive repackaging of existing product inventory that will not be sold prior to the end of the regulatory implementation period. FDA decided to include this option in the final rule.

E. Requiring a Labeling Statement on Only One Level of Labeling

Under the provisions of the final rule, FDA estimates that most devices covered under the rule will bear the required natural rubber statement on two or three levels of labeling. FDA considered requiring labeling statements on only one level of labeling. This alternative was rejected because of the importance of the information contained in the required labeling statements. Users may not have the necessary opportunity to read the statement if it is included only on some levels of labeling. For some products, especially those with multiple users, some labeling may be discarded prior to use by subsequent consumers. The inclusion of the statement on each level of labeling increases the likelihood that consumers will be aware of the risks posed by the natural rubber in the product.

VI. 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. Kibby, T., and M. Akl, ''Prevalence of Latex Sensitization in a Hospital Employee Population,'' *Annals of Allergy*, 78:41–44, 1997.

2. Kaczmarek, R., B. Silverman, T. Gross, et al., ''Prevalence of Latex-specific IgE Antibodies in Hospital Personnel,'' *Annals of Allergy, Asthma & Immunology*, 76:51–56, 1996.

3. Arellano, R., J. Bradley, and G. Sussman, ''Prevalence of Latex Sensitization Among Hospital Employees Occupationally Exposed to Latex Gloves,'' *Anesthesiology*, 77:905–908, 1992.

4. Lagier, F., D. Vervloet, I. Lhermet, et al.,''Prevalence of Latex Allergy in Operating Room Nurses,'' *Journal of Allergy and Clinical Immunology*, 90:319–322, 1992.

5. Yassin, M., M. Lierl, T. Fischer, et. al., ''Latex Allergy in Hospital Employees,'' *Annals of Allergy*, 72:245–249, 1994.

VII. Requests for Comments

Interested persons may, on or before July 1, 1998 submit to the Dockets management Branch (address above) written comments regarding this amended economic analysis statement on issues relating to natural rubber devices. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers 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.

Dated: May 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

BILLING CODE 4160–01–F

Appendix 1

EXECUTIVE SUMMARY

FDA issued a final rule on September 30, 1997 requiring label warnings on medical devices and medical device packaging that contains natural rubber that comes into contact with humans. The final rule is effective one year after publication (September 30, 1998). Under contract to FDA, ERG examined the cost and small business impacts of the regulation.

ERG estimated that the natural rubber warning rule will affect approximately 43 FDA-defined categories and 17,000 models of medical devices. ERG estimated the total industry cost of compliance at $48.7 million. Annualized over an infinite time horizon, the total costs are calculated at $3.2 million per year. ERG also estimated, based largely on FDA registration and listing data, that 1,111 small businesses must comply with the rule. Total annualized compliance costs for small businesses are estimated at $1.3 million, which represent 0.04 percent of revenues for small medical device manufacturers.

ERG also quantified the costs of alternative versions of the regulation in which industry is allowed a shorter (6 months) and a longer (24 months) implementation period than the base case (12 months). Under the 6-month alternative, the annualized costs of compliance are $4.1 million, an increase in costs of 27.9 percent from the base case. Under the 24-month alternative, the annualized costs are $1.9 million, a reduction of 40.4 percent from the base case. ERG also reviewed the cost implications (but did not quantify the effects) of an alternative regulatory provision under which affected businesses would not be allowed to use stickers to come into compliance. This option was judged to increase the size of inventory losses, especially for small businesses.

SECTION ONE

STUDY PURPOSE AND METHODOLOGY

The purpose of this rule is to require a warning label on medical devices and packaging containing latex. This is because medical devices composed of natural rubber may pose a significant health risk to some consumers and health care providers who are sensitized to natural latex proteins. FDA has received numerous reports of adverse effects related to reactions to natural latex proteins contained in medical devices, including deaths following barium enemas. These deaths were associated with anaphylactic reactions to the natural rubber latex cuff on the tip of barium enema catheters. Scientific studies and case reports have documented sensitivity to natural latex proteins found in a wide range of medical devices.

1.1 Overview of Study Methodology

FDA published a final rule on September 30, 1997 requiring warning statements on products that have natural rubber-containing medical device components that might contact humans. The labeling must state: "Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions." Similar warnings are required for products containing dry natural rubber or whose packaging has natural rubber or dry natural rubber.

ERG estimated the costs of compliance and the small business impacts of the regulation. To develop the cost estimates, ERG developed a study methodology encompassing the following topics:

- Estimating the number of labels revised per medical device
- Estimating the number of devices affected
- Modeling medical device labeling revisions

- Forecasting medical device manufacturer compliance responses and costs
- Calculating with a formal model medical device relabeling costs

1.2 Number of Labels Affected per Medical Device

The FDA-mandated warning statement is required on all device labels, including the principal display panel of the device packaging, the outside package, container, or wrapper, and the immediate device package, container, or wrapper. The warning must also appear on promotional materials. Where applicable, package inserts and Instructions for Use pamphlets must also be revised. While some labeling also includes physician operating manuals, technician or maintenance manuals, or other lengthy labeling, the natural rubber-containing devices generally do not include these items. ERG interpreted the regulation not to require a warning on shipping cartons.

FDA surveyed its medical device reviewers for the affected product categories and solicited information on the number of labels included in product shipments. FDA's reviewers estimated for most product categories that two to three device labels would be affected. Based on these inputs, and to ensure that costs are not underestimated, ERG used an estimate of 3 levels of labeling per device in developing the cost estimates.[1]

[1] The three levels of labeling should not be interpreted as three labels per medical device. Based on discussions with medical device manufacturers, ERG determined that most of the natural rubber-containing medical devices are not sold individually but rather in cases consisting of numerous units. ERG assumed that a representative case (third level packaging) has four boxes (second level packaging) each of which contains ten individually wrapped (primary packaging) units of the given medical device. Thus, the number of labels per case is 45 in the cost computations.

1.3 Number of Medical Devices Categories and Models Affected

FDA identified 43 medical device categories that are addressed by the regulation. FDA device reviewers also estimated the percentage of devices in each category that are covered by the regulation. Table 1-1 lists the device categories, the number of listed devices per category (i.e., the number of devices manufacturers are authorized to offer for sale), and the percentage share of devices within each category that contains natural rubber components that contact humans. The regulated devices include 5 categories of tracheal tubes, 4 of condoms, and 3 of catheters.

Within each of the medical device categories, it was also necessary to estimate the number of device models that are distinctly labeled. Manufacturers separately prepare and print each set of labels and therefore their labeling costs will be a multiple of the number of labels they revise. To address this point, ERG collected sales catalogues for approximately one-half of the medical device categories covered. The catalogues provided sufficient information to support estimates of the number of distinctly labeled models. ERG estimated that on average manufacturers sold 14 models of each of the listed medical devices. In developing these estimates, ERG was cognizant both of the number of different models sold (number of sizes, variety of styles), and of the possibility that numerous similar models will be packaged with the same base set of labeling. Manufacturers often use a production line labeling machine or other method to print a distinguishing model number on different models that are otherwise shipped with identical labeling. Similarly, manufacturers often prepare Instructions for Use and other labels to be applicable for multiple device models. In such cases, a manufacturer that sells ten models of a given device might only be changing one set of labeling. ERG's estimates of the number of models affected are displayed in Table 1-2.

For some medical device categories, ERG did not have adequate access to sales catalogues or other information on the number of models per FDA listing of affected devices. ERG applied the estimate of 14 models per listing to those categories where other data were unavailable.

Table 1-1
FDA Estimates of the Medical Device Categories Affected and Device Listings Per Category

Device Product Code	Product	Percent Containing Natural Rubber [a]	Levels of Labeling	Number of Registrations per Category	Number of Listings per Category [b]
BSJ	Mask, gas, anesthetic	50	1	28	28
BSK	Cuff, tracheal tube, inflatable	1	*3*	7	7
BSR	Stylet, tracheal tube	10	3	13	13
BSY	Catheters, suction, tracheobronchial	10	1	32	32
BTQ	Airway, nasopharyngeal	20	2	13	13
BTR	Tracheal tube (w/wo connector)	5	2	30	30
CAT	Cannula, nasal, oxygen	1	2	30	30
CBH	Device, fixation, tracheal tube	50	2	16	16
CBI	Tracheal/Bronchial tube	5	2	5	5
DWL	Stocking, medical support	5	1	15	15
DZB	Headgear, extraoral, orthodontic	20	2	16	16
ECI	Band, elastic, orthodontic	10	1	27	27
EMX	Balloon, epistaxis	50	3	16	16
EXJ	Condoms, urosheath type	*100*	*3*	12	*13*
EYC	Catheter, upper urinary tract	100	2	1	1
EYR	Tourniquet, gastro-urology	20	1	1	1
FCD	Kit, barium, enema, disposable	40	3	4	4
FCE	Kit, enema (for cleaning purposes)	40	3	19	19
FGD	Catheter, retention, barium enema with bag	40	3	2	2
FMC	Gloves	*100*	*3*	110	*135*
FMF	Piston syringe	95	2	77	77
FPF	Bottle, hot/cold, water	80	3	12	12
FQM	Elastic, bandage	10	1	89	89
FXX	Face, mask, surgical	100	1	56	56
GAX	Tourniquet, nonpneumatic	20	1	26	26
HDW	Diaphragm, contraceptive	80	3	3	3
HIS	Condoms	*100*	*3*	44	*48*
HOY	Ophthalmic eye shields	100	2	44	44
ILG	Stocking, elastic	5	1	7	7
INP	Tips and pads, cane, crutch, and walker	80	1	37	37
JOH	Tube, tracheostomy and tube cuff	1	*3*	9	9
JOW	Sleeve, limb, compressible	100	2	26	26
KCY	Tourniquet, pneumatic	20	1	12	12
KGO	Gloves, surgeons	*100*	*3*	54	*66*
KME	Bedding, disposable, medical	5	1	38	38
KMO	Binder, elastic	5	1	5	5
KNT	Tubes, gastrointestinal (and accessories)	5	3	40	40
KYZ	Irrigating syringe	90	2	61	61
LCG	Intestinal splinting tubes	50	3	1	1
LLJ	Condoms, organ protection	*100*	*3*	1	*1*
LTZ	Condoms, with nonoxynol-9	*100*	*3*	19	*21*
LYY	Gloves, latex	*100*	*3*	319	*392*
MBU	Condoms, intravaginal pouch	*100*	*3*	5	*5*
	Total	**NA**	**NA**	**1,382**	**1,499**
	Average	**49.37**	**2.14**	**NA**	**NA**

Source: FDA survey

[a] The numbers in italics are ERG estimates. ERG assumed that 100 percent of products included natural rubber that would contact humans in the absence of survey information on the product category.

[b] For condom and glove categories, ERG did not have complete listing data from FDA and estimated the number of listings based on the number of registered establishments.

Table 1-2
ERG Estimates of the Number of Medical Device Models Affected

Product	Number of Listings per Category [a]	Number of Models Per Listing [b]	Percent Containing Natural Rubber [c]	Total Models to be Changed, by Category
Mask, gas, anesthetic	28	5	50	70
Cuff, tracheal tube, inflatable	7	2	1	1
Stylet, tracheal tube	13	4	10	6
Catheters, suction, tracheobronchial	32	6	10	20
Airway, nasopharyngeal	13	3	20	8
Tracheal tube (w/wo connector)	30	28	5	42
Cannula, nasal, oxygen	30	1	1	1
Device, fixation, tracheal tube	16	19	50	152
Tracheal/Bronchial tube	5	28	5	7
Stocking, medical support	15	*14*	5	11
Headgear, extraoral, orthodontic	16	*14*	20	45
Band, elastic, orthodontic	27	*14*	10	38
Balloon, epistaxis	16	2	50	16
Condoms, urosheath type	*13*	*14*	*100*	182
Catheter, upper urinary tract	1	52	100	52
Tourniquet, gastro-urology	1	*14*	20	3
Kit, barium, enema, disposable	4	13	40	21
Kit, enema (for cleaning purposes)	19	4	40	31
Catheter, retention, barium enema with bag	2	2	40	2
Gloves	*135*	*14*	*100*	1890
Piston syringe	77	*14*	95	1025
Bottle, hot/cold, water	12	*14*	80	135
Elastic, bandage	89	*14*	10	125
Face, mask, surgical	56	23	100	1288
Tourniquet, nonpneumatic	26	*14*	20	73
Diaphragm, contraceptive	3	*14*	80	34
Condoms	*48*	*14*	*100*	672
Ophthalmic eye shields	44	5	100	220
Stocking, elastic	7	*14*	5	5
Tips and pads, cane, crutch, and walker	37	*14*	80	415
Tube, tracheostomy and tube cuff	9	30	1	3
Sleeve, limb, compressible	26	*14*	100	364
Tourniquet, pneumatic	12	*14*	20	34
Gloves, surgeons	*66*	*14*	*100*	924
Bedding, disposable, medical	38	*14*	5	27
Binder, elastic	5	*14*	5	4
Tubes, gastrointestinal (and accessories)	40	*14*	5	28
Irrigating syringe	61	22	90	1208
Intestinal splinting tubes	1	*14*	50	7
Condoms, organ protection	*1*	*14*	*100*	14
Condoms, with nonoxynol-9	*21*	*14*	*100*	294
Gloves, latex	*392*	*14*	*100*	5488
Condoms, intravaginal pouch	*5*	*14*	*100*	70
Total	**1,499**	**NA**	**NA**	**15,055**

Source: FDA survey, ERG estimates

[a] For condom and glove categories, ERG did not have complete listing data from FDA and estimated the number of listings based on the number of registered establishments. These estimates are presented in italics.

[b] The numbers in italics are based on the average number of models per listing, as estimated from ERG's review of medical device product catalogues.

[c] The numbers in italics are ERG estimates. ERG assumed 100% natural rubber content in the absence of survey information on the product category.

In total, ERG estimated that approximately 15,000 medical device models are affected by the regulation. The largest groups are estimated to be latex gloves (over 8,000 models over multiple glove categories) and condoms (approximately 1,000 models over several condom categories).

ERG interpreted the FDA rule also to apply to packaging materials that include natural rubber constituents. Such materials are used in cold seal packaging, which is a common method of sealing for sterile packages, such as individually wrapped elastic bandages and gauze. Based on discussions with affected manufacturers, ERG estimated that approximately 2,000 medical device models are sold in cold seal packaging. Combining the number of affected medical devices (approximately 15,000) with those sold in natural rubber-containing packaging (approximately 2,000), ERG estimated that labeling for a total of approximately 17,000 medical device models is regulated under this rule.

1.4 Modeling the Label Revision Process at Medical Device Companies

Most medical device manufacturers prepare and periodically revise numerous labels. The extensive standardization of the label preparation routine allowed ERG to forecast the costs that companies will incur to respond to the natural rubber labeling rule. The principal components of the labeling preparation process are:

- Regulatory affairs staff identify the need for a revised label. This staff typically coordinates the labeling review and revision process with other departments (including marketing, medical, and legal departments) and prepares the new labeling language.

- Graphic artists and label layout specialists prepare revised labels. This might be done by in-house or external staff. Once completed, the revised label is normally sent to outside vendors for final printing.

- The manufacturing side of the company receives and reviews the final revised labels. The manufacturing operation incurs costs to:

- Replace and discard inventory of old labels
- Incorporate the new labels into the material control and inventory systems
- Modify labeling and packaging equipment as necessary to accommodate new labels

Each of these components of the labeling revision process is modeled in the cost analysis, as described in Sections 1.6 and 1.7.

1.5 Predicting Manufacturer Compliance Responses and Associated Costs

Medical device companies will incur costs according to their selected method of achieving compliance and the circumstances in which they must prepare for labeling compliance. The compliance responses judged relevant to this rulemaking are grouped into four categories:

- Modify labels immediately
- Apply temporary additional labels, such as sticker labels, and modify labels permanently at a later date
- Incorporate this new labeling requirement in the course of other labeling revisions underway or planned
- No revisions needed, existing warning label is in compliance.

Manufacturers in the first category will develop revised labels and incorporate them into their production and packaging processes during the implementation year. The second group will also incur relabeling costs but for various reasons cannot implement new labels into their processes in time to meet the implementation deadline. Thus, these manufacturers will also need to apply temporary labels, most commonly sticker labels, to meet the FDA requirements. The third group of manufacturers is assumed not to incur any compliance costs specific to the natural rubber labeling rule because they are revising labels for other reasons in any case. Finally, the last group of manufacturers had already implemented a warning label that meets the FDA requirements based on previous discussions with the agency.

Table 1-3 presents the four options and the estimates of the frequency with which they are forecast to be used. The forecasts are based on discussions with the manufacturers contacted for this study and ERG estimates of the likely patterns of compliance. (These forecasts of manufacturer responses to the regulation are varied when alternative versions of the regulation are considered in Section 2.3.)

As the table notes, ERG judged that some manufacturers will need to change their labeling or packaging configurations to accommodate the warning statement. For example, manufacturers could find that they need to use larger labels, or that they need to increase carton size to provide needed label space. (Two of the manufacturers contacted for this study mentioned problems fitting the warning onto their labels; other manufacturers did not express concern about available labeling area or other problems with their labeling configurations). On the basis of these contacts, ERG judged that manufacturers would need to reformat or otherwise revise labeling and packaging configurations for 10 percent of the affected medical device models.

1.6 Incorporation of the Natural Rubber Warning Costs into Voluntary Relabeling Activities

Medical device manufacturers sometimes revise product labeling for reasons other than FDA regulatory requirements, such as changes in foreign labeling regulations, expectations of marketing advantages from relabeling, the desire to publicize device improvements and modifications in labeling, and expectations of greater clarity and/or reduced product liability exposure. If a medical device company is revising labels in any case, the regulatory affairs staff can also incorporate new regulatory requirements (such as the natural rubber warning language) at a negligible incremental cost. Therefore, ERG assumed that manufacturers of models that are being relabeled anyway will not incur any regulatory cost.

The number of medical devices likely to be relabeled voluntarily by medical device companies over the year's implementation time granted with this rule is significant, although no statistics are available on this subject. ERG is also aware, however, that some manufacturers

Table 1-3

Forecast of Compliance Categories by Company Size

Category	For Natural Rubber-Containing Devices Company Size Small	Medium	Large	For Devices in Natural-Rubber Containing Packaging All Companies
Category 1: Revision of principal labeling				
(a) Modify labeling with no change in labeling format	35%	40%	45%	75%
(b) Modify labeling with a major change in labeling format	10%	10%	10%	5%
Category 2: Addition of supplemental labels	30%	20%	10%	20%
Category 3: Incorporation of labeling revision into changes otherwise being made	10%	15%	20%	0%
Category 4: No necessary revisions	15%	15%	15%	0%
Total	**100%**	**100%**	**100%**	**100%**

almost never voluntarily revise their labeling. These companies might frequently introduce new versions of their devices and, therefore, are unwilling to revise labeling that will soon be superseded in any case.

In the case of the natural rubber warning statement, the timing of the rule nearly coincides with the European Union (EU) deadline of June 1998 for medical device companies to satisfy EU language and label-marking requirements. In discussing the EU deadline with medical device companies in early 1998, some confirmed that they were actively relabeling products to meet the EU requirements and were incorporating the FDA requirement as they went. Others, however, stated that they had satisfied the EU requirements well before September 1997 and, therefore, the timing of FDA's regulation did not ease their relabeling task.

The coincidental timing of the FDA natural rubber rule and the EU rule is of potential value only to those medical device companies marketing devices to Europe. Based on a survey of 223 medical device manufacturers in Medical Device and Diagnostics magazine (MD&DI), approximately 50 percent of manufacturers overall sell their devices in Europe (Bethune, 1997). An estimated 90 percent of large manufacturers sell to the EU.

ERG made the conservative judgment (as shown in Table 1-3) that, despite the potential overlap of the FDA and EU requirements, only approximately 10 to 20 percent of medical device models (for small to large companies) would be voluntarily relabeled within the implementation period of this regulation. The estimate reflects their relative participation levels for small to large companies in foreign exporting of medical devices.

ERG also considered the possibility that manufacturers are able to incorporate other labeling changes while incorporating the natural rubber warning, thereby forestalling additional relabeling in future years. For example, manufacturers could simultaneously enhance the labeling presentation of their cartons and containers, incorporate non-U.S. labeling requirements besides those originating from the EU, and incorporate the most up-to-date information into their IFU pamphlets. Nevertheless, the rapid technological obsolescence of many devices and the limited

value of labeling as a marketing tool for medical devices (especially for devices that are not sold over-the-counter) means that companies gain relatively little from such labeling enhancements. Therefore, ERG did not adjust the costs to recognize other potential benefits of the relabeling activities.

1.7 The Formal Structure of the Labeling Revision Model

The labeling revision costs per medical device model are the sum of the following cost elements:

$$TC_i = (RA)_I + (ART) + (MC)_I + (IIL)_I + (IL)_I + (TR)_I + (SL)_I + (LF)_I$$

where:

I = Size of company (small, medium, and large)

TC = Total relabeling costs per device model

RA = Costs incurred by the regulatory affairs department in modifying labeling content

ART= Artwork costs (cost for graphic art work and supplies)

MC = Costs of preparing for new printing runs and incorporating the new labeling into manufacturing operations

IIL = Irreducible inventory loss that occurs for all labeling changes due to company needs for a margin of error in labeling inventories

IL = Excess labeling inventory losses that result from the need to change labeling on a shorter cycle than originally envisioned by a company, due to regulatory implementation deadlines

TR = Cost of translating the warning statement into 12 languages

SL = Cost of purchasing and applying supplementary labels

LF = Additional cost of redesigning labeling and/or packaging when labeling space limitations will not allowing the warning statement to be included in the currently formatted labels.

ERG's estimates of the unit costs incurred at each stage of the relabeling process by small, medium, and large manufacturers are incorporated into the relabeling model. These estimates and assumptions are presented in the next section.

1.8 Medical device relabeling model assumptions

The description of model assumptions (See Table 1-4) is organized as follows:

- Regulatory affairs
- Artwork costs
- Manufacturing and printing costs
- Inventory costs
  - Irreducible inventory costs
  - Excess inventory losses
- Translation costs
- Supplementary labeling
- Major labeling format changes

1.8.1 Regulatory Affairs

This cost element addresses the labor costs needed to analyze new or revised regulatory requirements, prepare labeling changes, and obtain signoffs on the labeling changes from all relevant departments (not including manufacturing areas, such as materials control and quality control). Labor costs are those costs generated by regulatory affairs professionals and labeling department personnel (if separate), including editors and proofreaders. This category also covers professionals from other departments (including those responsible for legal affairs, medical issues, and marketing) that review and sign off on labeling revisions.

Table 1-4

Medical Device Model Assumptions and Parameters

Element	Components involved	Company Size: Small	Medium	Large
Regulatory Affairs (RA)	Labor hours per model for a minor change	6	12	24
	Regulatory affairs labor wage rate ($ per hour)	$33.66	$33.66	$33.66
	Subtract 10% from labor cost for blanket approval savings	90%	90%	90%
Artwork (ART)	Artwork and graphics costs per model	$600	$600	$600
Manufacturing (MC)	Hours per model to incorporate new label into process	4	8	20
	Production worker wage rate ($ per hour)	$18.06	$18.06	$18.06
Irreducible Minimum Inventory Loss (IIL)	All labeling and packaging losses	$500	$2,000	$5,000
Excess Inventory Loss (IL)	All labeling and packaging levels	$750	$3,000	$7,500
	Percentage of models where excess inventory losses occur (applies to models where stickers are not used)	5%	5%	5%
	Average excess inventory loss per model	$38	$150	$375
Translation (TR)	Cost of translating into 12 languages ($50 per language)	$600	$600	$600
	Percentage of companies that incur translation costs	30%	40%	60%
	Average translation cost per company	$180	$240	$360
Supplemental Labels (SLBL)	*Use of non-standard labels (stickers)*			
	6-week lease cost of pressure sensitive labeler (includes parts, labor, adjustment costs)	$5,400	$5,400	$10,800
	Number of production workers required for attaching labels	2	4	16
	Total cost of labor for manual attachment of labels assuming the process will last 6 weeks	$8,669	$17,338	$69,350
	Number of cases produced per model/yr per establishment size	6,000	20,000	60,000
	Total leasing and labor cost per model	$1,005	$1,624	$5,725
	Cost of a pressure sensitive label	$0.0200	$0.0100	$0.0050
Major Labeling Format Changes (LF)	*For all label text area changes*			
	Additional hours of regulatory affairs input per model	3	6	12
	Regulatory affairs labor wage rate ($ per hour)	$33.66	$33.66	$33.66
	Additional artwork cost per model	$600	$600	$600
	Additional manufacturing hours to revise packaging/labeling for	8	16	40
	Production worker wage rate ($ per hour)	$18.06	$18.06	$18.06

Regulatory affairs costs vary with the size of the manufacturer and the complexity and scope of the labeling change. Because the required warning in this case is so short (one sentence), with the exact language provided by FDA, regulatory affairs staff will require relatively little time to discuss the necessary warning language. Nevertheless, the regulatory affairs staff will need to (1) discuss the incorporation of the required language into other or additional warnings it provides on its products, (2) consider the exact placement of the warning statement on each label, and (3) add the warning into any advertising and promotional material that is in preparation for release after the implementation date of this rule.

On average, companies are estimated to spend 6 to 24 hours per model on this label change. Larger companies expend more hours per model due primarily to the higher number of reviews and signoffs required for a labeling change.

No separate costs are estimated for making changes to promotional materials associated with natural-rubber containing medical devices. Advertising copy is assumed to be revised frequently and, therefore, is likely to be revised and updated during the 12-month implementation period. The new warning statement would be incorporated with essentially no incremental costs during revisions. To the limited extent to which manufacturers might have advertising or promotional materials that are not frequently revised, ERG assumed that the hours estimate is adequate to address the additional changes in promotional materials.

1.8.2 Artwork Costs

Manufacturers incur costs for the labor of graphic artists, the purchasing of graphic art supplies, film supplies (to produce camera-ready copies of revised labels), new printing plates, and the printing of sample labels. In general, the variables that influence artwork costs include the complexity of the labeling revision, the potential for conflict with marketing or other labeling considerations, and the design complexity. In this case, graphic artists will need little time to add the warning statement, but will still need to access the computer graphics file for each label and fit the warning into the available area of the existing labels. Variables that influence the cost of new printing plates include the type of printing process used and the design complexity (especially the number of colors) of the original labeling.

For this regulation, artwork costs were estimated at $600 per model (across all size classes), with the costs covering all three levels of labeling. These costs were estimated to be representative artwork costs for all medical device manufacturers, whether they perform the relabeling in house or using outside vendors.

No separate artwork costs are assumed for revision of advertising copy and other promotional materials. As noted, ERG assumed that these materials are revised frequently and that the natural rubber warning statement can be incorporated at essentially no incremental cost.

1.8.3 Manufacturing and Printing Costs

Manufacturing and/or materials management personnel order printing of new labels, perform necessary quality-control reviews of the new labels when they arrive, incorporate the new label into manufacturing processes, and oversee removal of the old label from the master batch records and from the bill-of-materials that governs manufacturing operations. The manufacturing and printing cost category is defined to consist entirely of labor costs.

ERG estimated that it takes medical device manufacturers from 4 to 20 hours to incorporate a revised label into manufacturing. The large manufacturer estimate was influenced by circumstances at some large manufacturers that use exceptionally high speed and automated production processes and complicated production systems that require considerable management for each new set of labels.

1.8.4 Inventory Losses

Irreducible Inventory Losses - The irreducible minimum inventory loss represents the extra labels that manufacturers prepare to allow a margin of error in production and that are then discarded when labels are revised. These losses are defined as inevitable because manufacturers generally print enough labeling materials to ensure that sales are not constrained by a shortfall in this relatively low cost input to the production process. In this case, for example, manufacturers might try to time the introduction of new labels to ensure that all label inventories generated after a specific date have the new warning statement. Nevertheless, there are so many production, labeling, and packaging elements to coordinate that manufacturers cannot be certain of precisely eliminating old inventories. In this case, manufacturers probably will want to switch all of their labeling (primary, secondary, instructions for use, etc.) at the same time to prevent confusion among consumers. Thus, it is very likely that varying quantities of inventory will be lost for different label items.

ERG noted that for an OTC pharmaceutical labeling requirement, the National Drug Manufacturers Association had recently estimated an irreducible inventory loss of $1,000 per shelf-keeping-unit (SKU) (NDMA, 1997). The estimate for OTC products is likely to be higher than that for medical devices due to the higher speed of production on average (more production units per hour) than would generally apply to medical devices. On the other hand, ERG noted that medical device companies would sometimes be discarding inventory for more distinct labeling items per model than would OTC pharmaceutical manufacturers. Medical device manufacturers contacted for this study varied between those who said inventory losses were negligible and those

who predicted losses of many thousands of dollars. Based on these data, ERG estimated the irreducible inventory loss at $500 to $5,000 across the size classes.

Excess Inventory Losses - Excess inventory losses of labeling are defined as those, in addition to the irreducible minimum losses, that result from companies having to relabel within a shorter cycle than they envisioned when they stocked their label inventories. In developing the estimate of excess inventory losses, ERG determined that most manufacturers require no more than 6 months of regulatory lead time to deplete virtually their entire inventory of labels. Most of the companies contacted for this study stated that their inventory losses would be negligible. Many companies appear to keep no larger label inventory than that representing 3 months of production. Thus, with the one year lead-time accorded for the natural rubber labeling rule, ERG judged that there would rarely be a significant inventory loss for medical device manufacturers. In making this estimate, ERG assumed that medical device companies became aware of the rule reasonably soon after its publication.

ERG judged, nevertheless, that a small percentage (5 percent) of medical device companies would incur excess inventory losses for reasons that they could not control. The companies that face such losses are judged most likely to be those that face one or more exceptional circumstances in making labeling changes. For example, a small percentage of companies use special labeling components or materials that cannot be quickly provided by suppliers. For example, a few companies use foreign suppliers of specialized packaging and labeling materials that require 6 to 9 months to acquire. Such companies are likely to purchase relatively large inventories in order to avoid delays in production and to minimize the expense of the material acquisition process. Furthermore, in these cases the inventory that is eventually discarded is likely to be relatively costly. Other companies might have invested in relatively large label inventories for some reason, such as to ensure adequate supplies for European sales.

For companies incurring these excess inventory losses, the value of discarded inventory was estimated to vary from $750 to $7,500 per model for small to large manufacturers. The values

are approximate and will certainly vary with the manufacturer's preparedness. As noted, most companies contacted for the study indicated that no inventory losses would occur.

1.8.5 Translation Costs

A minority of medical device companies will incur translation costs to comply with the labeling rule. Non-English translations of the warning statement are a regulatory cost for companies that sell devices worldwide using a single set of labeling.[2] Thus companies will translate the warning into all of the language featured in their labeling. Translation costs are not relevant for companies that do not sell devices internationally (which applies to roughly one-half of all medical device manufacturers), or for companies that use separate labeling for international sales. With the recent expansion in language requirements for products sold in the EU, most companies that use a single set of labeling are providing 12 languages or more on their labeling.

For the cost estimates, ERG assumed a translation cost of $50 per language for each of 12 languages for the affected devices. This cost applies only once per company because all device types and models can use the same translation. Based on the relative distribution of international sales of medical devices, ERG estimated that 30 percent of small companies to 60 percent of large companies will incur translation costs.

[2]According to FDA regulation, non-English translations of labeling on devices sold in the United States must be consistent with the English language label.

1.8.6 Supplementary Labeling Costs

Medical device companies that cannot introduce new labels in time to meet the implementation deadline will resort to the use of supplementary labels, such as stickers. The use of supplementary labels will be especially common among medical device manufacturers who would otherwise face substantial label or product inventory losses. ERG estimated that 10 to 30 percent of companies will use supplementary labels.

Based on discussions with industry consultants and medical device manufacturers, ERG estimated that manufacturers choosing to apply supplementary labels will temporarily lease a pressure-sensitive labeler (automatic or semi-automatic) and hire from 2 to 16 temporary production workers. The temporary production workers are needed to operate the labelers and to manually apply those stickers that cannot be run through or handled by the labeling equipment. The lease cost of a pressure-sensitive labeler for a packaging line is estimated at approximately $1,600 per month. Companies will incur additional engineering and installation costs, estimated at $3,000 per labeler, to adapt the leased labelers to their production operations. ERG estimated that small and medium manufacturers would lease one labeler, and large companies 2 labelers. ERG estimated that the equipment and workers will be employed for a six-week period. The unit cost of a pressure sensitive supplementary label is estimated at $0.02, $0.01, and $0.005 for small, medium, and large companies, respectively. The estimated costs of all additional equipment and temporary workers were spread over all of the models manufactured per company. The total equipment leasing cost per model for supplementary labeling was estimated to vary from $1,005 for small to $5,725 for large manufacturers. Furthermore, the total cost of supplemental labels per model was estimated at $1,350 to $3,375 across company size categories.[3]

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[3]Because supplemental labels are a temporary solution, ERG assumed that they will only be applied to 3 months' production to deplete excess inventories.

1.8.7 Costs of Major Labeling Format Changes

Some medical device companies will incur additional costs to reformat their labels when their existing labels cannot accommodate the new warning statement. This problem is likely to arise most often among products sold worldwide with the same labeling because of the burden of multi-language translations and additional EU labeling specifications. ERG judged that the bulk of the costs for reformatting will be incurred in the implementation year as company staff formulate methods of achieving compliance. Thus, ERG estimated that regulatory affairs, artwork, and manufacturing changeover costs would all be incurred in the first year. ERG judged that the ongoing incremental cost of additional labeling materials, such as if physically larger labels are required, would be negligible and they have not been modeled.

SECTION TWO

COSTS OF COMPLIANCE AND REGULATORY FLEXIBILITY ANALYSIS

This section presents the unit and total industry costs of compliance. ERG then extends the analysis to small businesses in order to address the Small Business Regulatory Enforcement Fairness Act (SBREFA) requirements.

Compliance costs are distributed among business size categories using data from the Small Business Administration (SBA, 1998). For the medical device manufacturing Standard Industrial Classifications (SICs 384 and 385), SBA defines a small business as an entity employing fewer than 500 workers (SBA, 1996). For this analysis, ERG also defined medium-sized businesses as those employing between 500 and 2,499 employees and large businesses as those that employ 2,500 or more.

2.1 Unit Costs of Compliance

ERG combined the individual cost elements to derive the total unit relabeling costs per model for each compliance category (See Table 2-1). The unit costs for the simplest case of permanent labeling revisions (Category 1 (a)) are estimated at $1,404 for small and $7,089 for large companies. The total unit relabeling costs for the supplementary labeling compliance alternative (Category 2) range from $4,394 to $16,775 per model over the three size categories. The relatively large unit cost for applying stickers reflects the costs of hiring temporary labor to affix labels and leasing and operating labeling equipment. Furthermore, with stickers, the artwork (ART) and manufacturing change (MC) components of the label revision process are incurred twice (once for the sticker and once for the permanent label changes). This option will nevertheless be considered attractive for companies that wish to avoid even larger product or labeling material inventory losses.

Table 2-1

Unit Costs of Compliance, by Size Category

		Category 1		Category 2
Company Size	**Cost Element**	**Revision w/o Change in Format**	**Revision with Change in Format**	**Supplementary Labeling**
Small	Regulatory Affairs	$181.76	$282.74	$181.76
	Artwork	$600.00	$1,200.00	$1,200.00
	Manufacturing Change	$72.24	$216.72	$144.48
	Irreducible Inventory Loss	$500.00	$500.00	$500.00
	Excess Inventory Loss	$37.50	$37.50	NA
	Translation	$12.86	$12.86	$12.86
	Supplemental Labeling	NA	NA	$1,350.00
	Equipment Leasing Costs	NA	NA	$1,004.91
Total		**$1,404.37**	**$2,249.83**	**$4,394.02**
Medium	Regulatory Affairs	$363.53	$565.49	$363.53
	Artwork	$600.00	$1,200.00	$1,200.00
	Manufacturing Change	$144.48	$433.44	$288.96
	Irreducible Inventory Loss	$2,000.00	$2,000.00	$2,000.00
	Excess Inventory Loss	$150.00	$150.00	NA
	Translation	$17.15	$17.15	$17.15
	Supplemental Labeling	NA	NA	$2,250.00
	Equipment Leasing Costs	NA	NA	$1,624.11
Total		**$3,275.16**	**$4,366.08**	**$7,743.75**
Large	Regulatory Affairs	$727.06	$1,130.98	$727.06
	Artwork	$600.00	$1,200.00	$1,200.00
	Manufacturing Change	$361.20	$1,083.60	$722.40
	Irreducible Inventory Loss	$5,000.00	$5,000.00	$5,000.00
	Excess Inventory Loss	$375.00	$375.00	NA
	Translation	$25.72	$25.72	$25.72
	Supplemental Labeling	NA	NA	$3,375.00
	Equipment Leasing Costs	NA	NA	$5,725.03
Total		**$7,088.98**	**$8,815.30**	**$16,775.21**

2.2 Total Costs of Compliance

To derive total costs, it was necessary to estimate the distribution of the affected natural rubber-containing medical device models by size category. The distribution of compliance costs among business size categories will be correlated with their relative shares of models requiring relabeling. This distribution is not known, however. ERG notes from the SBA data that small firms represent slightly more than 90 percent of all firms but only approximately 25 percent of all employment. It is reasonable to assume that small firms' share of models is substantially less than their share of the population of firms but larger than their share of employment. ERG assumed for this analysis that 60 percent of models are produced by small businesses. ERG also assumed, based on their relative shares of industry employment, that 25 percent of models are produced by medium-sized businesses and 15 percent by large businesses. The final distribution of compliance costs among size categories varies from these percentages to some extent, however, because the unit compliance costs estimated for the different size categories are not exactly proportional to the distribution of models.

Table 2-2 presents the aggregate cost forecasts across company size categories for all affected medical devices. The total first-year costs for the industry are estimated at $48.7 million, and the annualized costs (using an infinite time horizon) are calculated at $3.2 million per year. Annualized compliance costs per year are calculated at $1.3 million for small businesses (40.6 percent of total costs), $0.9 million for medium businesses (28.1 percent), and $1.0 for large businesses (31.3 percent).

Table 2-2

Total Costs of Compliance, By Company Size

Cost Element	Small Companies	Medium Companies	Large Companies	All Companies
Regulatory Affairs	$1,546,796	$1,220,586	$1,382,609	$4,149,991
Artwork	$7,132,770	$2,633,250	$1,376,708	$11,142,728
Manufacturing Change	$928,374	$692,077	$915,764	$2,536,215
Irreducible Inventory Los	$3,587,375	$5,602,583	$7,839,313	$17,029,271
Excess Inventory Loss	$164,432	$302,281	$495,764	$962,477
Translation	$102,571	$53,757	$45,477	$201,805
Supplemental Labeling	$3,953,565	$1,816,688	$946,659	$6,716,912
Equipment Leasing Costs	$2,964,397	$1,384,963	$1,636,356	$5,985,716
Total Costs	**$20,380,281**	**$13,706,185**	**$14,638,649**	**$48,725,115**
Total Annualized Costs	**$1,333,289**	**$896,666**	**$957,669**	**$3,187,624**

2.3 Regulatory Flexibility Analysis

This section addresses the potential impact of the natural rubber labeling rule on small medical device manufacturers. ERG estimates the affected number of small businesses and then calculates regulatory impacts as a share of industry revenues.

2.3.1 Estimated Number of Affected Firms

The Regulatory Flexibility Act (RFA) requires agencies to determine whether a proposed rule may have a significant effect on a substantial number of small entities. As noted, SBA defines a small business in the medical device manufacturing SICs as an entity employing fewer than 500 employees.

SBA's database, which is based on U.S. Bureau of the Census data, provides a complete size distribution of establishments and businesses in SICs 384 and 385 (See Table 2-3). The SBA data shows 4,185 small businesses in SICs 384 and 385, encompassing all types of medical device manufacturers, including numerous businesses that are not affected by the natural rubber warning rule.

To restrict the estimate to affected small businesses, ERG combined the SBA data with the registration and listing data provided by FDA (see Section 1, Table 1-1). The FDA data enumerates the number of establishments registered for manufacturing of natural rubber-containing medical devices. ERG first distributed the number of registered establishments (1,382) by size according to the overall industry distribution of establishments by size provided in the SBA data. ERG noted that 83.0 percent of establishments in the SBA data are small. Using this estimate, ERG derived an estimate of 1,147 affected small establishments. Next, ERG adjusted the small establishment figure by the ratio of establishments to businesses for small establishments, as found in the SBA data (1.03 establishments per small business). In this fashion, ERG calculated the number of affected small businesses at 1,111.

Table 2-3

Distribution of Medical Device Manufacturing Firms (SIC 384 & 385) by Employment Size

SIC and Industry		Employment Size: Small 0-499 Employees	Medium 500-2499 Employees	Large 2500+ Employees	Industry Total
SIC 3841	Firms	1,150	92	38	1,280
Surgical and Medical Instruments	Establishments	1,166	201	119	1,486
and Apparatus	Employment	32,960	71,151	48,873	152,984
	Avg. Employment Per Firm	29	773	1,286	120
	Receipts ($000)	$4,540,616	$11,000,701	$7,410,287	$22,951,604
	Receipts Per Firm ($000)	$3,948	$119,573	$195,008	$17,931
SIC 3842	Firms	1,497	78	39	1,614
Orthopedic, Prosthetic, and	Establishments	1,583	185	102	1,870
Surgical Appliances and Supplies	Employment	42,559	54,080	34,436	131,075
	Avg. Employment Per Firm	28	693	883	81
	Receipts ($000)	$5,489,162	$9,785,433	$6,789,356	$22,063,951
	Receipts Per Firm ($000)	$3,667	$125,454	$174,086	$13,670
SIC 3843	Firms	633	14	6	653
Dental Equipment and Supplies	Establishments	648	31	15	694
	Employment	9,950	6,077	2,683	18,710
	Avg. Employment Per Firm	16	434	447	29
	Receipts ($000)	$1,126,612	$898,459	$424,483	$2,449,554
	Receipts Per Firm ($000)	$1,780	$64,176	$70,747	$3,751
SIC 3844	Firms	89	22	10	121
X-Ray Apparatus and Tubes and	Establishments	90	39	23	152
Related Irradiation Apparatus	Employment	2,270	11,702	7,344	21,316
	Avg. Employment Per Firm	26	532	734	176
	Receipts ($000)	$505,496	$2,990,676	$1,967,144	$5,463,316
	Receipts Per Firm ($000)	$5,680	$135,940	$196,714	$45,151
SIC 3845	Firms	308	50	22	380
Electromedical and	Establishments	312	66	31	409
Electrotherapeutic Apparatus	Employment	12,339	28,634	12,960	53,933
	Avg. Employment Per Firm	40	573	589	142
	Receipts ($000)	$2,196,916	$6,044,250	$2,607,372	$10,848,538
	Receipts Per Firm ($000)	$7,133	$120,885	$118,517	$28,549
SIC 3851	Firms	508	26	7	541
Ophthalmic Goods	Establishments	521	56	16	593
	Employment	8,619	18,674	10,235	37,528
	Avg. Employment Per Firm	17	718	1,462	69
	Receipts ($000)	$670,169	$1,969,449	$1,126,372	$3,765,990
	Receipts Per Firm ($000)	$1,319	$75,748	$160,910	$6,961
Total, All SICs	Firms	4,185	282	122	4,589
	Establishments	4,320	578	306	5,204
	Employment	108,697	190,318	116,531	415,546
	Avg. Employment Per Firm	26	675	955	91
	Receipts ($000)	$14,528,971	$32,688,968	$20,325,014	$67,542,953
	Receipts Per Firm ($000)	$3,472	$115,918	$166,598	$14,718
	Establishment:Firm Ratio	1.0323	2.0496	2.5082	1.1340
	Establishments as a Percentage of Industry Total	83.0%	11.1%	5.9%	100.0%

Source: SBA, 1998.

2.3.2 Compliance Costs as a Share of Small Medical Device Manufacturer Revenues

In order to measure the impact of the final rule on small businesses, ERG calculated the ratio of industry compliance costs to industry revenues. Based on the SBA database, the average revenues per firm ranges from $3.5 million to $166.6 million for small to large companies (see Table 2-4). The annualized compliance costs per firm are estimated at $1,200, $11,973, and $29,559 for small, medium, and large firms, respectively. Consequently, the annualized compliance costs per firm represent 0.04 percent of revenues for small medical device businesses.

2.3.3 Recordkeeping and Reporting Burden

Manufacturers are required to place a warning statement on the labeling of affected medical devices. Revising labeling is a standard procedure in medical device manufacturing that companies routinely follow. No new reporting and recordkeeping activities are required. Therefore, no additional professional skills are required.

2.3.4 Impact of Changes in Regulatory Implementation Lead Time on Costs of Compliance

The computed total cost of compliance is based on the 12-month implementation lead time and the other elements described in the published natural rubber warning regulation by the FDA. FDA also considered alternatives to the regulation, as follows:

- The same labeling requirements with an implementation period of 6 months.
- The same labeling requirements with an implementation period of 24 months.
- The implementation lead time of 12 months, but no allowance for use of stickers as a temporary labeling measure, due to concerns that stickers might become lost or dislodged during medical device distribution.

Table 2-4

Compliance Costs as a Share of Medical Device Manufacturer Revenues

	Small Companies	Medium Companies	Large Companies	All Companies
Number of Affected Establishments [a]	1,147	153	81	1,382
Number of Affected Firms [b]	1,111	75	32	1,219
Revenues per Firm	$3,471,678	$115,918,326	$166,598,475	$14,718,447
Total Annualized Compliance Costs	$1,333,289	$896,666	$957,669	$3,187,624
Annualized Compliance Costs per Firm	$1,200	$11,973	$29,559	$2,616
Annualized Compliance Costs as Percent of Revenue	0.035%	0.010%	0.018%	0.018%

Source: FDA survey, ERG estimates, and Small Business Administration 1998.

Notes:

[a] Based on the number of registered establishments.

[b] The number of affected firms is computed by dividing the number of affected firms in each size category by the establishment:firm ratio in same category

ERG quantified the impacts of the shorter and longer implementation periods, but did not estimate costs for the last alternative, which is discussed at the end of this section.

To consider shorter or longer implementation periods, ERG adjusted its cost methodology to address the impact of implementation times on (1) the magnitude of excess inventory losses incurred by manufacturers, (2) the percentage of models with excess inventory losses, and (3) the forecast of compliance options taken by manufacturers. With a 6-month lead time, ERG doubled its estimates of the average excess inventory loss per model incurred to $1,500 for small businesses, $6,000 for medium-sized businesses, and $15,000 for large businesses. ERG also judged that, with a shorter lead time, it is likely that many more manufacturers would incur excess inventory losses (see Section 1.7.4 for a discussion of the circumstances that create excess inventory losses). Thus, the percentage of medical device models for which excess inventory losses are incurred was increased from 5 to 20 percent for the 6-month implementation period alternative.

For the 24-month implementation period, ERG judged that essentially all manufacturers would avoid excess inventory losses. Extremely few manufacturers carry labeling inventories of more than 2 years. Hence, no excess inventory losses were estimated in this case.

Table 2-5 presents ERG's forecasts of the compliance options manufacturers will choose for the 6-month and 24-month regulatory implementation lead time alternatives. ERG assumed that the use of supplementary labeling would be more common with shorter lead times because more manufacturers would be (1) unable to get new labels prepared in time, and (2) would use stickers to avoid losses of label or product inventories. With a 24-month implementation period, ERG estimated that essentially no manufacturers would need to use supplementary labels.

Tables 2-6 provides a comparison of the total compliance costs under the base case (12-month implementation period) and the two alternative implementation times. With the 6 month-implementation time, annualized compliance costs are estimated to be $4.1 million,

Table 2-5

Forecast of Compliance Categories by Company Size For Regulatory Alternatives

6-Month Regulatory Implementation Period

Category	For Natural Rubber-Containing Devices Company Size: Small	Medium	Large	For Devices in Natural-Rubber Containing Packaging: All Companies
Category 1: Revision of principal labeling				
(a) Modify labeling with no change in labeling format	25%	30%	35%	55%
(b) Modify labeling with a major change in labeling format	10%	10%	10%	5%
Category 2: Addition of supplemental labels	40%	30%	20%	40%
Category 3: Incorporation of labeling revision into changes otherwise being made	10%	15%	20%	0%
Category 4: No necessary revisions	15%	15%	15%	0%
Total	**100%**	**100%**	**100%**	**100%**

24-Month Regulatory Implementation Period

Category	For Natural Rubber-Containing Devices Company Size: Small	Medium	Large	For Devices in Natural-Rubber Containing Packaging: All Companies
Category 1: Revision of principal labeling				
(a) Modify labeling with no change in labeling format	55%	50%	45%	85%
(b) Modify labeling with a major change in labeling format	10%	10%	10%	5%
Category 2: Addition of supplemental labels	0%	0%	0%	0%
Category 3: Incorporation of labeling revision into changes otherwise being made	20%	25%	30%	10%
Category 4: No necessary revisions	15%	15%	15%	0%
Total	**100%**	**100%**	**100%**	**100%**

Table 2-6

Total Costs of Compliance with Regulatory Alternatives

Lead Time	Small Companies	Medium Companies	Large Companies	All Companies
6 Months				
Total Costs	$24,668,459	$17,428,687	$20,229,273	$62,326,420
Total Annualized Costs	$1,613,824	$1,140,194	$1,323,410	$4,077,429
Percent Change in Annualized Costs from 12-Month Lead Time	21.0%	27.2%	38.2%	27.9%
12 Months				
Total Costs	$20,380,281	$13,706,185	$14,638,649	$48,725,115
Total Annualized Costs	$1,333,289	$896,666	$957,669	$3,187,624
Percent Change in Annualized Costs from 12-Month Lead Time	NA	NA	NA	NA
24 Months				
Total Costs	$10,429,015	$8,571,096	$10,061,787	$29,061,898
Total Annualized Costs	$682,272	$560,726	$658,248	$1,901,246
Percent Change in Annualized Costs from 12-Month Lead Time	-48.8%	-37.5%	-31.3%	-40.4%

approximately 28 percent higher than the base case. With the 24-month implementation period, annualized compliance costs are estimated to be $1.9 million, approximately 40 percent lower.

FDA also considered a prohibition on the use of supplementary labels (i.e., stickers) to comply with the rule due to concerns about the effectiveness of this method of labeling. ERG did not quantify the resulting compliance costs due to the difficulty of measuring the potentially very large costs incurred by certain manufacturers. A number of firms use stickers to avoid extensive repackaging of existing product inventory that will not be sold prior to the end of the regulatory implementation period or loss of expensive labeling inventories. Under this alternative, the percentage of companies incurring excess inventory losses and the size of the inventory losses would increase. At least some companies might incur fairly large inventory losses.

ERG forecast for the base case (12-month implementation scenario) that small businesses were three times more likely than large businesses to use stickers. During contacts to medical device manufacturers, ERG observed that small businesses were much more sensitive to potential losses of label inventories and more likely to benefit by organizing a temporary effort to add stickers to products.

In conclusion, the base case of a 12-month implementation period, with sticker labels allowed, alleviates the cost impacts, particularly those on small businesses. The sticker option also allows numerous companies to lessen potentially significant inventory losses and, based on contacts made during this study, allows a few companies to avoid losses that they would consider quite damaging.

Furthermore, the 12-month implementation period allows the large majority of companies sufficient time to exhaust existing label inventories and avoids the much greater cost impacts that would accompany a 6-month implementation period. ERG did not quantify the cost impacts of possible logistic difficulties that some companies, such as those that manufacture large numbers of natural-rubber containing devices, might face attempting to revise all affected labeling within a 6-month timeframe. These companies might need to delay relabeling of other products, hire and train

new labeling staff, incur overtime costs for labeling staff, and incur other exceptional costs. The 24-month implementation period, on the other hand, only eliminates excess inventory losses.

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BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 97N–0418]

Revocation of Lather Brushes Regulation; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of May 12, 1998. The document that revoked regulations pertaining to the treatment, sterilization, handling, storage, marketing, and inspection of lather brushes. The document published with an inadvertent error. This document corrects that error.

DATES: The final rule is effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Policy Development and Coordination Staff (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

In FR Doc. 98–12450 appearing on page 26077 in the **Federal Register** of Tuesday, May 12, 1998, the following correction is made:

On page 26077, in the second column, in the heading, the docket number ''97P–0418'' is corrected to read ''97N–0418''.

Dated: May 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14292 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Parts 16 and 50

[Attorney General Order No. 2156–98]

RIN 1105–AA20

Revision of Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This document amends the Department's regulations under both the Freedom of Information Act (FOIA) and the Privacy Act of 1974. The FOIA and Privacy Act regulations have been streamlined and condensed, in accordance with the principles of the National Performance Review, with more ''user-friendly'' language used wherever possible. These revisions also reflect the principles established by President Clinton and Attorney General Reno in their FOIA Memoranda of October 4, 1993. The Department's new statement of discretionary disclosure policy—which originated in the Attorney General's FOIA Memorandum of October 4, 1993, and is incorporated into § 16.1(a)—supersedes the existing regulation regarding discretionary access to records of historical interest. Additionally, the regulations have been updated to reflect developments in case law and to include updated cost figures used in calculating and charging fees. These revisions also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (Electronic FOIA Amendments).

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janice Galli McLeod ((202) 514–3642).

SUPPLEMENTARY INFORMATION:

Background Information

On August 26, 1997, the Department of Justice published a proposed rule that revised its existing regulations under the FOIA and Privacy Act and added new provisions implementing the Electronic FOIA Amendments. See 62 FR 45184, Aug. 26, 1997. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Department received three responses to its proposed rule. The Department has adopted several of the modifications suggested by the commenters and has made other revisions to its proposed rule for clarity as well.

New provisions implementing the Electronic FOIA Amendments are found at § 16.2(c) (electronic reading rooms), § 16.5(b) (multitrack processing), § 16.5(c) (processing under unusual circumstances), § 16.5(d) (expedited processing), § 16.6(b) (deletion marking), § 16.6(c) (appeal of format determinations), § 16.6(c)(3) (volume estimation), § 16.11(b)(3) (format of disclosure), and § 16.11(b)(8) (electronic searches). Revisions to the Department's fee schedule are found at § 16.11 (c) and (d).

Comments

The Department received three responses from commenters: the first, from several organizations that represent newspapers, news editors, and reporters; the second, from two nonprofit groups that regularly use the FOIA, both as requesters and as counsel for requesters; and the third, from a Federal agency. Each of the three responses contained several comments. Due consideration has been given to each of the comments received.

In several instances, commenters questioned the absence in the proposed rule of verbatim restatements of the language of the Electronic FOIA Amendments, or other statutory provisions of the FOIA. Such restatements of statutory language, however, are not necessary to the regulation. The rule revises the Department's existing regulations only where the amending language of the Electronic FOIA Amendments specifically requires or permits new regulations, where the current regulations conflict with the statutory amendments or existing case law, or where condensing or clarifying the regulations is warranted. The Department has added to its final rule three new clarifying statements—in §§ 16.1 and 16.3, as well as in § 16.40—to remind requesters and users that the Department's regulations should be read in conjunction with the FOIA, the Privacy Act, or both statutes.

Requesters and other users of the regulations now are also referred in § 16.3 to the Department's ''Freedom of Information Act Reference Guide''—a user-friendly guide created under the Electronic FOIA Amendments that provides helpful information designed to familiarize users with available resources and specific procedures for making FOIA requests to the Department. The Department has complied with new subsection (g) of the FOIA by making its ''Freedom of Information Act Reference Guide'' available both in paper form and electronically. See ''FOIA Update,'' Summer 1997, at 2; see also ''Freedom of Information Act Reference Guide,'' at 3 & Attachment C (Aug. 1997); H.R. Rep. No. 104–795, at 30 (1996). In accordance with one commenter's suggestion, § 16.3(a) has been revised to specifically refer requesters to the Department's ''Freedom of Information Act Reference Guide'' for assistance in locating the records of the Department's various components in connection with potential FOIA requests.

In some instances, commenters suggested particular amendments to the proposed rules. Several of the suggested amendments have been accepted and incorporated into the Department's final rule. For example, one commenter noted

that within § 16.6(b), the subsection that partly concerns a component's obligation to indicate both the amount of and the location of information deleted on a partially disclosed record, the term ''wherever practicable'' appeared to modify both the term ''amount'' and the term ''location,'' in a manner that was not consistent with the statutory language. The Department agrees and has modified this subsection to make it clear that the term in question applies only to the location of the deletion and not to the amount of information deleted. The commenter also questioned use of the term ''wherever practicable'' in lieu of the statutory term ''technically feasible'' within § 16.6(b). The Department agrees with the commenter and has replaced the term ''wherever practicable'' with the term ''if technically feasible.''

The Department also agrees with a commenter's suggestion that an agency's determination not to honor a requester's choice of form or format should be regarded as an adverse agency action that can be the subject of an administrative appeal. Accordingly, the Department has modified § 16.6(c) to include such a determination within its listing of adverse determinations subject to administrative appeal.

The Department disagrees with the commenter who interpreted the second sentence of 5 U.S.C.A. 552(a)(3)(B) (West 1996 & Supp. 1997) as requiring agencies to maintain records ''in as many forms as possible,'' and it declines to add the commenter's suggested amendatory language to that effect. There is nothing in the legislative history of this provision to indicate that this amendment was intended to extend beyond the confines of the FOIA in the way in which the commenter suggested. The Department further declines to adopt a commenter's suggestion that it modify the language of § 16.5(c) concerning extensions of time to process requests based on unusual circumstances so as to limit the use of the provision to ''rare instances.'' Rather, the parameters of this regulatory provision are governed by the clear statutory language, which specifies the circumstances under which time limits may be extended. The Department has, however, inserted the phrase ''as defined by the FOIA'' into this provision to alert requesters to the statutory basis of the definition of the term ''unusual circumstances.''

The Department also disagrees with the commenter who questioned the language of § 16.2(c)—specifically, the phrase ''by the Department''—regarding electronic availability. This language is entirely consistent with governmentwide guidance provided by the Department on this point in its ''FOIA Update'' publication. See ''FOIA Update,'' Winter 1997, at 4–5. As the Department advised all Federal agencies in ''FOIA Update,'' in enacting the Electronic FOIA Amendments Congress established a new ''electronic reading room'' obligation for all categories of reading room records, but it did so only ''(f)or records created on or after November 1, 1996.'' 5 U.S.C.A. 552(a)(2) (West 1996 & Supp. 1997). This cut-off date serves as an important practical limitation on an agency's ''electronic reading room'' obligation: By limiting it to newly created reading room records—records that presumably would already be maintained by an agency in an electronic form, with few exceptions—Congress ensured that agencies would more readily be able to satisfy it. Thus, as agencies create the new policy statements, staff manuals, and final opinions in the adjudication of cases that are required to be placed in their reading rooms under subsections (a)(2)(A)–(C), they now automatically make those records available electronically as well. By contrast, many agencies and Department components must deal with records in the new fourth reading room category that were not generated by them, but rather were generated elsewhere and merely were obtained by them for one purpose or another (e.g., documents submitted by regulated entities). While such records may be determined by a component to fall within new subsection (a)(2)(D), they are not ''created'' by the Department and should not be regarded as subject to the electronic availability requirement. Accord *United States Dep't of Justice* v. *Tax Analysts,* 492 U.S. 136, 144 (1989) (recognizing that agencies ''either create or obtain'' records that become subject to FOIA). A component may, of course, choose as a matter of administrative discretion to make such records available electronically in any case in which it determines that to do so would be most cost-effective in serving public access needs under subsection (a)(2)(D). The Department is confident that its implementation of this provision is fully in accord with congressional intent. Cf. H.R. Rep. No. 104–795, at 20–21 (1996) (indicating intent to treat subsection (a)(2) ''in the same manner'' as subsection (a)(1)); ''FOIA Update,'' Winter 1997, at 3 (compelling agencies to follow two rules more favorable to FOIA requesters even though language of statutory amendments did not provide for them explicitly).

Several comments pertained to requests for expedited processing. One commenter raised a concern that requesters may not be sufficiently familiar with Departmental rules to know where to send such requests. By regulation, the Department has defined four categories of requests that will be taken out of turn and given expedited treatment. See 28 CFR 16.5(d)(1). One category of such requests—those that concern a matter of widespread and exceptional media interest that involves possible questions about government integrity—must be directed to the Department's Office of Public Affairs. All other categories of requests for expedited processing are to be sent to the applicable component's FOIA office. The participation of the Department's Office of Public Affairs in this aspect of FOIA processing was initiated by the Attorney General in 1994 in order to have the Department's media specialists deal directly with matters of exceptional concern to the media. The address of the Office of Public Affairs now has been placed within the text of § 16.5(d)(2) in order to better facilitate this process; all other component FOIA addresses are found in the appendix that follows the Department's FOIA and Privacy Act regulations. For requesters familiar with the regulation, submission of expedited-processing requests directly to the office that will process them will further the purpose of the underlying statutory provision. The Department already had in place procedures by which all Department components are required to forward misdirected expedited-processing requests that involve the Department's special media-related standard to the Office of Public Affairs by hand-delivery or fax. At one commenter's suggestion, the Department has now added a statement embodying this existing administrative requirement within § 16.5(d)(2).

Another commenter commended the Department for adopting expedited-processing categories beyond the two categories authorized by Congress; it then asked the Department to create a fifth category for any records subject to ''five or more requests for substantially the same records.'' While Congress did give agencies latitude to expand expedited processing to other categories, it also admonished agencies that being ''unduly generous'' in creating other categories for expedited processing ''would unfairly disadvantage other requesters.'' H.R. Rep. No. 104–795, at 26 (1996). The Department accordingly declines to create a fifth expedited-processing category for records subject to multiple requests.

Other suggested revisions to the proposed rule that have been incorporated into this final rule include the addition of a specific reference to the twenty-day period within which a component ordinarily will be required to make a determination on a request within the section concerning component responses to requests (§ 16.6(b)); a revision of the introductory paragraph pertaining to fee waivers, for clarity (§ 16.11(k)); and minor revisions of § 16.11(c)(3) and (k)(4), for clarity.

In some instances, commenters posed questions about the implementation of the Electronic FOIA Amendments or the proposed revisions. One commenter, for instance, given the broad language within § 16.5(d) concerning the submission of requests for expedited processing, asked: ''Is there a point in time when expedited requests will not be accepted?'' The answer to the question is simply ''no.'' The language of the proposed rule clearly stated that a request for expedited processing may be made at the time of the initial request or ''at any later time.'' The Department believes that questions such as the one raised by this commenter are more appropriately handled in a forum other than publication as part of a final rule.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605()), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Department are nominal. Further, the ''small entities'' that make FOIA requests, as compared with indiidual requesters and other requesters, are relatively few in number.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by that agency.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

28 CFR Part 16

Administrative practice and procedure, Freedom of information, Privacy.

28 CFR Part 50

Administrative practice and procedure.

For the reasons stated in the preamble, the Department of Justice amends 28 CFR Chapter I, parts 16 and 50, as follows:

PART 16—DISCLOSURE OR PRODUCTION OF RECORDS OR INFORMATION

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

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

2. Subpart A of part 16 is revised to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

16.1 General provisions.
16.2 Public reading rooms.
16.3 Requirements for making requests.
16.4 Responsibility for responding to requests.
16.5 Timing of responses to requests.
16.6 Responses to requests.
16.7 Classified information.
16.8 Business information.
16.9 Appeals.
16.10 Preservation of records.
16.11 Fees.
16.12 Other rights and services.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 16.1 General provisions.

(a) This subpart contains the rules that the Department of Justice follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about access to records maintained by the Department. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, which are processed under subpart D of this part, are processed under this subpart also. Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this subpart. As a matter of policy, the Department makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As used in this subpart, *component* means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

§ 16.2 Public reading rooms.

(a) The Department maintains public reading rooms that contain the records that the FOIA requires to be made regularly available for public inspection and copying. Each Department component is responsible for determining which of the records it generates are required to be made available in this way and for making those records available either in its own reading room or in the Department's central reading room. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records.

(b) The Department maintains public reading rooms or areas at the locations listed below:

(1) Bureau of Prisons—on the Seventh Floor, 500 First Street, NW., Washington, DC;

(2) Civil Rights Division—in Room 930, 320 First Street, NW., Washington, DC;

(3) Community Relations Service—in Suite 2000, 600 E Street, NW., Washington, DC;

(4) Drug Enforcement Administration—in Room W–7216, 700 Army Navy Drive, Arlington, Virginia;

(5) Executive Office for Immigration Review (Board of Immigration Appeals)—in Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia;

(6) Federal Bureau of Investigation—at the J. Edgar Hoover Building, 935 Pennsylvania Avenue, NW., Washington, DC;

(7) Foreign Claims Settlement Commission—in Room 6002, 600 E Street, NW., Washington, DC;

(8) Immigration and Naturalization Service—425 I Street, NW., Washington, DC;

(9) Office of Justice Programs—In Room 5430, 810 Seventh Street, NW., Washington, DC;

(10) Pardon Attorney—on the Fourth Floor, 500 First Street, NW., Washington, DC;

(11) United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys and the United States Marshals, which are listed in most telephone books; and

(12) All other components of the Department of Justice—in Room 6505 at the Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC.

(c) Components shall also make reading room records created by the Department on or after November 1, 1996, available electronically at the Department's World Wide Web site (which can be found at http://www.usdoj.gov), through use of the Department's ''Freedom of Information Act Home Page.'' This includes each component's index of its reading room records, which will indicate which records are available electronically.

§ 16.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of the Department of Justice by writing directly to the Department component that maintains those records. You may find the Department's ''Freedom of Information Act Reference Guide''—which is available electronically at the Department's World Wide Web site, and is available in paper form as well—helpful in making your request. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see § 16.41(d) for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request should be sent to the component's FOIA office at the address listed in appendix I to part 16. In most cases, your FOIA request should be sent to a component's central FOIA office. For records held by a field office of the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), however, you must write directly to that FBI or INS field office address, which can be found in most telephone books or by calling the component's central FOIA office (The functions of each component are summarized in part 0 of this title and in the description of the Department and its components in the ''United States Government Manual,'' which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at http://www.access.gpo.gov/su__docs).) If you cannot determine where within the Department to send your request, you may send it to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001. That office will forward your request to the component(s) it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the proper component's FOIA office. For the quickest possible handling, you should mark both your request letter and the envelope ''Freedom of Information Act Request.''

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if you want records about a court case, you should provide the title of the case, the court in which the case was filed, and the nature of the case. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Department will be able to locate those records in response to your request. If a component determines that your request does not reasonably describe records, it shall tell you either what additional information is needed or why your request is otherwise insufficient. The component also shall give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

(c) *Agreement to pay fees.* If you make a FOIA request, it shall be considered an agreement by you to pay all applicable fees charged under § 16.11, up to $25.00, unless you seek a waiver of fees. The component responsible for responding to your request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

§ 16.4 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for a record and has possession of that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for a record of that component.

(c) *Consultations and referrals.* When a component receives a request for a record in its possession, it shall determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether to disclose it and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Law enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified, or may be appropriate for classification, by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date the FOIA request initially was received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the need for consultations or referrals for particular types of records.

§ 16.5 Timing of responses to requests.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If a component does so, it shall advise requesters in its slower track(s) of the limits of its faster track(s).

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the component determines to extend the time limits on that basis, the component shall as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the component shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(2) Where a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests based on the categories in paragraphs (d)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. Requests based on the category in paragraph (d)(1)(iv) of this section must be submitted to the Director of Public Affairs, whose address is: Office of Public Affairs, U.S. Department of Justice, Room 1128, 950 Pennsylvania Avenue, NW., Washington DC 20530–0001. A component that receives a request that must be handled by the Office of Public Affairs shall forward it immediately to that office by hand-delivery or fax.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 16.6 Responses to requests.

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 16.3(c) and provide an assigned request number for further reference.

(b) *Grants of requests.* Ordinarily, a component shall have twenty business days from when a request is received to determine whether to grant or deny the request. Once a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 16.11 and shall disclose records to the requester promptly on payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter shall be signed by the head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 16.9(a) and a description of the requirements of § 16.9(a).

§ 16.7 Classified information.

In processing a request for information that is classified under Executive Order 12958 (3 CFR, 1996 Comp., p. 333) or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld on the basis of Exemption 1 of the FOIA. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action to ensure compliance with part 17 of this title.

§ 16.8 Business information.

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom the Department obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The component has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* A component will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the component until after its disclosure decision has been made shall not be considered by the component. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the component shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the component shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester(s).

§ 16.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with a component's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530–0001. You must make your appeal in writing and it must be received by the Office of Information and Privacy within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark your appeal letter and the envelope ''Freedom of Information Act Appeal.'' Unless the Attorney General directs otherwise, a Director of the Office of Information and Privacy will act on behalf of the Attorney General on all appeals under this section, except that:

(1) In the case of an adverse determination by the Deputy Attorney General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;

(2) An adverse determination by the Attorney General will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

§ 16.10 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 16.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. A component ordinarily shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. Components shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) *Representative of the news media,* or news media requester, means any

person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, components shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees.* In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. Components may charge for time spent searching even if they do not locate any responsive record or if they withhold the record(s) located as entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be $4.00. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records within the scope of a request requires the use of professional personnel—the fee will be $7.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be $10.25 for each quarter hour of time spent by those personnel.

(iii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be ten cents per page. For copies produced by computer, such as tapes or printouts, components will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review—in other words, the review done when a component determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is $14.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $14.00.

(e) *Notice of anticipated fees in excess of $25.00.* When a component determines or estimates that the fees to be charged under this section will amount to more than $25.00, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than $25.00, the request shall not be considered received and further work shall not be done on it until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Departmental personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when a component chooses as a matter of administrative discretion to provide a special service—such as certifying that

records are true copies or sending them by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* Components may charge interest on any unpaid bill staring on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, components will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to made an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owned for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where a component determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 days of the date of billing, a component may require the requester to pay to the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which a component requires advance payment or payment due under paragraph (i)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government.''* The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding.''* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(3) To determine whether the second fee waiver requirement is met, components will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthred by the requested disclosure.* Components shall consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the

public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request. Components will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decisionmaking process, however, in deciding to grant waivers or reductions of fees.

§ 16.12 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

3. Subpart D of part 16 is revised to read as follows:

Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Sec.

16.40 General provisions.
16.41 Requests for access to records.
16.42 Responsibility for responding to requests for access to records.
16.43 Responses to requests for access to records.
16.44 Classified information.
16.45 Appeals from denials of requests for access to records.
16.46 Requests for amendment or correction of records.
16.47 Requests for an accounting or record disclosures.
16.48 Preservation of records.
16.49 Fees.
16.50 Notice of court-ordered and emergency disclosures.
16.51 Security of systems or records.
16.52 Contracts for the operation of record systems.
16.53 Use and collection of social security numbers.
16.54 Employee standards of conduct.
16.55 Other rights and services.

Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

§ 16.40 General provisions.

(a) *Purpose and scope.* This subpart contains the rules that the Department of Justice follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records themselves, request amendment or correction of those records, and request an accounting of disclosures of those by the Department. In addition, the Department processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, following the rules contained in subpart A of this part, which gives requests the benefit of both statutes.

(b) *Definitions.* As used in this subpart:

(1) *Component.* means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

(2) *Request for access.* to a record means a request made under Privacy Act subsection (d)(1).

(3) *Request for amendment or correction* of a record means a request made under Privacy Act subsection (d)(2).

(4) *Request for an accounting* means a request made under Privacy Act subsection (c)(3).

(5) *Requester* means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or a United States Attorney, or either's designee, is authorized to make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

§ 16.41 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a Department of Justice record about yourself by appearing in person or by writing directly to the Department component that maintains the record. Your request should be sent or delivered to the component's Privacy Act office at the address listed in appendix I to this part. In most cases, a component's central Privacy Act office is the place to send a Privacy Act request. For records held by a field office of the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), however, you must write directly to that FBI or INS field office address, which can be found in most telephone books or by calling the component's central Privacy Act office. (The functions of each component are summarized in Part 0 of this title and in the description of the Department and its components in the ''United States Government Manual,'' which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at http://www.access.gpo.gov/su__docs). If you cannot determine where within the Department to send your request, you may send it to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001, and that office will forward it to the component(s) it believes most likely to have the records that you seek. For the quickest possible handling, you should make both your request letter and the envelope ''Privacy Act Request.''

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable Department personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The Department publishes notices in the **Federal Register** that describe its components' systems of records. A description of the Department's systems of records also may be found as part of the ''Privacy Act Compilation'' published by the National Archives and Records Administration's Office of the Federal Register. This compilation is available in most large reference and university libraries. This compilation also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at http://www.access.gpo.gov/su__docs).

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it shall be considered an agreement by you to pay all applicable fees charged under § 16.49, up to $25.00. The component responsible for responding to your request ordinarily shall confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identify.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the FOIA/PA Mail Referral Unit, Justice Management Division. U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, as required in paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

§ 16.42 Responsibility for responding to requests for access to records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for access to a record, and has possession of that record, is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily shall include only those records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny and request for access to a record of that component.

(c) *Consultation and referrals.* When a component receives a request for access to a record in its possession, it shall determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether the record is exempt from access and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether it is exempt from access, or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Law enforcement information.* Whenever a request is made for access to a record containing information that relates to an investigation of a possible violation of law and that was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or shall consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request regrading that information to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the Privacy Act access request was initially received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the need for consultations or referrals for particular types of records.

§ 16.43 Responses to requests for access to records.

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 16.41(c) and provide an assigned request number for further reference.

(b) *Grants of requests for access.* Once a component makes a determination to grant a request for access in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 16.49 and shall disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the component may disclose records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the

head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and

(3) A statement that the denial may be appealed under § 16.45(a) and a description of the requirements of § 16.45(a).

§ 16.44 Classified information.

In processing a request for access to a record containing information that is classified under Executive Order 12958 or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld from a requester on the basis of Exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action to ensure compliance with part 17 of this title.

§ 16.45 Appeals from denials of requests for access to records.

(a) *Appeals.* If you are dissatisfied with a component's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530–0001. You must make your appeal in writing and it must be received by the Office of Information and Privacy within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope ''Privacy Act Appeal.'' Unless the Attorney General directs otherwise, a Director of the Office of Information and Privacy will act on behalf of the Attorney General on all appeals under this section, except that:

(1) In the case of an adverse determination by the Deputy Attorney General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;

(2) An adverse determination by the Attorney General will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

§ 16.46 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, you may make a request for amendment or correction of a Department of Justice record about yourself by writing directly to the Department component that maintains the record, following the procedures in § 16.41. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is in more than one system of records, you should state that and address your request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving your request for amendment or correction of records, a component shall send you a written acknowledgment of its receipt of your request, and it shall promptly notify you whether your request is granted or denied. If the component grants your request in whole or in part, it shall describe the amendment or correction made and shall advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies your request in whole or in part, it shall send you a letter signed by the head of the component, or the component head's designee, that shall state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction to the Office of Information and Privacy in the same manner as a denial of a request for access to records (see § 16.45) and the same procedures shall be followed. If your appeal is denied, you shall be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the Department's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement must be sent to the component involved, which shall place it in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the component shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the **Federal Register.**

§ 16.47 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in § 16.41.

(b) *Where accountings are not required.* Components are not required to provide accountings to you where they relate to:

(1) Disclosures for which accountings are not required to be kept—in other words, disclosures that are made to employees within the agency and disclosures that are made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the Office of Information and Privacy in the same manner as a denial of a request for access to records (see § 16.45) and the same procedures will be followed.

§ 16.48 Preservation of records.

Each component will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 16.49 Fees.

Components shall charge fees for duplication of records under the Privacy Act in the same way in which they charge duplication fees under § 16.11. No search or review fee may be charged for any record unless the record has been exempted from access under Exemptions (j)(2) or (k)(2) of the Privacy Act.

§ 16.50 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the component shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after the component's's receipt of the order—except that in a case in which the order is not a matter of public record, the notice shall be given only after the order becomes public. This notice shall be mailed to the individual's last known address and shall contain a copy of the order and description of the information disclosed. Notice shall not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the component shall notify that individual of the disclosure. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

§ 16.51 Security of systems of records.

(a) Each component shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls shall correspond to the sensitivity of the records that the controls protect. At a minimum, each component's administrative and physical controls shall ensure that.

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) Each component shall have procedures that restrict access to records to only those individuals within the Department who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

§ 16.52 Contracts for the operation of record systems.

Any approved contract for the operation of a record system will contain the standard contract requirements issued by the General Services Administration to ensure compliance with the requirements of the Privacy Act for that record system. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements.

§ 16.53 Use and collection of social security numbers.

Each component shall ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

§ 16.54 Employee standards of conduct.

Each component will inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of the Department of Justice shall:

(a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of the Department;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individuals from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Department intends to use the information;

(3) The routine uses the Department may make of the information; and

(4) The effects on the individuals, if any, of not providing the information;

(d) Ensure that the component maintains no system of records without public notice and that it notifies appropriate Department officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the Department in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Notify the appropriate Department official of any record that contains information that the Privacy Act does not permit the Department to maintain.

§ 16.55 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

4. Appendix I of part 16 is revised to read as follows:

Appendix I to Part 16—Components of the Department of Justice

Unless a separate address is listed below, the address for each component is: (component name), U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001. For all components marked by an asterisk, FOIA and Privacy Act requests should be sent to the Office of Information and Privacy, U.S. Department of Justice, Flag Bldg., Suite 570, Washington, DC 2053–0001. The components are:

A

Office of the Attorney General *
Office of the Deputy Attorney General *
Office of the Associate Attorney General *
Office of the Solicitor General

B

Office of Information and Privacy *
Office of the Inspector General
Office of the Intelligence Policy and Review
Office of Intergovernmental Affairs *
Office of Investigative Agency Policies
Office of Legal Counsel
Office of Legislative Affairs *
Office of Policy Development *
Office of Professional Responsibility
Office of Public Affairs *

C

Antitrust Division, U.S. Department of Justice, LPB Bldg., Suite 200, Washington, DC 20530–0001
Civil Division, U.S. Department of Justice, 901E Bldg., Room 808, Washington, DC 20530–0001
Civil Rights Division, U.S. Department of Justice, NYAV Bldg., Room 8000B, Washington, DC 20530–0001
Criminal Division, U.S. Department of Justice, WCTR Bldg., Suite 1075, Washington, DC 20503–0001
Environment and Natural Resources Division, U.S. Department of Justice, Post Office Box 4390, Washington, DC 20044–4390
Justice Management Division
Tax Division, U.S. Department of Justice, JCB Bldg., Room 6823, Washington, DC 20503–0001
Bureau of Prisons, U.S. Department of Justice, HOLC Bldg., Room 738, 320 First Street, NW., Washington, DC 20534–0001
Community Relations Service, U.S. Department of Justice, BICN Bldg., Suite 2000, Washington, DC 20530–0001
Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537–0001
Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041–0001
Executive Office for United States Attorneys, U.S. Department of Justice, BICN Bldg., Room 7100, Washington, DC 20530–0001
Executive Office for United States Trustees, U.S. Department of Justice, 901E Bldg., Room 780, Washington, DC 20530–0001
Federal Bureau of Investigation, U.S. Department of Justice, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001 (for field offices, consult your telephone book)
Foreign Claims Settlement Commission, U.S. Department of Justice, BICN Bldg., Room 6002, 600 E Street, NW., Washington, DC 20579–0001
Immigration and Naturalization Service, U.S. Department of Justice, CAB Bldg., 425 Eye Street, NW., Washington, DC 20536–0001 (for field offices, consult your telephone book)
INTERPOL-U.S. National Central Bureau, U.S. Department of Justice, Washington, DC 20530–0001
National Drug Intelligence Center, U.S. Department of Justice, Fifth Floor, 319 Washington Street, Johnstown, PA 15901–1622
Office of Community Oriented Policing Services, U.S. Department of Justice, VT1 Bldg., Twelfth Floor, Washington, DC 20530–0001
Office of Justice Programs, U.S. Department of Justice, Room 5337, 810 Seventh Street, NW., Washington, DC 20531–0001
Pardon Attorney, U.S. Department of Justice, FRST Bldg., Fourth Floor, Washington, DC 20530–0001
United States Marshals Service, U.S. Department of Justice, Lincoln Place, Room 1250, CSQ3, 600 Army Navy Drive, Arlington, VA 22202–4210

PART 50—STATEMENTS OF POLICY

5. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1921 et seq., 1973c.

§ 50.8 [Removed and Reserved]

6. Section 50.8 of part 50 is removed and reserved.

Dated: May 22, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–14341 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–BE–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC37

Blowout Preventer (BOP) Testing Requirements for Drilling and Completion Operations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the testing requirements for BOP systems used in drilling and completion operations on the Outer Continental Shelf (OCS). The rule allows a lessee up to 14 days between BOP pressure tests. MMS based this rule on a study of BOP performance which concluded that no statistical difference exists in failure rates for BOP's tested between 0- and 7-day intervals and between 8- and 14-day intervals. MMS estimates that the 14-day testing requirement could save industry $35 to $46 million a year without compromising safety.

EFFECTIVE DATE: The rule is effective on June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Hauser, Engineering and Research Branch, at (703) 787–1613.

SUPPLEMENTARY INFORMATION: MMS proposed revising the regulations for BOP testing in a notice of proposed rulemaking published in the **Federal Register** (62 FR 37819) on July 15, 1997. We received five sets of comments during the 60-day comment period, which closed on September 15, 1997. This final rule amends the regulations found at 30 CFR 250.407 and 250.516 and becomes effective on June 30, 1998. On that date, MMS will rescind Notice to Lessees and Operators (NTL) 97–1N because the new rule will be in effect. MMS issued NTL 97–1N on January 31, 1997, to inform lessees that they could begin testing BOP systems on intervals up to 14 days.

Comments on the Rule

The five commenters consisted of four large oil companies and a drilling contractor. All five commenters supported the proposed revision to allow lessees up to 14 days between BOP pressures tests. In addition, they commented on the following parts of the proposed rule: testing frequency for workovers; testing of blind-shear rams; test duration; and use of maximum anticipated surface pressure (MASP) for determining BOP test pressures. Those comments and MMS'' responses are discussed below.

BOP Testing Frequency During Workovers

Comment—One company stated that many workovers include completion or re-completion operations and asked if the amended regulations apply to the completion phase of a workover.

Response—The revised BOP testing requirements do not apply to the completion phase of workover operations. According to the definition in § 250.601, workover operations mean the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of the well. After the initial completion, you must test your BOP equipment according to the requirements of subpart F, Oil and Gas Well-Workover Operations.

Comment—Another commenter asked MMS to consider similar changes in testing frequency for workover operations after gathering necessary data.

Response—MMS will consider similar changes to the regulations after the completion of an appropriate study.

Testing of the Blind or Blind-Shear Ram

Comment—One commenter recommended that the requirement to test the blind or blind-shear ram at least once every 30 days (§ 250.407(d)(4)) should include an exclusion if the ram was tested during a routine test.

Response—The intent of this requirement is to ensure that the blind or blind-shear ram is tested at least once every 30 days. We revised the second sentence in this paragraph to now read as follows: ''Additionally, the interval between any blind or blind-shear ram tests may not exceed 30 days.'' The 30-day interval begins with any test.

Testing of a Casing Safety Valve

Comment—One commenter asked MMS to define what was meant by a ''casing safety valve.'' The commenter interpreted ''casing safety valve'' as a valve installed on a casing swage to facilitate circulation while running casing.

Response—We removed the term ''casing safety valve'' and have revised the wording of the final rule to be closer to the current rule. The new wording is ''You must actuate safety valves assembled with proper casing connections prior to running casing.''

Weekly Crew Drills

Comment—One company commented that the new regulations required weekly drills to familiarize personnel engaged in completion operations but there was not a similar requirement for drilling personnel.

Response—MMS continues to require well-controls drills for each drilling crew. The requirements for well-control drills during drilling are found in § 250.408. That section requires the lessee to conduct a well-control drill for each drilling crew.

Test Duration

Comment—One company thought that MMS should require a 5-minute test for large blowout preventers because of the larger fluid volumes needed for testing and leak detection.

Response—MMS requires a 5-minute test for subsea BOP equipment because of the larger volume of fluid in the system. MMS believes that a 3-minute test is appropriate for surface blowout preventer equipment provided the lessee measures the test pressures on the outermost half of a 4-hour chart, on a 1-hour chart, or on a digital recorder.

Use of MASP in Determining Test Pressures

Comment—Three companies commented on the use of MASP for determining test pressures for BOP equipment. One recommended using MASP because it was more consistent with current industry practices and would reduce undue stress, wear, and tear on BOP components. The company recommended using a conservative method of determining MASP. Another company recommended that MMS not use MASP for determining the required BOP test pressure due to the variety of methods used by operators to calculate MASP. The third company did not feel that changing the test pressures to MASP will improve the reliability of BOP equipment if the common definition of MASP is used. However that company said that testing to the rated working pressure can be excessive and that test pressures should be related to the design of the well.

Response—MMS believes that these comments show industry's interest in using MASP in determining BOP test pressures. They also show that MMS and industry must reach a common methodology for determining MASP. Therefore, MMS has decided not to require the use of MASP for establishing BOP test pressures in this rule. The rule continues to require the lessee to test BOP components at their rated working pressures (70 percent for an annular preventer) or as otherwise approved by the District Supervisor.

As discussed in the preamble of the proposed rule, District Supervisors base the approval of alternate test pressures on a comparison of the anticipated surface pressure calculations submitted with the application for permit to drill (APD) to MASP calculations made by MMS drilling engineers. If the two calculations compare favorably, the District Supervisor approves the requested test pressures. If the calculations for anticipated surface pressure are less than those calculated by MMS, the District Supervisor advises the lessee of any necessary revisions to the APD.

We are currently rewriting the regulations for Subpart D, Oil and Gas Drilling Operations, so we will continue to examine the use of MASP in determining BOP test pressures. We plan to publish the Notice of Proposed Rulemaking for subpart D by the end of the summer.

Testing at Casing and Liner Points

MMS acknowledged in the preamble to the proposed rule that there was at least one situation where it may not be necessary to test the BOP system. MMS has added two sentences to § 250.407(a)(3) that explain when a lessee will be allowed to omit a test of the BOP system at some casing and liner points. This addition is intended to clearly describe in the regulatory text the circumstance when MMS will allow a lessee to not test the BOP system. That circumstance occurs when a lessee doesn't remove the BOP stack to run

casing or a liner, and the required BOP-test pressures for the next section of the hole are not greater than the test pressures for the previous BOP test. The lessee must clearly indicate in its APD which casing strings and liners meet these criteria.

Recently, MMS published a final rule redesignating 30 CFR part 250. The new numbering is used here as follows: § 250.406 replaces § 250.56; § 250.407 replaces § 250.57; § 250.408 replaces § 250.58; § 250.516 replaces § 250.86; and § 250.601 replaces § 250.91.

Procedural Matters

Executive Order (E.O.) 12866

MMS estimates that this final rule will save the oil and gas industry $34.5 to $46 million per year. These savings result from having to conduct fewer BOP tests and increased drilling efficiency. Direct economic effects are reduced drilling costs for each well drilled on the OCS. The rule does not add any new costs to industry, and it will not reduce the level of safety to personnel or the environment. Since the rule will have an annual effect on the economy of less than $100 million, the rule is not a significant regulatory action.

The rule will not affect the level of drilling activity on the OCS. It will reduce the number of BOP tests conducted, which should result in reduced drilling time for each well. Once the lessee completes a well, the rig will move on to the next well. This will not have any adverse effects on employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in other markets because the economic effects are minor. The rule will have no effect on competition. Therefore, in accordance with E. O. 12866, a review by the Office of Management and Budget (OMB) is not necessary.

Regulatory Flexibility Act

This final rule will not have any significant effects on a substantial number of small entities. This rule affects only two groups that operate on the OCS: (1) lessees that contract drilling operations and (2) drilling contractors.

A lessee that qualifies as a small entity could see a minor, positive economic benefit due to the cost savings from conducting fewer BOP tests. However, any savings would probably be offset by increased costs to contract a drilling rig. Day rates for offshore drilling rigs are increasing due to high rig utilization.

In general, entities that engage in offshore activities are not small due to technical and financial resources and experience needed to safely conduct these operations. Small entities are more likely to operate onshore or in State waters—areas not covered by this rule. When small entities do work in the OCS, they are likely to be service contractors and not owner/operators of OCS platforms or drilling rigs.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Paperwork Reduction Act (PRA) of 1995

As part of the Notice of Proposed Rulemaking process, OMB approved the proposed information collection requirements in 30 CFR Part 250, Subpart D, Oil and Gas Drilling Operations (OMB Control Number 1010–0053) and Subpart E, Oil and Gas Well-Completion Operations (OMB Control Number 1010–0067), as required by the PRA of 1995 (44 U.S.C. 3501 *et seq.*). MMS did not receive any comments on the information collection aspects in the notice of proposed rulemaking. The final rule did not change any of the information collection requirements. PRA 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.

The collections of information in these subparts consist of reporting and recordkeeping requirements on the conditions of a drilling site and well-completion operations in the OCS. MMS uses the information to determine if lessees are properly providing for safe operations and protection of human life or health and the environment. MMS estimated the total annual burden for subpart D to be 108,581 hours. This reflects a decrease of 12,499 recordkeeping hours as a result of the rule. The estimated total annual burden for subpart E is 4,841 hours. MMS estimates that the rule reduced the annual burden for subpart E by 2,563 recordkeeping hours.

Takings Implication Assessment

The Department of the Interior (DOI) certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Governmental Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

E.O. 12988

DOI has certified to OMB that this rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: May 15, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: U.S.C. 1334.

2. In § 250.406, the fourth sentence in paragraph (d)(10)(i) is revised to read as follows:

§ 250.406 Blowout preventer systems and system components.

* * * * *

(d) * * *

(10) * * *

(i) * * * All required manual and remotely controlled valves of a kelly cock or comparable type in a top-drive system must be essentially full-opening and tested according to the test pressure and test frequency as stated in § 250.407 of this part. * * *

3. Section 250.407 is revised to read as follows:

§ 250.407 Blowout preventer (BOP) system tests, inspections, and maintenance.

(a) *BOP pressure testing timeframes.* You must pressure test your BOP system:

(1) When installed;

(2) Before 14 days have elapsed since your last BOP pressure test. You must begin to test your BOP system before 12 a.m. (midnight) on the 14th day following the conclusion of the previous test. However, the District Supervisor may require testing every 7 days if conditions or BOP performance warrant; and

(3) Before drilling out each string of casing or a liner. The District Supervisor may allow you to omit this test if you did not remove the BOP stack to run the casing string or liner and the required BOP-test pressures for the next section of the hole are not greater than the test pressures for the previous BOP test. You must indicate in your APD which casing strings and liners meet these criteria.

(b) *BOP test pressures.* When you test the BOP system, you must conduct a low pressure and a high pressure test for each BOP component. Each individual pressure test must hold pressure long enough to demonstrate that the tested component(s) holds the required pressure. Required test pressures are as follows:

(1) All low pressure tests must be between 200 and 300 psi. Any initial pressure above 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero and reinitiate the test. You must conduct the low pressure test before the high pressure test.

(2) For ram-type BOP's, choke manifold, and other BOP equipment, the high pressure test must equal the rated working pressure of the equipment or the pressure otherwise approved by the District Supervisor; and

(3) For annular-type BOP's, the high pressure test must equal 70 percent of the rated working pressure of the equipment or the pressure otherwise approved by the District Supervisor.

(c) *Duration of pressure test.* Each test must hold the required pressure for 5 minutes.

(1) For surface BOP systems and surface equipment of a subsea BOP system, a 3-minute test duration is acceptable if you record your test pressures on the outermost half of a 4-hour chart, on a 1-hour chart, or on a digital recorder.

(2) If the equipment does not hold the required pressure during a test, you must remedy the problem and retest the affected component(s).

(d) *Additional BOP testing requirements.* You must:

(1) Use water to test a surface BOP system;

(2) Stump test a subsurface BOP system before installation. You must use water to stump test a subsea BOP system. You may use drilling fluids to conduct subsequent tests of a subsea BOP system;

(3) Alternate tests between control stations and pods. If a control station or pod is not functional, you must suspend further drilling operations until that station or pod is operable;

(4) Pressure test the blind or blind-shear ram during a stump test and at all casing points. Additionally, the interval between any blind or blind-shear ram tests may not exceed 30 days;

(5) Function test annulars and rams every 7 days between pressure tests;

(6) Pressure-test variable bore-pipe rams against all sizes of pipe in use, excluding drill collars and bottom-hole tools;

(7) Test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly;

(8) Actuate safety valves assembled with proper casing connections prior to running casing, and

(9) If you install casing rams, you must test the ram bonnet before running casing.

(e) *Postponing BOP tests.* You may postpone a BOP test if you have well-control problems such as lost circulation, formation fluid influx, or stuck drill pipe. If this occurs, you must conduct the required BOP test on the first trip out of the hole. You must record the reason for postponing any test in the driller's report.

(f) *Visual inspections.* You must visually inspect your surface and subsea BOP systems and marine riser at least once each day if weather and sea conditions permit. You may use television cameras to inspect subsea equipment. The District Supervisor may approve alternate methods and frequencies to inspect a marine riser. Casing risers on fixed structures and jackup rigs are not subject to the daily underwater inspections.

(g) *BOP maintenance.* You must maintain your BOP system to ensure that the equipment functions properly.

(h) *BOP test records.* You must record the time, date, and results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine riser in the driller's report. In addition, you must:

(1) Record BOP test pressures on pressure charts;

(2) Have your onsite representative certify (sign and date) BOP test charts and reports as correct;

(3) Document the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. You may reference a BOP test plan if it is available at the facility;

(4) Identify the control station or pod used during the test;

(5) Identify any problems or irregularities observed during BOP system testing and record actions taken to remedy the problems or irregularities;

(6) Retain all records, including pressure charts, driller's report, and referenced documents, pertaining to BOP tests, actuations, and inspections at the facility for the duration of drilling; and

(7) After drilling is completed, you must retain all the records listed in paragraph (h)(6) of this section for a period of 2 years at the facility, at the lessee's field office nearest the Outer Continental Shelf (OCS) facility, or at another location conveniently available to the District Supervisor.

(i) *Alternate methods.* The District Supervisor may require, or approve, more frequent testing, as well as different test pressures and inspection methods, or other practices.

4. Section 250.516 is revised to read as follows:

§ 250.516 Blowout preventer system tests, inspections, and maintenance.

(a) *BOP pressure testing timeframes.* You must pressure test your BOP system:

(1) When installed; and

(2) Before 14 days have elapsed since your last BOP pressure test. You must begin to test your BOP system before 12 a.m. (midnight) on the 14th day following the conclusion of the previous test. However, the District Supervisor may require testing every 7 days if conditions or BOP performance warrant.

(b) *BOP test pressures.* When you test the BOP system, you must conduct a low pressure and a high pressure test for each BOP component. Each individual pressure test must hold pressure long enough to demonstrate that the tested component(s) holds the required pressure. The District Supervisor may approve or require other test pressures or practices. Required test pressures are as follows:

(1) All low pressure tests must be between 200 and 300 psi. Any initial pressure above 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero and reinitiate the test. You must conduct the low pressure test before the high pressure test.

(2) For ram-type BOP's, choke manifold, and other BOP equipment, the high pressure test must equal the rated working pressure of the equipment.

(3) For annular-type BOP's, the high pressure test must equal 70 percent of the rated working pressure of the equipment.

(c) *Duration of pressure test.* Each test must hold the required pressure for 5 minutes.

(1) For surface BOP systems and surface equipment of a subsea BOP system, a 3-minute test duration is acceptable if you record your test pressures on the outermost half of a 4-hour chart, on a 1-hour chart, or on a digital recorder.

(2) If the equipment does not hold the required pressure during a test, you must remedy the problem and retest the affected component(s).

(d) *Additional BOP testing requirements.* You must:

(1) Use water to test the surface BOP system;

(2) Stump test a subsurface BOP system before installation. You must use water to stump test a subsea BOP system. You may use drilling or completion fluids to conduct subsequent tests of a subsea BOP system;

(3) Alternate tests between control stations and pods. If a control station or pod is not functional, you must suspend further completion operations until that station or pod is operable;

(4) Pressure test the blind or blind-shear ram at least every 30 days;

(5) Function test annulars and rams every 7 days;

(6) Pressure-test variable bore-pipe rams against all sizes of pipe in use, excluding drill collars and bottom-hole tools; and

(7) Test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly;

(e) *Postponing BOP tests.* You may postpone a BOP test if you have well-control problems. You must conduct the required BOP test as soon as possible (i.e., first trip out of the hole) after the problem has been remedied. You must record the reason for postponing any test in the driller's report.

(f) *Weekly crew drills.* You must conduct a weekly drill to familiarize all personnel engaged in well-completion operations with appropriate safety measures.

(g) *BOP inspections.* You must visually inspect your BOP system and marine riser at least once each day if weather and sea conditions permit. You may use television cameras to inspect this equipment. The District Supervisor may approve alternate methods and frequencies to inspect a marine riser.

(h) *BOP maintenance.* You must maintain your BOP system to ensure that the equipment functions properly.

(i) *BOP test records.* You must record the time, date, and results of all pressure tests, actuations, crew drills, and inspections of the BOP system, system components, and marine riser in the driller's report. In addition, you must:

(1) Record BOP test pressures on pressure charts;

(2) Have your onsite representative certify (sign and date) BOP test charts and reports as correct;

(3) Document the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. You may reference a BOP test plan if it is available at the facility;

(4) Identify the control station or pod used during the test;

(5) Identify any problems or irregularities observed during BOP system and equipment testing and record actions taken to remedy the problems or irregularities;

(6) Retain all records including pressure charts, driller's report, and referenced documents pertaining to BOP tests, actuations, and inspections at the facility for the duration of the completion activity; and

(7) After completion of the well, you must retain all the records listed in paragraph (i)(6) of this section for a period of 2 years at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

(j) *Alternate methods.* The District Supervisor may require, or approve, more frequent testing, as well as different test pressures and inspection methods, or other practices.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels: Addition of Sudanese Government Designations, Removal of Two Individuals, and Unblocking of a Vessel

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is adding to appendices A and B to 31 CFR chapter V the names of 62 entities which have been determined to act for or on behalf of, or to be owned or controlled by the Government of Sudan. In addition, the entries for two individuals previously designated as specially designated narcotics traffickers are being removed from appendices A and B. The entry for a vessel is also being removed from appendix C, as it is no longer considered to be property in which the Government of Cuba has an interest. Technical changes are also made to the notes to the appendices.

EFFECTIVE DATE: May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

Appendices A and B to 31 CFR chapter V contain the names of blocked persons, specially designated nationals, specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC'') (62 FR 34934, June 27, 1997). Appendix C to 31 CFR chapter V contains the names of blocked vessels designated pursuant to the various OFAC sanctions programs.

Pursuant to Executive Order 13067 of November 3, 1997, ''Blocking Sudanese Government Property and Prohibiting Transactions With Sudan'' (62 FR 59989, Nov. 5, 1997), imposing a trade embargo against Sudan and a total asset freeze on the Government of Sudan, 62 Sudanese entities are added to appendices A and B as entities which have been determined to act for or on behalf of, or to be owned or controlled by the Government of Sudan (specially designated nationals or ''SDNs''). Any property subject to the jurisdiction of the United States in which an SDN has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which an SDN has an interest. The notes to the appendices are amended to add an identifying abbreviation for Government of Sudan SDNs.

In addition, pursuant to the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536, the names of two individuals previously designated as specially designated narcotics traffickers are being removed from appendices A and B because they no longer meet the applicable criteria for designation. All real and personal property of these individuals, including all accounts not otherwise subject to blocking in which they have any interest, are unblocked; and all lawful transactions involving U.S. persons and these individuals are authorized.

Pursuant to the Cuban Assets Control Regulations, 31 CFR part 515, one vessel is being removed from appendix C as it is no longer considered to be property in which the Government of Cuba has an interest.

Designations of foreign persons blocked pursuant to the relevant statute, Executive order, or regulations are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking or unblocking is effective upon the date of filing for public inspection with the **Federal Register**, or upon prior actual notice.

Since this rule involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of (1) 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13067, 62 FR 59889, with respect to the addition of blocked Government of Sudan entities; (2) 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, with respect to removals from the list of specially designated narcotics traffickers; and (3) 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614, with respect to the unblocking of a vessel in which the Government of Cuba is found no longer to have an interest, appendices A, B, and C to 31 CFR chapter V are amended as set forth below:

1. The notes to the appendices to chapter V are amended by revising note 6 to read as follows:

APPENDICES TO CHAPTER V

Notes: * * *

* * * * *

6. References to regulatory parts in chapter V or other authorities:

[CUBA]: Cuban Assets Control Regulations, part 515;

[FRY (S&M)]: Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, part 585;

[FTO]: Foreign Terrorist Organizations Sanctions Regulations, part 597;

[IRAN]: Iranian Transactions Regulations, part 560;

[LIBYA]: Libyan Sanctions Regulations, part 550;

[NKOREA]: Foreign Assets Control Regulations, part 500;

[SDNT]: Narcotics Trafficking Sanctions Regulations, part 536;

[SDT]: Terrorism Sanctions Regulations, part 596;

[SRBH]: Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, part 585;

[SUDAN]: Executive Order 13067, 62 FR 59989, Nov. 5, 1997.

Appendix A [Amended]

2. Section I of appendix A to 31 CFR chapter V is amended by removing the entries for the names ''RAMIREZ GARCIA, Manuel Hernan'' and ''RIZO, Diego,'' and by adding the following names inserted in alphabetical order to read as follows:

I. * * *

* * * * *

AFRICAN DRILLING COMPANY, Khartoum, Sudan [SUDAN]

* * * * *

AGRICULTURAL BANK OF SUDAN, P.O. Box 1363, Khartoum, Sudan [SUDAN]

* * * * *

AMIN EL GEZAI COMPANY (a.k.a. EL AMIN EL GEZAI COMPANY), Khartoum, Sudan [SUDAN]

* * * * *

AUTOMOBILE CORPORATION, Khartoum, Sudan [SUDAN]

* * * * *

BANK OF KHARTOUM (a.k.a. BANK OF KHARTOUM GROUP), P.O. Box 1008, Khartoum, Sudan; P.O. Box 312, Khartoum, Sudan; P.O. Box 880, Khartoum, Sudan; P.O. Box 2732, Khartoum, Sudan; P.O. Box 408, Barlaman Ave., Khartoum, Sudan; P.O. Box 67, Omdurman, Sudan; P.O. Box 241, Port Sudan, Sudan; P.O. Box 131, Wad Medani, Sudan; Abu Hammad, Sudan; Abugaouta, Sudan; Assalaya, Sudan; P.O. Box 89, Atbara, Sudan; Berber, Sudan; Dongola, Sudan; El Daba, Sudan; El Dain, Sudan; El Damazeen, Sudan; El Damer, Sudan; El Dilling, Sudan; El Dinder, Sudan; El Fashir, Sudan; El Fow, Sudan; El Gadarit, Sudan; El Garia, Sudan; El Ghadder, Sudan; El Managil, Sudan; El Mazmoum, Sudan; P.O. Box 220, El Obeid, Sudan; El Rahad, Sudan; El Roseirs, Sudan; El Suk el Shabi, Sudan; Halfa el Gadida, Sudan; Karima, Sudan; Karkoug, Sudan; Kassala, Sudan; Omdurman P.O. Square, P.O. Box 341, Khartoum, Sudan; Sharia el Barlaman, P.O. Box 922, Khartoum, Sudan; Sharia el Gama'a, P.O. Box 880, Khartoum, Sudan; Sharia el Gamhoria, P.O. Box 312, Khartoum, Sudan; Sharia el Murada, Khartoum, Sudan; Tayar Murad, P.O. Box 922, Khartoum, Sudan; Suk el Arabi, P.O. Box 4160, Khartoum, Sudan; University of Khartoum, Khartoum, Sudan; P.O. Box 12, Kosti, Sudan; P.O. Box 135, Nyala, Sudan; Rabak, Sudan; Rufaa, Sudan; Sawakin, Sudan; Shendi, Sudan; Singa, Sudan; Tamboul, Sudan; Tandalti, Sudan; Tokar, Sudan; Wadi Halfa, Sudan [SUDAN]

BANK OF SUDAN, Sharia El Gamaa, P.O. Box 313, Khartoum, Sudan; Atbara, Sudan; P.O. Box 27, El Obeid, Sudan; P.O. Box 136, Juba, Sudan; P.O. Box 73, Kosti, Sudan; Nyala, Sudan; P.O. Box 34, Port Sudan, Sudan; Wad Medani, Sudan; Wau, Sudan [SUDAN]

* * * * *

BLUE NILE PACKING CORPORATION, P.O. Box 385, Khartoum, Sudan [SUDAN]

* * * * *

COPTRADE COMPANY LIMITED (PHARMACEUTICAL AND CHEMICAL DIVISION), P.O. Box 246, Khartoum, Sudan; Port Sudan, Sudan [SUDAN]

* * * * *

EMIRATES AND SUDAN INVESTMENT COMPANY LIMITED, P.O. Box 7036, Khartoum, Sudan; Port Sudan, Sudan [SUDAN]

* * * * *

FARMERS BANK FOR INVESTMENT & RURAL DEVELOPMENT, Khartoum, Sudan [SUDAN]

* * * * *

GEZIRA AUTOMOBILE COMPANY (a.k.a. EL GEZIRA AUTOMOBILE COMPANY), P.O. Box 232, Khartoum, Sudan [SUDAN]

GEZIRA TRADE & SERVICES COMPANY LIMITED, P.O. Box 215, Khartoum, Sudan; P.O. Box 17, Port Sudan, Sudan; El Obeid, Sudan; Gedarit, Sudan; Juba, Sudan; Kosti, Sudan; Sennar, Sudan; Wad Medani, Sudan [SUDAN]

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GROUPED INDUSTRIES CORPORATION, P.O. Box 2241, Khartoum, Sudan [SUDAN]

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INDUSTRIAL BANK COMPANY FOR TRADE & DEVELOPMENT LIMITED, Khartoum, Sudan [SUDAN]

* * * * *

INDUSTRIAL RESEARCH AND CONSULTANCY INSTITUTE, P.O. Box 268, Khartoum, Sudan [SUDAN]

INGASSANA MINES HILLS CORPORATION, P.O. Box 2241, Khartoum, Sudan [SUDAN]

* * * * *

ISLAMIC CO-OPERATIVE DEVELOPMENT BANK (a.k.a. ICDB), P.O. Box 62, Khartoum, Sudan [SUDAN]

* * * * *

KASSALA FRUIT PROCESSING COMPANY, Khartoum, Sudan [SUDAN]

* * * * *

KHARTOUM CENTRAL FOUNDRY, Khartoum, Sudan [SUDAN]

KHARTOUM COMMERCIAL AND SHIPPING COMPANY LIMITED, Kasr Avenue, P.O. Box 221, Khartoum, Sudan [SUDAN]

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KHARTOUM TANNERY, P.O. Box 134, Khartoum South, Sudan [SUDAN]

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KHOR OMER ENGINEERING COMPANY, P.O. Box 305, Khartoum, Sudan [SUDAN]

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KORDOFAN AUTOMOBILE COMPANY, P.O. Box 97, Khartoum, Sudan [SUDAN]

KORDOFAN COMPANY, Khartoum, Sudan [SUDAN]

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MILITARY COMMERCIAL CORPORATION, P.O. Box 221, Khartoum, Sudan [SUDAN]

* * * * *

MODERN ELECTRONIC COMPANY, Khartoum, Sudan [SUDAN]

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MODERN LAUNDRY BLUE FACTORY (a.k.a. THE MODERN LAUNDRY BLUEFACTORY), P.O. Box 2241, Khartoum, Sudan [SUDAN]

MODERN PLASTIC & CERAMICS INDUSTRIES COMPANY, Khartoum, Sudan [SUDAN]

* * * * *

NATIONAL EXPORT-IMPORT BANK (n.k.a. BANK OF KHARTOUM GROUP), Sudanese Kuwait Commercial Centre, Nile Street, P.O. Box 2732, Khartoum, Sudan [SUDAN]

* * * * *

NATIONAL REINSURANCE COMPANY (SUDAN) LIMITED, P.O. Box 443, Khartoum, Sudan [SUDAN]

* * * * *

NILE CEMENT COMPANY LIMITED, P.O. Box 1502, Khartoum, Sudan; Factories at Rabak, St. 45-47, Khartoum Extension, Sudan [SUDAN]

NILEIN INDUSTRIAL DEVELOPMENT BANK (SUDAN) (a.k.a. EL NILEIN INDUSTRIAL DEVELOPMENT BANK (SUDAN); a.k.a. EL NILEIN INDUSTRIAL DEVELOPMENT BANK GROUP; f.k.a. EL NILEIN BANK; f.k.a. INDUSTRIAL BANK OF SUDAN), P.O. Box 466/1722, United Nations Square, Khartoum, Sudan; Parliament Street, P.O. Box 466, Khartoum, Sudan; P.O. Box 6013, Abu Dhabi City, United Arab Emirates [SUDAN]

* * * * *

PEOPLE'S CO-OPERATIVE BANK, P.O. Box 922, Khartoum, Sudan [SUDAN]

* * * * *

PORT SUDAN REFINERY LIMITED, P.O. Box 354, Port Sudan, Sudan [SUDAN]

* * * * *

PUBLIC CORPORATION FOR BUILDING AND CONSTRUCTION, P.O. Box 2110, Khartoum, Sudan [SUDAN]

PUBLIC CORPORATION FOR IRRIGATION AND EXCAVATION, P.O. Box 619, Khartoum, Sudan; P.O. Box 123, Wad Medani, Sudan [SUDAN]

PUBLIC ELECTRICITY AND WATER CORPORATION, P.O. Box 1380, Khartoum, Sudan [SUDAN]

* * * * *

RED SEA STEVEDORING, P.O. Box 215, Khartoum, Sudan; P.O. Box 17, Port Sudan, Sudan [SUDAN]

* * * * *

ROADS AND BRIDGES PUBLIC CORPORATION, P.O. Box 756, Khartoum, Sudan [SUDAN]

* * * * *

SACKS FACTORY, P.O. Box 2328, Khartoum, Sudan [SUDAN]

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SILOS AND STORAGE CORPORATION, P.O. Box 1183, Khartoum, Sudan [SUDAN]

* * * * *

STATE CORPORATION FOR CINEMA, P.O. Box 6028, Khartoum, Sudan [SUDAN]

STATE TRADING COMPANY (a.k.a. STATE TRADING CORPORATION), P.O. Box 211, Khartoum, Sudan [SUDAN]

* * * * *

SUDAN AIR (a.k.a. SUDAN AIRWAYS), P.O. Box 253, Khartoum, Sudan; Bahrain; Chad; Egypt; Ethiopia; Germany; Greece; Italy; Kenya; Kuwait; Nigeria; Saudi Arabia; Uganda; United Arab Emirates; England (and perhaps elsewhere in the United Kingdom); 211 East 43rd Street, New York, New York 10017, U.S.A.; 199 Atlantic Avenue, Brooklyn, New York, New York 11201-5606 U.S.A. [SUDAN]

SUDAN COMMERCIAL BANK, P.O. Box 1116, Al-Qasr Avenue, Khartoum, Sudan; P.O. Box 182, El Gadaref, Sudan; P.O. Box 412, El Obeid, Sudan; P.O. Box 1174, Khartoum, Sudan; P.O. Box 570, Port Sudan, Sudan [SUDAN]

SUDAN DEVELOPMENT CORPORATION, Street 21, P.O. Box 710, Khartoum, Sudan [SUDAN]

SUDAN EXHIBITION AND FAIRS CORPORATION, P.O. Box 2366, Khartoum, Sudan [SUDAN]

SUDAN OIL SEEDS COMPANY LIMITED, P.O. Box 167, Khartoum, Sudan; Nyala, Sudan; Obied, Sudan; Port Sudan, Sudan; Tandalty, Sudan [SUDAN]

SUDAN RAILWAYS CORPORATION (a.k.a. SRC), P.O. Box 43, Bara, Sudan; Babanousa, Sudan; Khartoum, Sudan; Kosti, Sudan; Port Sudan, Sudan [SUDAN]

SUDAN RURAL DEVELOPMENT COMPANY LIMITED (a.k.a. SRDC), P.O. Box 2190, Khartoum, Sudan [SUDAN]

SUDAN WAREHOUSING COMPANY, P.O. Box 215, Khartoum, Sudan; P.O. Box 17, Port Sudan, Sudan; El Obeid, Sudan; Gedarit, Sudan; Juba, Sudan; Kosti, Sudan; Sennar, Sudan; Wad Medani, Sudan [SUDAN]

SUDANESE COMPANY FOR BUILDING AND CONSTRUCTION LIMITED, P.O. Box 2110, Khartoum, Sudan [SUDAN]

SUDANESE ESTATES BANK, Al-Baladiya Avenue, P.O. Box 309, Khartoum, Sudan [SUDAN]

SUDANESE REAL ESTATE SERVICES COMPANY, Khartoum, Sudan [SUDAN]

SUDANESE SAVINGS BANK, P.O. Box 159, Wad Medani, Sudan [SUDAN]

* * * * *

TAHEER PERFUMERY CORPORATION, (a.k.a. EL TAHEER PERFUMERY CORPORATION), P.O. Box 2241, Khartoum, Sudan [SUDAN]

TAHREER PERFUMERY CORPORATION, (a.k.a. EL TAHREER PERFUMERY CORPORATION), Omdurman, Sudan [SUDAN]

* * * * *

TAKA AUTOMOBILE COMPANY, EL (a.k.a. EL TAKA AUTOMOBILE COMPANY), P.O. Box 221, Khartoum, Sudan [SUDAN]

* * * * *

TEA PACKETING AND TRADING COMPANY, P.O. Box 369, Khartoum, Sudan [SUDAN]

* * * * *

UNITY BANK (now part of BANK OF KHARTOUM GROUP), Bariman Ave., P.O. Box 408, Khartoum, Sudan [SUDAN]

* * * * *

WAFRA CHEMICALS & TECHNO-MEDICAL SERVICES LIMITED, Khartoum, Sudan [SUDAN]

* * * * *

WHITE NILE BATTERY COMPANY, Khartoum, Sudan [SUDAN]

Appendix B [Amended]

3. Appendix B to 31 CFR chapter V is amended by adding the following entries inserted in alphabetical order under the headings ''Bahrain'', ''Chad'', ''Egypt'', ''England'', ''Ethiopia'', ''Germany'', ''Greece'', ''Italy'', ''Kenya'', ''Kuwait'', ''Nigeria'', ''Saudi Arabia'', and ''Uganda'' to read as follows:

* * * * *

SUDAN AIR (a.k.a. SUDAN AIRWAYS) [SUDAN]

* * * * *

4. Appendix B to 31 CFR chapter V is amended by removing the entries for the names ''RAMIREZ GARCIA, Manuel Hernan'' and ''RIZO, Diego'' under the heading ''Colombia.''

5. Appendix B to 31 CFR chapter V is amended by adding the following entries inserted in alphabetical order under the heading ''Sudan'' to read as follows:

* * * * *

AFRICAN DRILLING COMPANY, Khartoum, Sudan [SUDAN]

AGRICULTURAL BANK OF SUDAN, P.O. Box 1363, Khartoum, Sudan [SUDAN]

AMIN EL GEZAI COMPANY (a.k.a. EL AMIN EL GEZAI COMPANY), Khartoum, Sudan [SUDAN]

* * * * *

AUTOMOBILE CORPORATION, Khartoum, Sudan [SUDAN]

BANK OF KHARTOUM (a.k.a. BANK OF KHARTOUM GROUP), P.O. Box 1008, Khartoum, Sudan; P.O. Box 312, Khartoum, Sudan; P.O. Box 880, Khartoum, Sudan; P.O. Box 2732, Khartoum, Sudan; P.O. Box 408, Barlaman Ave., Khartoum, Sudan; P.O. Box 67, Omdurman, Sudan; P.O. Box 241, Port Sudan, Sudan; P.O. Box 131, Wad Medani, Sudan; Abu Hammad, Sudan; Abugaouta, Sudan; Assalaya, Sudan; P.O. Box 89, Atbara, Sudan; Berber, Sudan; Dongola, Sudan; El Daba, Sudan; El Dain, Sudan; El Damazeen, Sudan; El Damer, Sudan; El Dilling, Sudan; El Dinder, Sudan; El Fashir, Sudan; El Fow, Sudan; El Gadarit, Sudan; El Garia, Sudan; El Ghadder, Sudan; El Managil, Sudan; El Mazmoum, Sudan; P.O. Box 220, El Obeid, Sudan; El Rahad, Sudan; El Roseirs, Sudan; El Suk el Shabi, Sudan; Halfa el Gadida, Sudan; Karima, Sudan; Karkoug, Sudan; Kassala, Sudan; Omdurman P.O. Square, P.O. Box 341, Khartoum, Sudan; Sharia el Barlaman, P.O. Box 922, Khartoum, Sudan; Sharia el Gama'a, P.O. Box 880, Khartoum, Sudan; Sharia el Gamhoria, P.O. Box 312, Khartoum, Sudan; Sharia el Murada, Khartoum, Sudan; Tayar Murad, P.O. Box 922, Khartoum, Sudan; Suk el Arabi, P.O. Box 4160, Khartoum, Sudan; University of Khartoum, Khartoum, Sudan; P.O. Box 12, Kosti, Sudan; P.O. Box 135, Nyala, Sudan; Rabak, Sudan; Rufaa, Sudan; Sawakin, Sudan; Shendi, Sudan; Singa, Sudan; Tamboul, Sudan; Tandalti, Sudan; Tokar, Sudan; Wadi Halfa, Sudan [SUDAN]

BANK OF SUDAN, Sharia El Gamaa, P.O. Box 313, Khartoum, Sudan; Atbara, Sudan; P.O. Box 27, El Obeid, Sudan; P.O. Box 136, Juba, Sudan; P.O. Box 73, Kosti, Sudan; Nyala, Sudan; P.O. Box 34, Port Sudan, Sudan; Wad Medani, Sudan; Wau, Sudan [SUDAN]

* * * * *

BLUE NILE PACKING CORPORATION, P.O. Box 385, Khartoum, Sudan [SUDAN]

COPTRADE COMPANY LIMITED (PHARMACEUTICAL AND CHEMICAL DIVISION), P.O. Box 246, Khartoum, Sudan; Port Sudan, Sudan [SUDAN]

EMIRATES AND SUDAN INVESTMENT COMPANY LIMITED, P.O. Box 7036, Khartoum, Sudan; Port Sudan, Sudan [SUDAN]

FARMERS BANK FOR INVESTMENT & RURAL DEVELOPMENT, Khartoum, Sudan [SUDAN]

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GEZIRA AUTOMOBILE COMPANY (a.k.a. EL GEZIRA AUTOMOBILE COMPANY), P.O. Box 232, Khartoum, Sudan [SUDAN]

GEZIRA TRADE & SERVICES COMPANY LIMITED, P.O. Box 215, Khartoum, Sudan; P.O. Box 17, Port Sudan, Sudan; El Obeid, Sudan; Gedarit, Sudan; Juba, Sudan; Kosti, Sudan; Sennar, Sudan; Wad Medani, Sudan [SUDAN]

GROUPED INDUSTRIES CORPORATION, P.O. Box 2241, Khartoum, Sudan [SUDAN]

INDUSTRIAL BANK COMPANY FOR TRADE & DEVELOPMENT LIMITED, Khartoum, Sudan [SUDAN]

INDUSTRIAL RESEARCH AND CONSULTANCY INSTITUTE, P.O. Box 268, Khartoum, Sudan [SUDAN]

INGASSANA MINES HILLS CORPORATION, P.O. Box 2241, Khartoum, Sudan [SUDAN]

ISLAMIC CO-OPERATIVE DEVELOPMENT BANK (a.k.a. ICDB), P.O. Box 62, Khartoum, Sudan [SUDAN]

KASSALA FRUIT PROCESSING COMPANY, Khartoum, Sudan [SUDAN]

KHARTOUM CENTRAL FOUNDRY, Khartoum, Sudan [SUDAN]

KHARTOUM COMMERCIAL AND SHIPPING COMPANY LIMITED, Kasr Avenue, P.O. Box 221, Khartoum, Sudan [SUDAN]

KHARTOUM TANNERY, P.O. Box 134, Khartoum South, Sudan [SUDAN]
KHOR OMER ENGINEERING COMPANY, P.O. Box 305, Khartoum, Sudan [SUDAN]
KORDOFAN AUTOMOBILE COMPANY, P.O. Box 97, Khartoum, Sudan [SUDAN]
KORDOFAN COMPANY, Khartoum, Sudan [SUDAN]
MILITARY COMMERCIAL CORPORATION, P.O. Box 221, Khartoum, Sudan [SUDAN]
MODERN ELECTRONIC COMPANY, Khartoum, Sudan [SUDAN]
MODERN LAUNDRY BLUE FACTORY (a.k.a. THE MODERN LAUNDRY BLUE FACTORY), P.O. Box 2241, Khartoum, Sudan [SUDAN]
MODERN PLASTIC & CERAMICS INDUSTRIES COMPANY, Khartoum, Sudan [SUDAN]
NATIONAL EXPORT-IMPORT BANK (n.k.a. BANK OF KHARTOUM GROUP), Sudanese Kuwait Commercial Centre, Nile Street, P.O. Box 2732, Khartoum, Sudan [SUDAN]
NATIONAL REINSURANCE COMPANY (SUDAN) LIMITED, P.O. Box 443, Khartoum, Sudan [SUDAN]
NILE CEMENT COMPANY LIMITED, P.O. Box 1502, Khartoum, Sudan; Factories at Rabak, St. 45-47, Khartoum Extension, Sudan [SUDAN]
NILEIN INDUSTRIAL DEVELOPMENT BANK (SUDAN) (a.k.a. EL NILEIN INDUSTRIAL DEVELOPMENT BANK (SUDAN); a.k.a. EL NILEIN INDUSTRIAL DEVELOPMENT BANK GROUP; f.k.a. EL NILEIN BANK; f.k.a. INDUSTRIAL BANK OF SUDAN), P.O. Box 466/1722, United Nations Square, Khartoum, Sudan; Parliament Street, P.O. Box 466, Khartoum, Sudan [SUDAN]
PEOPLE'S CO-OPERATIVE BANK, P.O. Box 922, Khartoum, Sudan [SUDAN]
PORT SUDAN REFINERY LIMITED, P.O. Box 354, Port Sudan, Sudan [SUDAN]
PUBLIC CORPORATION FOR BUILDING AND CONSTRUCTION, P.O. Box 2110, Khartoum, Sudan [SUDAN]
PUBLIC CORPORATION FOR IRRIGATION AND EXCAVATION, P.O. Box 619, Khartoum, Sudan; P.O. Box 123, Wad Medani, Sudan [SUDAN]
PUBLIC ELECTRICITY AND WATER CORPORATION, P.O. Box 1380, Khartoum, Sudan [SUDAN]
RED SEA STEVEDORING, P.O. Box 215, Khartoum, Sudan; P.O. Box 17, Port Sudan, Sudan [SUDAN]

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ROADS AND BRIDGES PUBLIC CORPORATION, P.O. Box 756, Khartoum, Sudan [SUDAN]
SACKS FACTORY, P.O. Box 2328, Khartoum, Sudan [SUDAN]
SILOS AND STORAGE CORPORATION, P.O. Box 1183, Khartoum, Sudan [SUDAN]
STATE CORPORATION FOR CINEMA, P.O. Box 6028, Khartoum, Sudan [SUDAN]
STATE TRADING COMPANY (a.k.a. STATE TRADING CORPORATION), P.O. Box 211, Khartoum, Sudan [SUDAN]
SUDAN AIR (a.k.a. SUDAN AIRWAYS), P.O. Box 253, Khartoum, Sudan [SUDAN]
SUDAN COMMERCIAL BANK, P.O. Box 1116, Al-Qasr Avenue, Khartoum, Sudan; P.O. Box 182, El Gadaref, Sudan; P.O. Box 412, El Obeid, Sudan; P.O. Box 1174, Khartoum, Sudan; P.O. Box 570, Port Sudan, Sudan [SUDAN]
SUDAN DEVELOPMENT CORPORATION, Street 21, P.O. Box 710, Khartoum, Sudan [SUDAN]
SUDAN EXHIBITION AND FAIRS CORPORATION, P.O. Box 2366, Khartoum, Sudan [SUDAN]
SUDAN OIL SEEDS COMPANY LIMITED, P.O. Box 167, Khartoum, Sudan; Nyala, Sudan; Obied, Sudan; Port Sudan, Sudan; Tandalty, Sudan [SUDAN]
SUDAN RAILWAYS CORPORATION (a.k.a. SRC), P.O. Box 43, Bara, Sudan; Babanousa, Sudan; Khartoum, Sudan; Kosti, Sudan; Port Sudan, Sudan [SUDAN]
SUDAN RURAL DEVELOPMENT COMPANY LIMITED (a.k.a. SRDC), P.O. Box 2190, Khartoum, Sudan [SUDAN]
SUDAN WAREHOUSING COMPANY, P.O. Box 215, Khartoum, Sudan; P.O. Box 17, Port Sudan, Sudan; El Obeid, Sudan; Gedarit, Sudan; Juba, Sudan; Kosti, Sudan; Sennar, Sudan; Wad Medani, Sudan [SUDAN]
SUDANESE COMPANY FOR BUILDING AND CONSTRUCTION LIMITED, P.O. Box 2110, Khartoum, Sudan [SUDAN]
SUDANESE ESTATES BANK, Al-Baladiya Avenue, P.O. Box 309, Khartoum, Sudan [SUDAN]
SUDANESE REAL ESTATE SERVICES COMPANY, Khartoum, Sudan [SUDAN]
SUDANESE SAVINGS BANK, P.O. Box 159, Wad Medani, Sudan [SUDAN]
TAHEER PERFUMERY CORPORATION (a.k.a. EL TAHEER PERFUMERY CORPORATION), P.O. Box 2241, Khartoum, Sudan [SUDAN]
TAHREER PERFUMERY CORPORATION, (a.k.a. EL TAHREER PERFUMERY CORPORATION), Omdurman, Sudan [SUDAN]
TAKA AUTOMOBILE COMPANY (a.k.a. EL TAKA AUTOMOBILE COMPANY), P.O. Box 221, Khartoum, Sudan [SUDAN]
TEA PACKETING AND TRADING COMPANY, P.O. Box 369, Khartoum, Sudan [SUDAN]
UNITY BANK (now part of BANK OF KHARTOUM GROUP), Bariman Ave., P.O. Box 408, Khartoum, Sudan [SUDAN]
WAFRA CHEMICALS & TECHNO-MEDICAL SERVICES LIMITED, Khartoum, Sudan [SUDAN]
WHITE NILE BATTERY COMPANY, Khartoum, Sudan [SUDAN]

6. Appendix B to 31 CFR chapter V is amended by adding the following entries inserted in alphabetical order under the heading ''United Arab Emirates'' to read as follows:

* * * * *

NILEIN INDUSTRIAL DEVELOPMENT BANK (SUDAN) (a.k.a. EL NILEIN INDUSTRIAL DEVELOPMENT BANK (SUDAN); a.k.a. EL NILEIN INDUSTRIAL DEVELOPMENT BANK GROUP; f.k.a. EL NILEIN BANK; f.k.a. INDUSTRIAL BANK OF SUDAN), P.O. Box 6013, Abu Dhabi City, United Arab Emirates [SUDAN]

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SUDAN AIR (a.k.a. SUDAN AIRWAYS) [SUDAN]

* * * * *

7. Appendix B to 31 CFR chapter V is amended by adding the following entries inserted in alphabetical order under the heading ''United States of America'' to read as follows:

* * * * *

SUDAN AIR (a.k.a. SUDAN AIRWAYS), 211 East 43rd Street, New York, New York 10017, U.S.A.; 199 Atlantic Avenue, Brooklyn, New York, New York 11201-5606 U.S.A. [SUDAN]

* * * * *

Appendix C [Amended]

8. Appendix C to 31 CFR chapter V is amended by removing the entry for the vessel ''PIONEER''.

Dated: April 24, 1998.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: May 11, 1998.

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–14295 Filed 5–26–98; 4:17 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS STOUT (DDG 55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without

interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy, Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS STOUT (DDG 55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for the USS STOUT to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS STOUT	DDG 55	X	X	X	19.6
*	*	*	*	*	*

Dated: May 8, 1998.

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 98–14289 Filed 5–29–98; 8:45 am]

BILLING CODE 3810–FF–P

PANAMA CANAL COMMISSION

35 CFR Part 133

RIN 3207–AA–46

Tolls for Use of Canal

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission (Commission) is revising its method of payment of tolls and other vessel charges to allow certain small vessels paying a toll of not more than $1,500 to have the option to pay tolls and fees for other ancillary services by using commercial credit cards, under conditions established by the Commission.

DATES: Effective June 1, 1998.

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) 272–3433, E-mail: fmf@pancanal.com.

SUPPLEMENTARY INFORMATION: On June 1, 1998, the Commission will establish a new toll structure for small vessels transiting the Panama Canal. This change is being implemented as part of the efforts the Commission is taking to allocate better its resources and to provide a more efficient service.

The Commission is also aware of the importance of providing better service to customers. The Board of Directors of the Commission, therefore, approved a change which will allow small vessel owners to guarantee the payment of tolls and fees for other ancillary services by use of a commercial credit card.

Currently, all vessels transiting the Canal must pay tolls in full, or secure these charges through a financial institution designated by the Commission as provided in 35 CFR 133.74. Vessels must satisfy this requirement before they are permitted to enter a lock, as well as pay all other charges before a vessel is permitted to depart from the Canal. Unless one of the exceptions under 35 CFR 133.74 applies, all payments are required to be made in cash.

This new exception will expedite the paperwork involved in the transit of small vessels by allowing vessel owners to complete payment requirements in less time. Furthermore, this will facilitate the Commission's administrative process involved in the payment of tolls and other vessel charges for small vessel transits. No notice or comment period is being afforded as this change will provide an immediate benefit to affected Canal users.

The Commission is exempt from Executive Order 12866 and its provisions do not apply to this rule. Even if the Order were applicable, the rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The

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

Finally, the Secretary of the Panama Canal Commission certifies these changes meet the applicable standards set out in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 35 CFR Part 133

Navigation, Panama Canal, Vessels.

For the reasons stated in the preamble, the Panama Canal Commission is amending 35 CFR part 133 as follows:

PART 133—TOLLS FOR USE OF CANAL

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

Authority: 22 U.S.C. 3791–3792, 3794.

2. Revise the heading of § 133.74 and add paragraph (c) to read as follows:

§ 133.74 Same; exception; payment secured by deposit of cash or bonds; credit cards.

* * * * *

(c) Vessels assessed a toll of not more than $1,500 under § 133.1(d) may pay the respective toll and any charges for ancillary services by credit card, under such conditions as are established by the Commission.

Dated: May 22, 1998.

John A. Mills,

Secretary.

[FR Doc. 98–14181 Filed 5–29–98; 8:45 am]

BILLING CODE 3640–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket #: 980511124–8124–01]

Revision of Patent Cooperation Treaty Application Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule with request for public comments.

SUMMARY: The Patent and Trademark Office (Office or USPTO) is amending its rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT) to conform the United States rules of practice with the corresponding changes to the Regulations under the PCT which become effective July 1, 1998. The result will be more streamlined procedures for filing and prosecuting international applications under the PCT.

DATES: *Effective date:* July 1, 1998.

Comment deadline date: To be ensured of consideration, written comments must be received on or before July 31, 1998. No public hearing will be held.

ADDRESSES: Address written comments to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 308–6459, marked to the attention of Richard Lazarus. Comments submitted by facsimile should be followed by a copy of the comments submitted by mail. The Office would also prefer that comments submitted by mail be accompanied by a copy of the comments in a standard word processing format on a 3 ¼ inch disk.

The comments will be available for public inspection in Crystal Plaza Two, room 7A04, 2011 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: ftp.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Richard Lazarus, PCT Legal Office Supervisor, by telephone at (703) 308–6451; or by mail addressed to: Box PCT, Assistant Commissioner for Patents, Washington, DC 20231; or by facsimile to (703) 308–6459, marked to the attention of Richard Lazarus.

SUPPLEMENTARY INFORMATION: During a September-October 1997 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted amendments to the PCT Regulations, which will take effect on July 1, 1998. The amended PCT Regulations were published in the *Official Gazette* at 1210 *Off. Gaz. Pat. Office* 29 (May 12, 1998). The resulting changes to PCT practice will improve filing and processing procedures for applicants filing international applications.

This interim rule amends the United States rules of practice to conform them to corresponding changes made to the PCT Regulations that will take effect on July 1, 1998. The interim rules will also be effective on July 1, 1998. The Office will publish a final rule either confirming the adoption of these interim rules as final rules or adopting final rules which reflect changes made based upon the public comments received in response to this interim rule.

Applicants are hereby notified that PCT Rules 20.4(c) and 26.3ter(a) and (c) as amended are not compatible with the national law of the United States, and thus the USPTO has taken a reservation on adherence to these Rules through its notification to the Director General of WIPO to such effect. *See* PCT Rules 20.4(d) and 26.3ter(b) and (d). Applicants of international applications in the United States need to be aware of these differences to avoid the consequences of failing to comply with the requirements of United States law. For example, PCT Rules 20.4(c) and 26.3ter(a) and (c) permit an international filing date to be accorded notwithstanding that portions of the international application are in a language not acceptable to the Receiving Office. 35 U.S.C. 361 does not permit this practice and a filing date will not be accorded by the USPTO under these provisions or circumstances. However, if any portion of the international application is not in English, but is in a language of filing accepted by the International Bureau, it will be forwarded to the International Bureau pursuant to the provisions of PCT Rule 19.4. The International Bureau will act as a Receiving Office and accord a receipt date as of the receipt date in the USPTO.

Similarly, the USPTO continues not to adhere to the unchanged provisions of PCT Rule 49.5(cbis) and (k) with respect to the translation requirements for United States national stage applications (35 U.S.C. 371(c)(2)). *See* PCT Rule 49.5(l).

The above noted changes to the PCT Regulations include the addition of new PCT Rules 89bis and 89ter (directed to electronic filing and processing of international applications) which will enter into force at the same time as the modifications to the Administrative Instructions implementing those PCT Rules. Implementation of PCT Rules 89bis and 89ter is optional with each national office. In the event that the USPTO decides to implement PCT Rules 89bis and 89ter, the USPTO will provide notice to that effect in the **Federal Register** and *Official Gazette*.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.14(g) is added to comply with the amendments to PCT Rule 94. After international publication and establishment of the international preliminary examination report, third parties are permitted access to

documents from the file of the International Preliminary Examining Authority in the USPTO's elected office file (not the international preliminary examination file) to the same extent as access to United States national applications.

Section 1.412(c)(6) is amended to conform to the changes to PCT Rule 19.4(a). The change relates to the procedures for the filing of international applications and their processing by the Receiving Office. The change broadens the circumstances in which an international application may be transmitted to the International Bureau as the Receiving Office and adds more flexibility for applicants and the United States Receiving Office in determining whether to forward the international application to the International Bureau as the Receiving Office. When the international application is filed with the USPTO and the language in which the application is filed is not accepted by the USPTO, or if the applicant does not have the requisite residence or nationality, the application may be forwarded to the International Bureau for receiving Office processing.

Section 1.416(c) is amended to reflect the addition of new PCT Rule 59.3. The change provides a safeguard in the case of a Demand filed with the USPTO which is not competent as the International Preliminary Examining Authority. The Office forwards the Demand and the competent International Preliminary Examining Authority processes the Demand based on the date of receipt in the USPTO. This section is rewritten to: (1) redesignate current paragraphs (c)(2) through (c)(6) as paragraphs (c)(3) through (c)(7), respectively; and (2) add ''[f]orwarding Demands in accordance with PCT Rule 59.3'' as a new paragraph (c)(2).

Section 1.419 is added pursuant to 44 U.S.C. 3512(a) and 5 CFR 1320.5(b). As the Office cannot add the information specified in 5 CFR 1320.5(b) to the forms prescribed by the International Bureau, the Office is adopting § 1.419 to provide the information display required by 5 CFR 1320.5(b)(2)(i). *See* 5 CFR 1320.5(b)(2)(ii)(D). Section 1.419 specifically provides: (1) that the collection of information in 37 CFR Part 1, Subpart C, has been reviewed and approved by the Office of Management and Budget under control number 0651–0021; (2) that § 1.419 constitutes the display required by 44 U.S.C. 3512(a) and 5 CFR 1320.5(b)(2)(i) for the collection of information under Office of Management and Budget control number 0651–0021; and (3) a notice under 5 CFR 1320.5(b)(2)(i) that:

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 Office of Management and Budget control number.

Section 1.431 is amended to reflect corresponding changes to PCT Rules 14, 15, 16 and 16bis. This section is amended to: (1) Provide in paragraph (c) that the basic, transmittal, and search fee payable is the basic, transmittal, and search fee in effect on the filing date of the international application (see PCT Rule 14.1(c), 15.4(a), and 16.1(f)); (2) eliminate the unassociated text following former paragraph (c)(2); (3) add ''prior to the sending of a notice of deficiency''; and (4) add a reference to PCT Rule 16bis.1(e) in paragraph (d). These changes will reduce mistakes in paying fees where different fees have different times for payment. The change simplifies the fees due to be the fee amounts (basic, transmittal and search) in effect on the date of receipt of the international application. Additionally, the change provides the additional benefit of delaying the effect of the sanction until the sending of the notice of such sanction.

Section 1.432 is amended to reflect corresponding changes to PCT Rules 15 and 16bis. The changes relate to the time periods and amounts due for the payment of designation and confirmation fees. Paragraph (b) has been rewritten, for the purposes of clarity, as paragraphs (b)(1) and (b)(2), with paragraph (b)(2) comprising the unassociated text following former paragraph (b)(3). Additionally, former paragraph (b)(3), now paragraph (b)(1)(iii), has been amended to include the timeliness provision of new PCT Rule 16bis.1(e).

Section 1.432 is further amended to designate paragraph (c) as paragraphs (d), (d)(1) and (d)(2) for better clarity.

Section 1.432 is further amended to add a new paragraph (c) providing the amount payable for the designation fee set forth in § 1.432(b). Section 1.432(c)(1) provides that if the designation fee is paid in full within one month from the date of receipt of the international application, the amount payable for the designation fee is the designation fee in effect on the filing date of the international application. Section 1.432(c)(2) provides that if the designation fee is paid in full later than one month from the date of receipt of the international application, but within one year from the priority date, the amount payable for the designation fee is the designation fee in effect on the date such fee is paid in full. Section 1.432(c)(3) provides that if the designation fee was due one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date, the amount payable for the designation fee is the designation fee in effect on the date one year from the priority date. Section 1.432(c)(4) provides that if the designation fee was due one month from the international filing date and after one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date, the amount payable for the designation fee is the designation fee in effect on the international filing date.

The addition of new paragraph (c) reflects the corresponding changes to PCT Rules 15.4(b), 15.4(c) and 16bis.1.

Section 1.435 is amended to conform to the change to PCT Rule 13ter incorporating the common computer readable form standard prescribed by the Administrative Instructions. The amendments to Section 1.435 change ''Administrative Instruction 204'' to ''sections 204 and 208 of the Administrative Instructions.''

Section 1.445 is amended to re-insert paragraphs (a)(4) and (a)(5) that were inadvertently deleted. Section 1.445(a)(4) was inadvertently omitted in *Revision of Patent Fees*; Final Rule Notice, 59 FR 43736 (August 25, 1994), 1165 *Off. Gaz. Pat. Office* 132 (August 30, 1994), and § 1.445(a)(5) was inadvertently omitted in *Revision of Patent and Trademark Fees*; Final Rule Notice, 60 FR 41018 (August 11, 1995), 1177 *Off. Gaz. Pat. Office* 171 (August 29, 1995).

Section 1.451 is amended to conform to the changes made to PCT Rule 4.10 and the addition of new PCT Rule 26bis. The changes reflect the ability of applicants to now add or correct priority claims after the filing of the international application. This section is amended to: (1) add a new paragraph (d) which provides that the applicant may correct or add a priority claim in accordance with PCT Rule 26bis.1; and (2) add the phrase ''subject to paragraph (d)'' to paragraph (a).

Section 1.461 is amended to reflect the corresponding change to PCT Rule 19.4 wherein an international application filed in error with the USPTO may be forwarded to the International Bureau for processing as Receiving Office. The new provisions expand the flexibility for forwarding an

international application which is filed with, but not accepted by, the USPTO.

Section 1.465 is amended to conform to the changes made to PCT Rule 4.10 and the addition of new PCT Rule 26bis concerning the time period in which applicant may add or correct a priority claim. Under the new provisions, an applicant may add or correct a priority claim until sixteen months from the priority date, or where the priority date is changed, sixteen months from the priority date as so changed, whichever period expires first. All priority claim additions or changes must, however, be submitted no later than four months from the international filing date. Section 1.465(b) is amended to change the phrase ''cancelled under PCT Rule 4.10(d), or considered not to have been made under PCT Rule 4.10(b)'' to ''corrected or added under PCT Rule 26bis.1(a), or withdrawn under PCT Rule 90bis.3, or considered not to have been made under PCT Rule 26bis.2.'' Section 1.465(b) is further amended to change the phrase ''computing time limits'' to ''computing any non-expired time limits'' to be in accord with the provision of new PCT Rules 26bis.1(c). As suggested by the latter amendment to Section 1.465(b), time limits which have already expired at the time of the addition, correction, or withdrawal of a priority claim are not subject to recomputation. Section 1.465(c) is amended to change the reference to PCT ''Rule 4.10(d)'' to ''PCT Rule 26bis.2(b).''

Section 1.471 is amended to clarify the rule to conform it to amended PCT Rule 12. Section 1.471 is amended to: (1) Indicate that it also applies to corrections submitted to the United States International Searching Authority; (2) explicitly require that corrections be in English and in compliance with PCT Rules 10 and 11; (3) provide that one ''appropriate'' addition or change of not more than five words per sheet may be stated in a letter; and (4) provide that amendments that do not comply with PCT Rules 10 and 11 may not be entered. PCT Rule 12 was amended to allow the Receiving Office to accept an international application in any language. In these instances, a translation may be required for the International Searching Authority, and any corrections are required to be submitted in both the language of the application and the language of the translation. 35 U.S.C. 361(c) reflects that the United States Receiving Office *only* accepts international applications in English and, in accordance with the agreement between the United States and the International Bureau, the United States International Searching and Examining Authorities will *only* process international applications in English. Thus, any changes under § 1.471 must be in English. Section 1.471 is also clarified to reflect that PCT Rules 10 and 11 apply to any later submitted documents.

Section 1.480 is amended to clarify the rule to conform it to amended PCT Rule 59.3. Section 1.480 is amended to change ''Demand and payment of the fees for international preliminary examination (§ 1.482)'' to ''proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees for international preliminary examination (§ 1.482) have been paid.'' PCT Rule 59.3 was amended to allow a non-competent authority to forward a Demand either to the International Bureau or the competent international preliminary examining authority.

Section 1.480 is changed to clarify that the United States International Preliminary Examining Authority *only* conducts international preliminary examinations in international applications where the United States is the competent International Preliminary Examining Authority.

Section 1.481(a) is added to reflect the corresponding changes to PCT Rules 57 and 58, as well as the addition of PCT Rule 58bis. PCT Rule 57.3 sets the time limit for paying and the amount of the handling fee, and PCT Rule 58.1(b) provides that the provisions of PCT Rule 57.3 apply to the time limit for paying and the amount of the preliminary examination fee. Section 1.481(a) provides that the handling and preliminary examination fees shall be paid within the time period set in PCT Rule 57.3, and that the handling fee or preliminary examination fee payable is the handling fee or preliminary examination fee in effect on the date of receipt of the Demand in the United States International Preliminary Examining Authority. PCT Rule 58bis.1(c) was added to consider the handling fee and examination fee to have been received before the expiration of the time period set in PCT Rule 57.3 if the fees were submitted prior to the sending of an invitation to pay the fees. PCT Rule 58bis.1(a) was added to now allow the International Preliminary Examining Authority to collect a late payment fee, if the fees for preliminary examination are not paid prior to the sending of the invitation. PCT Rule 58bis.2 sets the amount of the late payment fee. Section 1.481(a) reflects changes to PCT Rule 58bis by providing that if the handling and preliminary fees are not paid within the time period set in PCT Rule 57.3, applicants will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of: (1) fifty percent of the amount of the deficient fees, but not exceeding an amount equal to double the handling fee, or (2) an amount equal to the handling fee (PCT Rule 58bis.2). Section 1.481 also provides that the one-month time limit set in § 1.481(a) to pay deficient fees may not be extended.

Section 1.481(b) is added to reflect the addition of PCT Rule 58bis.1(d). Section 1.481(b) provides that if the payment needed to cover the handling and preliminary examination fees, pursuant to § 1.481(a), is not timely made in accordance with added PCT Rule 58bis.1(d), the United States International Preliminary Examination Authority will declare the Demand to be considered as if it had not been submitted. In this regard, where the Authority sends a notification that the Demand is considered not to have been made and applicant's payment is received, both on that same date, the fee is considered to be late and the notification remains effective. The fee must antedate the notice in order for the notice not to be effective.

Section 1.484(b) is amended to clarify the rule in conformance with amended PCT Rule 59.3. Section 1.484(b) is amended to: (1) Change ''Demand'' to ''proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees for international preliminary examination (§ 1.482) have been paid and''; and (2) eliminate the unassociated text following former paragraph (b)(3). PCT Rule 59.3 was amended to allow a non-competent receiving Office or international authority to forward a Demand either to the International Bureau or the competent International Preliminary Examining Authority. This change has the consequence of providing a safeguard for applicants who are filing a Demand at the end of nineteen months from the priority date and through error deposit the Demand with a receiving Office or an international authority that is not competent. Section 1.484(b) is changed to reflect that the United States International Preliminary Examining Authority only conducts international preliminary examination where the United States is the competent International Preliminary Examining Authority.

Section 1.485(a) is amended by adding that the replacement sheets must be ''in compliance with PCT Rules 10 and 11.'' The amendment incorporates

the change to PCT Rule 11.14 which makes the formal requirements of PCT Rules 10 and 11 applicable to amendments during the international preliminary examination phase.

Sections 1.494(c) and 1.495(c) are amended to provide that a ''Sequence Listing'' need not be translated if the ''Sequence Listing'' complies with PCT Rule 12.1 and the description complies with PCT Rule 5.2(b).

Review Under the Paperwork Reduction Act of 1995

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 (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collections of information requirements subject to the PRA. The principal impact of this interim rule is to conform the United States rules of practice relating to applications filed under the PCT to the corresponding amendments made to the Regulations under the PCT.

The public reporting burden for these collections of information have been approved by the Office of Management and Budget (OMB) under OMB control number 0651–0021. The public reporting burden for this collection of information is estimated to average .954 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the information. Send comments regarding this burden estimate or any other aspect of the data requirements, including suggestions for reducing this burden, to Richard Lazarus at the address specified above or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Bldg., 725 17th St. NW, rm. 10235, Washington, DC 20230, Attn: Desk Officer for the Patent and Trademark Office.

Other Considerations

The United States rules of practice contained in title 37, CFR, must conform to the PCT Articles and the Regulations annexed to the PCT. *See* PCT Article 27(1). This interim rule implements corresponding changes required to conform United States rules for international applications to the amendments to the PCT Regulations which become effective on July 1, 1998. Thus, this interim rule is covered by the foreign affairs function exception of 5 U.S.C. 553(a)(1), and may be adopted without prior notice and opportunity for public comment. *See International Brotherhood of Teamsters* v. *Pena,* 17 F.3d 1478, 1486 (D.C. Cir. 1994).

In addition, the Commissioner of Patents and Trademarks, pursuant to authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the changes made in this interim rule without prior notice and an opportunity for public comment, as such procedures are timing-wise infeasible. The PCT Regulations take effect on July 1, 1998. Delay in the promulgation of these interim rules to provide notice and public comment procedures would effectively preclude the required adoption in the United States of the PCT Regulations by their effective date of July 1, 1998. *See Petry* v. *Block,* 737 F.2d 1193, 1200–02 (D.C. Cir. 1984).

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This interim rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987).

This interim rule has been determined not to be significant for purposes of Executive Order 12866 (September 30, 1993).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.14 is amended by adding paragraph (g) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(g) Copies of an application file for which the United States acted as the International Preliminary Examining Authority, or copies of a document in such an application file, will be furnished in accordance with Patent Cooperation Treaty (PCT) Rule 94.2 or 94.3, upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)).

3. Section 1.412 is amending by revised paragraph (c)(6) to read as follows:

§ 1.412 The United States Receiving Office.

* * * * *

(c) * * *

(6) Reviewing and, unless prescriptions concerning national security prevent the application from being so transmitted (PCT Rule 19.4), transmitting the international application to the International Bureau for processing in its capacity as a Receiving Office:

(i) Where the United States Receiving Office is not the competent Receiving Office under PCT Rule 19.1 or 19.2 and § 1.421(a); or

(ii) Where the international application is not in English but is in a language accepted under PCT Rule 12.1(a) by the International Bureau as a Receiving Office; or

(iii) Where there is agreement and authorization in accordance with PCT Rule 19.4(a)(iii).

4. Section 1.416 is amended by revising paragraph (c) to read as follows:

§ 1.416 The United States International Preliminary Examining Authority.

* * * * *

(c) The major functions of the International Preliminary Examining Authority include:

(1) Receiving and checking for defects in the Demand;

(2) Forwarding Demands in accordance with PCT Rule 59.3;

(3) Collecting the handling fee for the International Bureau and the preliminary examination fee for the United States International Preliminary Examining Authority;

(4) Informing applicant of receipt of the Demand;

(5) Considering the matter of unity of invention;

(6) Providing an international preliminary examination report which is a non-binding opinion on the questions of whether the claimed invention appears: to be novel, to involve an inventive step (to be nonobvious), and to be industrially applicable; and

(7) Transmitting the international preliminary examination report to applicant and the International Bureau.

5. A new § 1.419 is added before the undesignated center heading ''Who May File an International Application'' to read as follows:

§ 1.419 Display of currently valid control number under the Paperwork Reduction Act.

(a) Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.), the collection of information in this subpart has been reviewed and approved by the Office of Management and Budget under control number 0651–0021.

(b) 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 Office of Management and Budget control number. This section constitutes the display required by 44 U.S.C. 3512(a) and 5 CFR 1320.5(b)(2)(i) for the collection of information under Office of Management and Budget control number 0651–0021 (see 5 CFR 1320.5(b)(2)(ii)(D)).

6. Section 1.431 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.431 International application requirements.

* * * * *

(c) Payment of the basic portion of the international fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. The basic, transmittal, and search fee payable is the basic, transmittal, and search fee in effect on the receipt date of the international application.

(1) If the basic, transmittal and search fees are not paid within one month from the date of receipt of the international application and prior to the sending of a notice of deficiency, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of:

(i) Fifty percent of the amount of the deficient fees up to a maximum amount equal to the basic fee; or

(ii) An amount equal to the transmittal fee (PCT Rule 16bis).

(2) The one-month time limit set pursuant to this paragraph to pay deficient fees may not be extended.

(d) If the payment needed to cover the transmittal fee, the basic fee, the search fee, one designation fee and the late payment fee pursuant to paragraph (c) of this section is not timely made in accordance with PCT Rule 16bis.1(e), the Receiving Office will declare the international application withdrawn under PCT Article 14(3)(a).

7. Section 1.432 is amended by revising its heading, paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 1.432 Designation of States and payment of designation and confirmation fees.

* * * * *

(b) If the fees necessary to cover all the national and regional designations specified in the Request are not paid by the applicant within one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date, applicant will be notified and given one month within which to pay the deficient designation fees plus a late payment fee. The late payment fee shall be equal to the greater of fifty percent of the amount of the deficient fees up to a maximum amount equal to the basic fee, or an amount equal to the transmittal fee (PCT Rule 16bis). The one-month time limit set in the notification of deficient designation fees may not be extended. Failure to timely pay at least one designation fee will result in the withdrawal of the international application.

(1) The one designation fee must be paid:

(i) Within one year from the priority date;

(ii) Within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date; or

(iii) With the late payment fee defined in this paragraph within the time set in the notification of the deficient designation fees or in accordance with PCT Rule 16bis.1(e).

(2) If after a notification of deficient designation fees the applicant makes timely payment, but the amount paid is not sufficient to cover the late payment fee and all designation fees, the Receiving Office will, after allocating payment for the basic, search, transmittal and late payment fees, allocate the amount paid in accordance with PCT Rule 16bis.1(c) and withdraw the unpaid designations. The notification of deficient designation fees pursuant to this paragraph may be made simultaneously with any notification pursuant to § 1.431(c).

(c) The amount payable for the designation fee set forth in paragraph (b) is:

(1) The designation fee in effect on the filing date of the international application, if such fee is paid in full within one month from the date of receipt of the international application;

(2) The designation fee in effect on the date such fee is paid in full, if such fee is paid in full later than one month from the date of receipt of the international application but within one year from the priority date;

(3) The designation fee in effect on the date one year from the priority date, if the fee was due one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date; or

(4) The designation fee in effect on the international filing date, if the fee was due one month from the international filing date and after one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date.

(d) On filing the international application, in addition to specifying at least one national or regional designation under PCT Rule 4.9(a), applicant may also indicate under PCT Rule 4.9(b) that all other designations permitted under the Treaty are made.

(1) Indication of other designations permitted by the Treaty under PCT Rule 4.9(b) must be made in a statement on the Request that any designation made under this paragraph is subject to confirmation (PCT Rule 4.9(c)) not later than the expiration of 15 months from the priority date by:

(i) Filing a written notice with the United States Receiving Office specifying the national and/or regional designations being confirmed;

(ii) Paying the designation fee for each designation being confirmed; and

(iii) Paying the confirmation fee specified in § 1.445(a)(4).

(2) Unconfirmed designations will be considered withdrawn. If the amount submitted is not sufficient to cover the designation fee and the confirmation fee for each designation being confirmed, the Receiving Office will allocate the amount paid in accordance with any priority of designations specified by applicant. If applicant does not specify any priority of designations, the allocation of the amount paid will be made in accordance with PCT Rule 16bis.1(c).

8. Section 1.435 is amended by revising paragraph (a) to read as follows:

§ 1.435 The description.

(a) The application must meet the requirements as to the content and form of the description set forth in PCT Rules 5, 9, 10, and 11 and sections 204 and 208 of the Administrative Instructions.

* * * * *

9. Section 1.445 is amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—$240.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) Where a corresponding prior United States National application filed under 35 U.S.C. 111(a) with the filing fee under § 1.16(a) has been filed—450.00

(ii) For all situations not provided for in paragraph (a)(2)(i) of this section—700.00

(3) A supplemental search fee when required, per additional invention—210.00

(4) A confirmation fee (PCT Rule 96) equal to fifty percent of the sum of designation fees for the national and regional designations being confirmed (§ 1.432(d)).

(5) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

* * * * *

10. Section 1.451 is amended by revising paragraph (a) and adding a paragraph (d) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

(a) The claim for priority must, subject to paragraph (d) of this section, be made on the Request (PCT Rule 4.10) in a manner complying with sections 110 and 115 of the Administrative Instructions.

* * * * *

(d) The applicant may correct or add a priority claim in accordance with PCT Rule 26bis.1.

11. Section 1.461 is amended by revising paragraph (a) to read as follows:

§ 1.461 Procedures for transmittal of record copy to the International Bureau.

(a) Transmittal of the record copy of the international application to the International Bureau shall be made by the United States Receiving Office or as provided by PCT Rule 19.4.

* * * * *

12. Section 1.465 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.465 Timing of application processing based on the priority date.

* * * * *

(b) When a claimed priority date is corrected or added under PCT Rule 26bis.1(a), or withdrawn under PCT Rule 90bis.3, or considered not to have been made under PCT Rule 26bis.2, the priority date for the purposes of computing any non-expired time limits will be the date of the earliest valid remaining priority claim of the international application, or if none, the international filing date.

(c) When corrections under PCT Art. 11(2), Art. 14(2) or PCT Rule 20.2(a) (i) or (iii) are timely submitted, and the date of receipt of such corrections falls later than one year from the claimed priority date or dates, the Receiving Office shall proceed under PCT Rule 26bis.2.

13. Section 1.471 is amended by revising paragraph (a) to read as follows:

§ 1.471 Corrections and amendments during international processing.

(a) Except as otherwise provided in this paragraph, all corrections submitted to the United States Receiving Office or United States International Searching Authority must be in English, in the form of replacement sheets in compliance with PCT Rules 10 and 11, and accompanied by a letter that draws attention to the differences between the replaced sheets and the replacement sheets. Replacement sheets are not required for the deletion of lines of text, the correction of simple typographical errors, and one addition or change of not more than five words per sheet. These changes may be stated in a letter and, if appropriate, the United States Receiving Office will make the deletion or transfer the correction to the international application, provided that such corrections do not adversely affect the clarity and direct reproducibility of the application (PCT Rule 26.4). Amendments that do not comply with PCT Rules 10 and 11.1 to 11.13 may not be entered.

* * * * *

14. Section 1.480 is amended by revising paragraph (a) to read as follows:

§ 1.480 Demand for international preliminary examination.

(a) On the filing of a proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees have been paid, the international application shall be the subject of an international preliminary examination. The preliminary examination fee (§ 1.482(a)(1)) and the handling fee (§ 1.482(b)) shall be due at the time of filing the Demand.

* * * * *

15. Section 1.481 is added to read as follows:

§ 1.481 Payment of international preliminary examination fees.

(a) The handling and preliminary examination fees shall be paid within the time period set in PCT Rule 57.3. The handling fee or preliminary examination fee payable is the handling fee or preliminary examination fee in effect on the date of receipt of the Demand except under PCT Rule 59.3(a) where the fee payable is the fee in effect on the date of arrival of the Demand at the United States International Preliminary Examining Authority.

(1) If the handling and preliminary fees are not paid within the time period set in PCT Rule 57.3, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of:

(i) Fifty percent of the amount of the deficient fees, but not exceeding an amount equal to double the handling fee; or

(ii) An amount equal to the handling fee (PCT Rule 58bis.2).

(2) The one-month time limit set in this paragraph to pay deficient fees may not be extended.

(b) If the payment needed to cover the handling and preliminary examination fees, pursuant to paragraph (a) of this section, is not timely made in accordance with PCT Rule 58bis.1(d), the United States International Preliminary Examination Authority will declare the Demand to be considered as if it had not been submitted.

16. Section 1.484 is amended by revising paragraph (b) to read as follows:

§ 1.484 Conduct of international preliminary examination.

* * * * *

(b) International preliminary examination will begin promptly upon receipt of a proper Demand in an application for which the United States International Preliminary Examining Authority is competent, for which the fees for international preliminary examination (§ 1.482) have been paid, and which requests examination based on the application as filed or as amended by an amendment which has been received by the United States International Preliminary Examining Authority. Where a Demand requests examination based on a PCT Article 19 amendment which has not been received, examination may begin at 20 months without receipt of the PCT Article 19 amendment. Where a Demand requests examination based on a PCT Article 34 amendment which has not been received, applicant will be notified and given a time period within which to submit the amendment.

(1) Examination will begin after the earliest of:

(i) Receipt of the amendment;

(ii) Receipt of applicant's statement that no amendment will be made; or

(iii) Expiration of the time period set in the notification.

(2) No international preliminary examination report will be established prior to issuance of an international search report.

* * * * *

17. Section 1.485 is amended by revising paragraph (a) to read as follows:

§ 1.485 Amendment by applicant during international preliminary examination.

(a) The applicant may make amendments at the time of filing the Demand. The applicant may also make amendments within the time limit set by the International Preliminary Examining Authority for reply to any notification under § 1.484(b) or to any written opinion. Any such amendments must:

(1) Be made by submitting a replacement sheet in compliance with PCT Rules 10 and 11.1 to 11.13 for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled; and

(2) Include a description of how the replacement sheet differs from the replaced sheet. Amendments that do not comply with PCT Rules 10 and 11.1 to 11.13 may not be entered.

* * * * *

18. Section 1.494 is amended by revising paragraph (c) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a Designated Office.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of 20 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 20 months after the priority date. A ''Sequence Listing'' need not be translated if the ''Sequence Listing'' complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

19. Section 1.495 is amended by revising paragraph (c) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an Elected Office.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of 30 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 30 months after the priority date.

A ''Sequence Listing'' need not be translated if the ''Sequence Listing'' complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

Dated: May 22, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–14195 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No: 960828235–8109–02]

RIN: 0651–AA88

Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Disclosures

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules for submitting nucleotide or amino acid sequences in computer readable form (CRF) for patent applications. These amendments simplify the requirements of the rules, rearrange portions of the rules for better understanding and establish consistent rules to permit a single internationally acceptable computer readable form. Sequence Listings will be presented in an international, language neutral format using numeric identifiers rather than the current subject headings. The Paper Sequence Listing will preferably be a separately numbered section of the patent application. Sequences which contain fewer than four specifically identified nucleotides or amino acids will no longer be required to be submitted in computer readable form.

DATES: *Effective date:* July 1, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 1998.

Applicability date: Sections 1.821 through 1.825 as amended apply to applications filed on or after July 1, 1998, except for: (1) applications that claim the benefit of a prior application under 35 U.S.C. 120 filed before July 1, 1998, and which do not add subject matter involving a sequence listing subject to §§ 1.821 through 1.825; and (2) reissue applications in which the application for the patent sought to be reissued was filed before July 1, 1998. Sections 1.821 through 1.825 apply during a reexamination proceeding if the application for the patent sought to be reexamined was filed on or after July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Esther M. Kepplinger, by telephone at (703) 308–1495; by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231 marked to her attention; by facsimile to (703) 305–3935; or by electronic mail at esther.kepplinger@uspto.gov.

SUPPLEMENTARY INFORMATION: Sections 1.821 through 1.825 of title 37 provide a standardized format for the description of nucleotide and amino acid sequence data in patent applications and require the submission of such sequences in computer readable form (CRF). Sections 1.821 through 1.825 provide the following benefits to the PTO: (1) Improved search capabilities; (2) improved interference detection; (3) more efficient examination; (4) cost savings for the input of the sequence data; (5) more

efficient and accurate printing of sequences in patents; (6) exchange of the sequence data with other patent offices electronically; and (7) improved public access to the sequences electronically.

Reasons for the Changes

In response to the needs of our customers, the procedural requirements found in former §§ 1.821 through 1.825 have been reduced. Sections 1.821 through 1.825 are being amended to be consistent with World Intellectual Property Organization (WIPO) Standard ST.25 (signed in 1998 and effective July 1, 1998). ST.25 replaces WIPO Standards ST.23 and ST.24 which deal with paper and electronic submissions of sequence listings.

A Meeting of International Authorities (MIA) under the Patent Cooperation Treaty (PCT) was held in November of 1994 to discuss simplification of sequence listing submission requirements. Under the previous PCT Regulations, each International Searching Authority, each International Preliminary Examining Authority and each designated/elected office was free to set the requirements for submission of sequence listings in paper and electronic form. This imposed a burden on applicants by requiring them to prepare sequence listings in many different formats. In addition, sequence listings were required to be translated for consideration in the national stage at considerable cost to applicants and at the risk that the information could be inaccurately translated.

After the November 1994 MIA, the PTO, the European Patent Office (EPO) and the Japanese Patent Office (JPO) worked together with WIPO to create a new international standard which forms the basis of WIPO Standard ST.25 (1998). Sections 1.821 through 1.825 of 37 CFR, as amended herein, are consistent with WIPO Standard ST.25 (1998) and the PCT sequence listing requirements. Sequence listings prepared in accordance with §§ 1.821 through 1.825 as amended generally will be acceptable in all countries which adhere to WIPO Standard ST.25 (1998). In addition, a sequence listing prepared in accordance with the §§ 1.821 through 1.825 as amended will be acceptable for the national stage in all PCT member countries which require the submission of a sequence listing. As a result of this rule change, applicants will experience a reduction in cost since only one sequence listing in paper and electronic form will need to be prepared and translations of this listing will not be needed.

All necessary changes to the text of §§ 1.821 through 1.825 to reflect the new WIPO Standard ST.25 (1998), have been made. Each change is described below.

Overview of the Changes

The changes in this Final Rule include:

(1) Use of numeric identifiers to replace the language subject headings within the submission;

(2) Elimination of unnecessary and confusing data elements;

(3) Movement of the paper Sequence Listing to the end of the application, preferably with separately numbered pages;

(4) Elimination of the requirement to provide a submission for sequences with fewer than four specifically defined nucleotides or amino acids;

(5) Use of *lower-case* one-letter codes for nucleotide bases;

(6) Rearrangement of portions of the rules to improve their context;

(7) Clarification and simplification of the rules to aid in understanding; and

(8) Minor changes to accomplish harmonization with WIPO Standard ST.25 (1998) as well as the EPO and the JPO standards.

Amended §§ 1.821 through 1.825 are not mandatory for: (1) applications that claim the benefit of a prior application under 35 U.S.C. 120 filed before July 1, 1998, and which do not add subject matter involving a sequence listing subject to §§ 1.821 through 1.825; (2) reissue applications in which the application for the patent sought to be reissued was filed before July 1, 1998; and (3) reexamination proceedings if the application for the patent sought to be reexamined was filed before July 1, 1998. The PTO will accept and encourages the submission of sequence listings in compliance with amended §§ 1.821 through 1.825 for any application or reexamination proceeding. All sequence listings (including the entire computer readable form) must be submitted in compliance with either §§ 1.821 through 1.825 as amended in this Final Rule or (when permitted) former §§ 1.821 through 1.825.

If the CRF for a new application would be identical to a compliant CRF already on file in the PTO, the applicant may make reference to the other application and the CRF in lieu of filing a duplicate CRF in the new application by following the procedures set forth in § 1.821(e). If exceptional circumstances do arise and certain applicants experience specific hardships in attempting to comply with amended §§ 1.821 through 1.825, the PTO will consider a petition under § 1.183 to waive certain requirements of §§ 1.821 through 1.825.

A Notice of Proposed Rulemaking entitled ''Changes Implementing Nucleotide and/or Amino Acid Sequence Listings'' (Notice of Proposed Rulemaking) was published in the **Federal Register** at 61 FR 51855 (October 4, 1996), and in the *Official Gazette of the Patent and Trademark Office*, at 1191 *Off. Gaz. Pat. Office* 168 (October 29, 1996). Sections 1.821 through 1.825 as adopted contain several changes from these sections. This Final Rule provides a discussion of the content of the specific rules being amended, description of the changes in the text of the proposed rules, and explanation of the reasons supporting the changes. In addition, comments received in response to the Notice of Proposed Rulemaking are analyzed.

Discussion of Specific Rules and Changes from the Proposed Rules:

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows.

Section 1.77

The proposed change to 37 CFR 1.77 was previously adopted. *See Miscellaneous Changes to Patent Practice*; Final Rule, 61 FR 42790 (August 19, 1996), 1190 *Off. Gaz. Pat. Office* 67 (September 17, 1996).

Section 1.821

Section 1.821 incorporates by reference the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25 (1998), including Tables 1 through 6 of Appendix 2, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the World Intellectual Property Organization; 34 chemin des Colombettes; 1211 Geneva 20 Switzerland. Copies may be inspected at the Patent Search Room; Crystal Plaza 3, Lobby Level; 2021 South Clark Place; Arlington, VA 22202. Copies may also be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC 20408. These Tables are reproduced below.

WIPO Standard ST.25 (1998), Appendix 2, Table 1, provides that the bases of a nucleotide sequence should be represented using the following one-letter code for nucleotide sequence characters:

TABLE 1.—ONE LETTER CODES FOR NUCLEOTIDE SEQUENCES

Symbol	Meaning	Origin of designation
a	a	*a*denine.
g	g	*g*uanine.
c	c	*c*ytosine.
t	t	*t*hymine.
u	u	*u*racil.
r	g or a	*pur*ine.
y	t/u or c	p*yr*imidine.
m	a or c	a*m*ino.
k	g or t/u	*k*eto.
s	g or c	*s*trong interactions 3 H-bonds.
w	a or t/u	*w*eak interactions 2 H-bonds.
b	g or c or t/u	not a.
d	a or g or t/u	not c.
h	a or c or t/u	not g.
v	a or g or c	not t, not u.
n	(a or g or c or t/u) or (unknown or other)	a*n*y

WIPO Standard ST.25 (1998), Appendix 2, Table 2, provides that modified bases may be represented as the corresponding unmodified bases in the sequence itself, if the modified base is one of those listed below and the modification is further described in the Feature section of the Sequence Listing. The codes from the list below may be used in the description (i.e., the specification and drawings, or in the Sequence Listing) but these codes may not be used in the sequence itself.

TABLE 2.—MODIFIED BASES

Symbol	Meaning
ac4c	4-acetylcytidine.
chm5u	5-(carboxyhydroxylmethyl)uridine.
cm	2-O-methylcytidine.
cmnm5s2u	5-carboxymethylaminomethyl-2-thiouridine.
cmnm5u	5-carboxymethylaminomethyluridine.
d	dihydrouridine.
fm	2-O-methylpseudouridine.
gal q	beta, D-galactosylqueuosine.
gm	2-O-methylguanosine.
I	inosine.
i6a	N6-isopentenyladenosine.
m1a	1-methyladenosine.
m1f	1-methylpseudouridine.
m1g	1-methylguanosine.
m1i	1-methylinosine.
m22g	2,2-dimethylguanosine.
m2a	2-methyladenosine.
m2g	2-methylguanosine.
m3c	3-methylcytidine.
m5c	5-methylcytidine.
m6a	N6-methyladenosine.
m7g	7-methylguanosine.
mam5u	5-methylaminomethyluridine.
mam5s2u	5-methoxyaminomethyl-2-thiouridine.
man q	beta, D-mannosylqueuosine.
mcm5s2u	5-methoxycarbonylmethyl-2-thiouridine.
mcm5u	5-methoxycarbonylmethyluridine.
mo5u	5-methoxyuridine.
ms2i6a	2-methylthio-N6-isopentenyladenosine.
ms2t6a	N-((9-beta-D-ribofuranosyl-2-methylthiopurine-6-yl) carbamoyl) threonine.
mt6a	N-((9-beta-D-ribofuranosylpurine-6-yl)N-methylcarbamoyl) threonine.
mv	uridine-5-oxyacetic acid-methylester.
o5u	uridine-5-oxyacetic acid.
osyw	wybutoxosine.
p	pseudouridine.
q	queuosine.
s2c	2-thiocytidine.
s2t	5-methyl-2-thiouridine.
s2u	2-thiouridine.
s4u	4-thiouridine.
t	5-methyluridine.
t6a	N-((9-beta-D-ribofuranosylpurine-6-yl)-carbamoyl)threonine.
tm	2-O-methyl-5-methyluridine.
um	2-O-methyluridine.

TABLE 2.—MODIFIED BASES—Continued

Symbol	Meaning
yw	wybutosine.
x	3-(3-amino-3-carboxy-propyl)uridine, (acp3)u.

WIPO Standard ST.25 (1998), Appendix 2, Table 3, provides that the amino acids should be represented using the following three-letter code with the first letter as a capital.

TABLE 3.—AMINO ACID THREE-LETTER CODES

Symbol	Meaning
Ala	Alanine.
Cys	Cysteine.
Asp	Aspartic Acid.
Glu	Glutamic Acid.
Phe	Phenylalanine.
Gly	Glycine.
His	Histidine.
Ile	Isoleucine.
Lys	Lysine.

TABLE 3.—AMINO ACID THREE-LETTER CODES—Continued

Symbol	Meaning
Leu	Leucine.
Met	Methionine.
Asn	Asparagine.
Pro	Proline.
Gln	Glutamine.
Arg	Arginine.
Ser	Serine.
Thr	Threonine.
Val	Valine.
Trp	Tryptophan.
Tyr	Tyrosine.
Asx	Asp or Asn.
Glx	Glu or Gln.
Xaa	Unknown or other.

WIPO Standard ST.25 (1998), Appendix 2, Table 4, provides that modified and unusual amino acids may be represented as the corresponding unmodified amino acids in the sequence itself if the modified or unusual amino acid is one of those listed below and the modification is further described in the Feature section of the Sequence Listing. The codes from the list below may be used in the description (i.e., the specification and drawings, or in the Sequence Listing) but these codes may not be used in the sequence itself.

TABLE 4.—MODIFIED AND UNUSUAL AMINO ACID CODES

Symbol	Meaning
Aad	2-Aminoadipic acid.
bAad	3-aminoadipic acid.
bAla	beta-Alanine, beta-Aminopropionic acid.
Abu	2-Aminobutyric acid.
4Abu	4-Aminobutyric acid, piperidinic acid.
Acp	6-Aminocaproic acid.
Ahe	2-Aminoheptanoic acid.
Aib	2-Aminoisobutyric acid.
bAib	3-Aminoisobutyric acid.
Apm	2-Aminopimelic acid.
Dbu	2,4-Diaminobutyric acid.
Des	Desmosine.
Dpm	2,2-Diaminopimelic acid.
Dpr	2,3-Diaminopropionic acid.
EtGly	N-Ethylglycine.
EtAsn	N-Ethylasparagine.
Hyl	Hydroxylysine.
aHyl	allo-Hydroxylysine.
3Hyp	3-Hydroxyproline.
4Hyp	4-Hydroxyproline.
Ide	Isodesmosine.
aIle	allo-Isoleucine.
MeGly	N-Methylglycine, sarcosine.
MeIle	N-Methylisoleucine.
MeLys	6-N-Methyllysine.
MeVal	N-Methylvaline.
Nva	Norvaline.
Nle	Norleucine.
Orn	Ornithine.

WIPO Standard ST.25 (1998), Appendix 2, Table 5 provides for feature keys related to DNA sequences.

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Table 5: Feature keys related to nucleotide sequences

Key	Description
allele	a related individual or strain contains stable, alternative forms of the same gene which differs from the presented sequence at this location (and perhaps others)
attenuator	1) region of DNA at which regulation of termination of transcription occurs, which controls the expression of some bacterial operons; 2) sequence segment located between the promoter and the first structural gene that causes partial termination of transcription
C_region	constant region of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains. Includes one or more exons depending on the particular chain
CAAT_signal	CAAT box; part of a conserved sequence located about 75 bp up-stream of the start point of eukaryotic transcription units which may be involved in RNA polymerase binding; consensus=GG (C or T) CAATCT
CDS	coding sequence; sequence of nucleotides that corresponds with the sequence of amino acids in a protein (location includes stop codon). Feature includes amino acid conceptual translation
conflict	independent determinations of the "same" sequence differ at this site or region
D-loop	displacement loop; a region within mitochondrial DNA in which a short stretch of RNA is paired with one strand of DNA, displacing the original partner DNA strand in this region; also used to describe the displacement of a region of one strand of duplex DNA by a single stranded invader in the reaction catalyzed by RecA protein
D-segment	diversity segment of immunoglobulin heavy chain, and T-cell receptor beta chain
enhancer	a cis-acting sequence that increases the utilization of (some) eukaryotic promoters, and can function in either orientation and in any location (upstream or downstream) relative to the promoter
exon	region of genome that codes for portion of spliced mRNA; may contain 5'UTR, all CDSs, and 3'UTR
GC_signal	GC box; a conserved GC-rich region located upstream of the start point of eukaryotic transcription units which may occur in multiple copies or in either orientation; consensus=GGGCGG
gene	region of biological interest identified as a gene and for which a name has been assigned
iDNA	Intervening DNA; DNA which is eliminated through any of several kinds of recombination
intron	a segment of DNA that is transcribed, but removed from within the transcript by splicing together the sequences (exons) on either side of it
J_segment	joining segment of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma-chains
LTR	long terminal repeat, a sequence directly repeated at both ends of a defined sequence, of the sort typically found in retroviruses
mat_peptide	mature peptide or protein coding sequence; coding sequence for the mature or final peptide or protein product following post-translational modification. The location does not include the stop codon (unlike the corresponding CDS)

misc_binding	site in nucleic acid which covalently or non-covalently binds another moiety that cannot be described by any other Binding key (primer_bind or protein_bind)
misc_difference	feature sequence is different from that presented in the entry and cannot be described by any other Difference key (conflict, unsure, old_sequence, mutation, variation, allele, or modified_base)
misc_feature	region of biological interest which cannot be described by any other feature key; a new or rare feature
misc_recomb	site of any generalized, site-specific or replicative recombination event where there is a breakage and reunion of duplex DNA that cannot be described by other recombination keys (iDNA and virion) or qualifiers of source key (/insertion_seq,/transposon,/proviral)
misc_RNA	any transcript or RNA product that cannot be defined by other RNA keys (prim_transcript, precursor_RNA, mRNA, 5'clip, 3'clip, 5'UTR, 3'UTR, exon, CDS, sig_peptide, transit_peptide, mat_peptide, intron, polyA_site, rRNA, tRNA, scRNA, and snRNA)
misc_signal	any region containing a signal controlling or altering gene function or expression that cannot be described by other Signal keys (promoter, CAAT_signal, TATA_signal, -35_signal, -10_signal, GC_signal, RBS, polyA_signal, enhancer, attenuator, terminator, and rep_origin)
misc_structure	any secondary or tertiary structure or conformation that cannot be described by other Structure keys (stem_loop and D-loop)
modified_base	the indicated nucleotide is a modified nucleotide and should be substituted for by the indicated molecule (given in the mod_base qualifier value)
mRNA	messenger RNA; includes 5'untranslated region (5'UTR), coding sequences (CDS, exon) and 3'untranslated region (3'UTR)
mutation	a related strain has an abrupt, inheritable change in the sequence at this location
N_region	Extra nucleotides inserted between rearranged immunoglobulin segments
old_sequence	the presented sequence revises a previous version of the sequence at this location
polyA_signal	recognition region necessary for endonuclease cleavage of an RNA transcript that is followed by polyadenylation; consensus=AATAAA
polyA_site	site on an RNA transcript to which will be added adenine residues by post-transcriptional polyadenylation
precursor_RNA	any RNA species that is not yet the mature RNA product; may include 5'clipped region (5'clip), 5'untranslated region (5'UTR), coding sequences (CDS, exon), intervening sequences (intron), 3'untranslated region (3'UTR), and 3'clipped region (3'clip)
prim_transcript	primary (initial, unprocessed) transcript; includes 5'clipped region (5'clip), 5' untranslated region (5'UTR), coding sequences (CDS, exon), intervening sequences (intron), 3'untranslated region (3'UTR), and 3'clipped region (3'clip)
primer_bind	Non-covalent primer binding site for initiation of replication, transcription, or reverse transcription. Includes site(s) for synthetic e.g., PCR primer elements
promoter	region on a DNA molecule involved in RNA polymerase binding to initiate transcription
protein_bind	non-covalent protein binding site on nucleic acid
RBS	ribosome binding site
repeat_region	region of genome containing repeating units
repeat_unit	single repeat element

rep_origin	origin of replication; starting site for duplication of nucleic acid to give two identical copies
rRNA	mature ribosomal RNA; the RNA component of the ribonucleoprotein particle (ribosome) which assembles amino acids into proteins
S_region	Switch region of immunoglobulin heavy chains. Involved in the rearrangement of heavy chain DNA leading to the expression of a different immunoglobulin class from the same B-cell
satellite	many tandem repeats (identical or related) of a short basic repeating unit; many have a base composition or other property different from the genome average that allows them to be separated from the bulk (main band) genomic DNA
scRNA	small cytoplasmic RNA; any one of several small cytoplasmic RNA molecules present in the cytoplasm and (sometimes) nucleus of a eukaryote
sig_peptide	signal peptide coding sequence; coding sequence for an N-terminal domain of a secreted protein; this domain is involved in attaching nascent polypeptide to the membrane; leader sequence
snRNA	small nuclear RNA; any one of many small RNA species confined to the nucleus; several of the snRNAs are involved in splicing or other RNA processing reactions
source	identifies the biological source of the specified span of the sequence. This key is mandatory. Every entry will have, as a minimum, a single source key spanning the entire sequence. More than one source key per sequence is permissible
stem_loop	hairpin; a double-helical region formed by base-pairing between adjacent (inverted) complementary sequences in a single strand of RNA or DNA
STS	Sequence Tagged Site. Short, single-copy DNA sequence that characterizes a mapping landmark on the genome and can be detected by PCR. A region of the genome can be mapped by determining the order of a series of STSs
TATA_signal	TATA box; Goldberg-Hogness box; a conserved AT-rich septamer found about 25 bp before the start point of each eukaryotic RNA polymerase II transcript unit which may be involved in positioning the enzyme for correct initiation; consensus=TATA(A or T)A(A or T)
terminator	sequence of DNA located either at the end of the transcript or adjacent to a promoter region that causes RNA polymerase to terminate transcription; may also be site of binding of repressor protein
transit_peptide	transit peptide coding sequence; coding sequence for an N-terminal domain of a nuclear-encoded organellar protein; this domain is involved in post-translational import of the protein into the organelle
tRNA	mature transfer RNA, a small RNA molecule (75-85 bases long) that mediates the translation of a nucleic acid sequence into an amino acid sequence
unsure	author is unsure of exact sequence in this region
V_region	Variable region of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains. Codes for the variable amino terminal portion. Can be made up from V_segments, D_segments, N_regions, and J_segments
V_segment	variable segment of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains. Codes for most of the variable region (V_region) and the last few amino acids of the leader peptide

variation	a related strain contains stable mutations from the same gene (e.g., RFLPs, polymorphisms, etc.) which differ from the presented sequence at this location (and possibly others)
3'clip	3'-most region of a precursor transcript that is clipped off during processing
3'UTR	region at the 3' end of a mature transcript (following the stop codon) that is not translated into a protein
5'clip	5'-most region of a precursor transcript that is clipped off during processing
5'UTR	region at the 5' end of a mature transcript (preceding the initiation codon) that is not translated into a protein
-10_signal	pribnow box; a conserved region about 10 bp upstream of the start point of bacterial transcription units which may be involved in binding RNA polymerase; consensus=TATAAT
-35_signal	a conserved hexamer about 35 bp upstream of the start point of bacterial transcription units; consensus=TTGACA [ ] or TGTTGACA [ ]

WIPO Standard ST.25 (1998), Appendix 2, Table 6 provide for feature keys related to protein sequences.

Table 6: Feature keys related to Protein sequences

Key	Description
CONFLICT	Different papers report differing sequences
VARIANT	Authors report that sequence variants exist
VARSPLIC	Description of sequence variants produced by alternative splicing
MUTAGEN	Site which has been experimentally altered
MOD_RES	Post-translational modification of a residue
ACETYLATION	N-terminal or other
AMIDATION	Generally at the C-terminal of a mature active peptide
BLOCKED	Undetermined N- or C-terminal blocking group
FORMYLATION	Of the N-terminal methionine
GAMMA-CARBOXYGLUTAMIC ACID HYDROXYLATION	Of asparagine, aspartic acid, proline or lysine
METHYLATION	Generally of lysine or arginine
PHOSPHORYLATION	Of serine, threonine, tyrosine, aspartic acid or histidine
PYRROLIDONE CARBOXYLIC ACID	N-terminal glutamate which has formed an internal cyclic lactam
SULFATATION	Generally of tyrosine
LIPID	Covalent binding of a lipidic moiety
MYRISTATE	Myristate group attached through an amide bond to the N-terminal glycine residue of the mature form of a protein or to an internal lysine residue

PALMITATE	Palmitate group attached through a thioether bond to a cysteine residue or through an ester bond to a serine or threonine residue
FARNESYL	Farnesyl group attached through a thioether bond to a cysteine residue
GERANYL-GERANYL	Geranyl-geranyl group attached through a thioether bond to a cysteine residue
GPI-ANCHOR	Glycosyl-phosphatidylinositol (GPI) group linked to the alpha-carboxyl group of the C-terminal residue of the mature form of a protein
N-ACYL DIGLYCERIDE	N-terminal cysteine of the mature form of a prokaryotic lipoprotein with an amide-linked fatty acid and a glyceryl group to which two fatty acids are linked by ester linkages
DISULFID	Disulfide bond. The 'FROM' and 'TO' endpoints represent the two residues which are linked by an intra-chain disulfide bond. If the 'FROM' and 'TO' endpoints are identical, the disulfide bond is an interchain one and the description field indicates the nature of the cross-link
THIOLEST	Thiolester bond. The 'FROM' and 'TO' endpoints represent the two residues which are linked by the thiolester bond
THIOETH	Thioether bond. The 'FROM' and 'TO' endpoints represent the two residues which are linked by the thioether bond
CARBOHYD	Glycosylation site. The nature of the carbohydrate (if known) is given in the description field
METAL	Binding site for a metal ion. The description field indicates the nature of the metal
BINDING	Binding site for any chemical group (co-enzyme, prosthetic group, etc.). The chemical nature of the group is given in the description field
SIGNAL	Extent of a signal sequence (prepeptide)
TRANSIT	Extent of a transit peptide (mitochondrial, chloroplastic, or for a microbody)
PROPEP	Extent of a propeptide
CHAIN	Extent of a polypeptide chain in the mature protein
PEPTIDE	Extent of a released active peptide
DOMAIN	Extent of a domain of interest on the sequence. The nature of that domain is given in the description field
CA_BIND	Extent of a calcium-binding region
DNA_BIND	Extent of a DNA-binding region
NP_BIND	Extent of a nucleotide phosphate binding region. The nature of the nucleotide phosphate is indicated in the description field
TRANSMEM	Extent of a transmembrane region
ZN_FING	Extent of a zinc finger region
SIMILAR	Extent of a similarity with another protein sequence. Precise information, relative to that sequence is given in the description field
REPEAT	Extent of an internal sequence repetition
HELIX	Secondary structure - Helices, e.g., Alpha-helix, 3(10) helix, or Pi-helix

STRAND	Secondary structure - Beta-strand, e.g., Hydrogen bonded beta-strand, or Residue in an isolated beta-bridge
TURN	Secondary structure - Turns, e.g., H-bonded turn (3-turn, 4-turn, or 5-turn)
ACT_SITE	Amino acid(s) involved in the activity of an enzyme
SITE	Any other interesting site on the sequence
INIT_MET	The sequence is known to start with an initiator methionine
NON_TER	The residue at an extremity of the sequence is not the terminal residue. If applied to position 1, this signifies that the first position is not the N-terminus of the complete molecule. If applied to the last position, it signifies that this position is not the C-terminus of the complete molecule. There is no description field for this key
NON_CONS	Non consecutive residues. Indicates that two residues in a sequence are not consecutive and that there are a number of unsequenced residues between them
UNSURE	Uncertainties in the sequence. Used to describe region(s) of a sequence for which the authors are unsure about the sequence assignment

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Further in paragraph (a) of § 1.821, both occurrences of ''Copies of ST.23'' have been changed to ''Copies of WIPO Standard ST.25 (1998).'' This change is necessary to reflect the new standard number.

In paragraph (a)(1) of § 1.821, ''ST.23 (April 1994), paragraph 8'' has been changed to ''ST.25 (1998), Appendix 2, Table 1.'' This change reflects the correct information with regard to the incorporated WIPO standard and the list of symbols to be used for nucleotide sequence characters.

Further in paragraph (a)(1) of § 1.821, ''ST.23 (April 1994), paragraph 9'' has been changed to ''ST.25 (1998), Appendix 2, Table 2.'' This change reflects the correct information with regard to the incorporated WIPO standard and the list of modified bases which can be presented as unmodified nucleotide sequence characters.

In paragraph (a)(2) of § 1.821, all three occurrences of ''ST.23 (April 1994), paragraph 11'' have been changed to ''ST.25 (1998), Appendix 2, Table 3.'' This change reflects the correct information with regard to the incorporated WIPO standard and the list of symbols to be used for amino acid sequence characters.

Further in paragraph (a)(2) of § 1.821, ''ST.23 (April 1994), paragraph 12'' has been changed to ''ST.25 (1998), Appendix 2, Table 4.'' This change reflects the correct information with regard to the incorporated WIPO standard and the list of modified or unusual amino acids which can be presented as unmodified amino acid sequence characters.

In paragraph (c) of § 1.821, each of the three occurrences of the words ''integer identifier'' or ''integer identifiers'' has been changed to ''sequence identifier'' or ''sequence identifiers'' as appropriate. WIPO Standard ST.25 (1998), uses the term ''sequence identifier'' rather than ''integer identifier.'' Thus, this change is necessary to achieve harmonization with the international standard.

In the last sentence of paragraph (c) of § 1.821, the phrase ''The sequence omitted shall appear following the integer identifier'' of the proposed rule has been replaced by ''the code '000' shall be used in place of the sequence.'' The response for the numeric identifier <160> shall include the total number of SEQ ID NOs, whether followed by a sequence or by the code ''000''. The code ''000'' should be put into <400>. This change permits flexibility in the preparation and amendment of Sequence Listings. It also makes the rule language-neutral and is consistent with WIPO Standard ST.25 (1998).

In paragraph (d) of § 1.821, the words ''integer identifier'' have been changed to ''sequence identifier.'' WIPO Standard ST.25 (1998) uses the term ''sequence identifier'' rather than ''integer identifier.'' Thus, this change is necessary to achieve harmonization with the international standard.

In paragraphs (f), (g) and (h) of § 1.821, the sentence ''Such a statement must be a verified statement if made by a person not registered to practice before the Office'' has been deleted. The separate verification requirements in § 1.821 have been eliminated in view of the recent amendment to §§ 1.4(d) and 10.18. *See Changes to Patent Practice and Procedure;* Final Rule, 62 FR. 53131 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63 (October 21, 1997). Paragraph (g) of § 1.821 has also been amended to provide that the Office will provide a ''period of time'' (rather than one month) within which the applicant must comply with the requirements of § 1.821(b) through (f) in order to avoid abandonment.

Further in paragraph (f) of § 1.821, the following has been added at the end of the first sentence, '', *e.g.*, the information recorded in computer readable form is identical to the written sequence listing.'' WIPO Standard ST.25 (1998), paragraph 39, requires the language which has been added as an acceptable example for phrasing the required statement that the computer readable form and the written sequence listing are the same.

Section 1.822

In paragraph (b) of § 1.822, both references to WIPO Standard ST.23 (April 1994), paragraphs 8 and 11, as proposed have been changed to ''WIPO Standard ST.25 (1998), Appendix 2, Tables 1 and 3.'' These changes reflect the correct information with regard to the incorporated WIPO standard and the lists of symbols for nucleotide and amino acid sequence characters.

Further in paragraph (b) of § 1.822, ''WIPO Standard ST.23 (April 1994), paragraphs 9 and 12'' as proposed has been changed to ''WIPO Standard ST.25 (1998), Appendix 2, Tables 2 and 4.''

This change reflects the correct information with regard to the incorporated WIPO standard and the lists of modified bases and modified or unusual amino acids which can be depicted in the Sequence Listing via the symbols for a corresponding unmodified base or amino acid.

Further in paragraph (b) of § 1.822, the symbol designating an unknown nucleotide base or a nucleotide base other than those listed in the WIPO standard was proposed as an upper case letter ''N.'' This symbol has been changed to a lower case letter ''n.'' This change is consistent with the use of lower case letters for the symbols representing the nucleotide bases.

Further in paragraph (b) of § 1.822, the language has been clarified to specifically state that each ''n'' or ''Xaa'' represents only a single residue. Thus, for example, a single ''Xaa'' may not be used to designate a string of four amino acids, each of which is unknown. This represents a codification of existing practice.

Further in paragraph (b) of § 1.822, the information required in the Feature section to explain the use of ''n'' or ''Xaa'' in a given sequence is referred to ''as appropriate.'' Additional instruction is added at the end of paragraph (b) of § 1.822 following ''the Feature section'' indicating'', preferably by including one or more feature keys listed in WIPO Standard ST.25 (1998), Appendix 2, Tables 5 and 6.'' This change specifies the preference for using the feature keys listed in the WIPO standard in order to aid applicants in filing a CRF which will comply with WIPO Standard ST.25 (1998). These feature keys are controlled vocabulary and are considered language neutral. Their use is required in a PCT patent application or a patent application in a foreign country which has adopted WIPO Standard ST.25 (1998).

In paragraph (c)(1) of § 1.822, ''WIPO Standard ST.23 (April 1994), paragraph 8'' as proposed has been changed to ''WIPO Standard ST.25 (1998), Appendix 2, Table 1.'' This change reflects the correct information with regard to the incorporated WIPO standard and the list of symbols to be used for nucleotide sequence characters.

In paragraph (d)(1) of § 1.822, ''WIPO Standard ST.23 (April 1994), paragraph 11, as proposed has been changed to ''WIPO Standard ST.25 (1998), Appendix 2, Table 3.'' This change reflects the correct information with regard to the incorporated WIPO standard and the list of symbols to be used for amino acid sequence characters.

In paragraph (d)(4) of § 1.822, the section notes that enumeration requirements are applicable to amino acid sequences that are circular in configuration. The following language has been added to the end of the paragraph '', with the exception that the designation of the first amino acid of the sequence may be made at the option of the applicant.'' This change is necessary to provide consistency with its counterpart of circular nucleotide sequences as provided in paragraph (c)(7) of § 1.822. This change is also consistent with WIPO Standard ST.25 (1998), paragraph 21.

In paragraph (e) of § 1.822, the words ''integer identifiers'' have been changed to ''sequence identifiers .'' WIPO Standard ST.25 (1998) uses the term ''sequence identifier'' rather than ''integer identifier.'' Thus, this change is necessary to achieve harmonization with the international standard.

Section 1.823

In paragraph (a) of § 1.823, the entire second sentence which read ''On a separate page of the application specification, immediately prior to the claims, there shall be a reference to the presence of the 'Sequence Listing' in a 'Sequence Listing Annex.'" has been eliminated. The designation of the Sequence Listing as an annex to the specification was initially proposed in an early version of the international standard. This terminology is not used in WIPO Standard ST.25 (1998), however, and so it has also been eliminated from paragraph (a) of § 1.823, as proposed. Simplification results as well by the elimination of the requirement that the Sequence Listing must be designated as an annex to the specification.

In paragraph (a) of § 1.823, the third sentence has been modified by deleting the words ''shall appear in the 'Sequence Listing Annex,' which is.'' As explained above, the current version of the international standard does not require designating the Sequence Listing as an annex to the specification.

In paragraph (a) of § 1.823, the words ''preferably should be'' have been added to the third sentence, before ''numbered independently of the numbering of the remainder of the application'' to describe the independent page numbering of the Sequence Listing in paper copy form. The term ''preferably'' was added for purposes of harmonization with WIPO Standard ST.25 (1998).

In paragraph (a) of § 1.823, the last clause of the third sentence ''and shall be placed in the application file'' has been deleted as unnecessary and potentially confusing now that the reference to a ''Sequence Listing Annex'' has been removed from this paragraph.

In paragraph (a) of § 1.823, the fourth sentence has been eliminated in its entirety. As explained above, the current version of the international standard does not require designating the Sequence Listing as an annex to the specification.

In paragraph (a) of § 1.823, in both occurrences in the fifth sentence and in the single occurrence in the sixth sentence, the word ''shall'' has been changed to ''should.'' These changes are necessary for purposes of achieving consistency with WIPO Standard ST.25 (1998).

In paragraph (b) of § 1.823, the first sentence has been modified by the deletion of the words ''in addition to and immediately preceding.'' This change is consistent with WIPO Standard ST.25 (1998).

In paragraph (b) of § 1.823, the fifth sentence has been deleted, eliminating the prohibition of any item of information occupying more than one line. This change is consistent with WIPO Standard ST.25 (1998).

In paragraph (b) of § 1.823, the last sentence has been deleted to eliminate the ''rep'' designation for data elements of the ''Sequence Listing.'' Certain data elements may still be repeated within the listing but this change was made for harmonization of the table with WIPO Standard ST.25 (1998).

In paragraph (b) of § 1.823, the eighth sentence has been modified to reflect the new numeric numbering scheme, for harmonization with WIPO Standard ST.25 (1998). Specifically, ''<100> through <193>'' of the proposed rule has been changed to ''<110> through <170>.''

The table in paragraph (b) of § 1.823, has been changed to reflect the revised numbering scheme and data elements used in WIPO Standard ST.25 (1998). The specific changes are as follows:

Numeric identifier ''<100>, General Information,'' has been deleted from the proposed rules, as it is not present in WIPO Standard ST.25 (1998).

Numeric identifier ''<110>, Applicant,'' in the proposed rule, has been changed to indicate that ''preferably '' a maximum of ten names may be indicated. This change allows for more than ten names in the Applicant field for those instances in which such would be appropriate. This change is consistent with WIPO Standard ST.25 (1998).

Numeric identifier ''<120>, Title of Invention,'' in the proposed rule, has been changed to eliminate the limitation

that the title be a maximum of four lines. This change allows applicants more flexibility with respect to the title. This change is consistent with WIPO Standard ST.25 (1998).

Numeric identifier ''<130>, Number of Sequences,'' in the proposed rule, has been changed to reflect ''<130>, File Reference,'' as stated in WIPO Standard ST.25 (1998). This numeric identifier was indicated as ''<183>, File Reference/Docket Number '', in the rule as proposed. As proposed this was an optional numeric identifier. The numeric identifier remains optional once the application has been assigned an application number, *e.g.*, a serial number. This numeric identifier is now MANDATORY when an application number has not yet been assigned to the application, such as on the day the application is initially filed. This change will assist in the matching of sequence information submissions with an application in the event that either the paper copy or the computer readable form were to become separated from the remainder of the application. This change is consistent with WIPO Standard ST.25 (1998).

The Number of Sequences field identified as ''<130>'' in the proposed rule is now numbered ''<160>'' in § 1.823 as adopted and redefined as ''Number of SEQ ID NOs.''

The information associated with numeric identifiers ''<140>'' through ''<153>,'' ''Correspondence Address'' through ''Operating System'' of the proposed rule, has been eliminated to reduce the burden on the applicant and to harmonize with WIPO Standard ST.25 (1998). Some of these numeric identifiers have been used in the new numbering scheme and have been associated with different information as indicated herein and in the Table of § 1.823.

One remaining numeric identifier within the Computer Readable Form section, ''<154>, Software,'' of the proposed rule, will remain, with the exception that it has been reassigned the numeric identifier of ''<170>'' to reflect the numbering scheme presented in WIPO Standard ST.25 (1998).

The main headings ''<160>, Current Application Data'' and ''<170>, Prior Application Data,'' of the proposed rules, have been eliminated to harmonize with WIPO Standard ST.25 (1998) and reduce the number of fields in the Sequence Listing. The information that was to appear under these main headings remains in the rules but has been reassigned numeric identifiers <140> through <151>. The specific changes are as follows: ''<160>'' has been redefined as ''Number of SEQ ID NOs ''; ''<161>, Application Number,'' of the proposed rule is now numbered as ''<140>,'' and is defined as ''Current Application Number'; ''<162>, Filing Date,'' of the proposed rule is now numbered ''<141>,'' and is defined as ''Current Filing Date''; ''<170>'' has been redefined as ''Software ''; ''<171>, Application Number,'' of the proposed rule is now numbered as ''<150>,'' and is defined as ''Prior Application Number''; ''<172>, Filing Date,'' of the proposed rule is now numbered as ''<151>,'' and is defined as ''Prior Application Filing Date.''

The numeric identifiers now numbered ''<150>, Prior Application Number,'', and ''<151>, Prior Application Filing Date,'' are now mandatory only in those instances in which a claim for priority with respect to those prior applications is being made under either 35 U.S.C. 119 or 120. This change will provide information in this regard when it is most useful and was necessary to harmonize these rules with WIPO Standard ST.25 (1998). Throughout the Sequence Listing, application numbers must be set forth as a combination of the two digit country code, as set forth in WIPO Standard ST.3, as well as an application number in accordance with WIPO Standard ST.13 or for an international application, the numbering system as set out in Section 307(a) of the Administrative Instructions under the PCT.

Numeric identifiers ''<180>, Attorney/Agent Information,'' through ''<182>, Registration Number,'' of the proposed rule, have been eliminated to harmonize with WIPO Standard ST.25 (1998) and reduce the number of fields in the Sequence Listing.

Numeric identifier ''<183>, File Reference/Docket Number'' of the proposed rule has been reassigned as numeric identifier ''<130>,'' and redefined as ''File Reference'' in an effort to harmonize with WIPO Standard ST.25 (1998).

The Telecommunication Information section, ''<190>'' through ''<193>'' of the proposed rules, has been eliminated in order to reduce the number of fields in the Sequence Listing and harmonize with WIPO Standard ST.25 (1998).

Numeric identifier ''<200>, Information for SEQ ID NO:#:'', has been reassigned the numeric identifier ''<210>, SEQ ID NO: #:'' This numeric identifier indicates the integer, referred to in these final rules as the sequence identifier for both the sequence information and the actual sequence which follows the information.

Numeric identifier ''<210>, Sequence Characteristics,'' of the proposed rule has been eliminated in order to reduce the number of required elements in the Sequence Listing and harmonize with WIPO Standard ST.25 (1998).

The valid responses for the mandatory numeric identifier ''<212>, Type,'' have been changed from ''N'' and ''A'', as stated in the proposed rule, to ''DNA,'' ''RNA,'' and ''PRT'' (protein) in order to harmonize with WIPO Standard ST.25 (1998). A compound that is a mixture of DNA and RNA should be represented by ''DNA.'' This change is consistent with WIPO Standard ST.25 (1998).

Numeric identifier ''<213>, Organism,'' has been added to the Sequence Listing of these final rules in an effort to harmonize with WIPO Standard ST.25 (1998). A response for the Organism identifier is MANDATORY. The valid responses are the scientific name, i.e. ''Genus species'', ''Artificial Sequence'', or ''Unknown.''

Numeric identifier ''<214>, Topology,'' of the proposed rule, has been eliminated to harmonize with WIPO Standard ST.25 (1998), and to reduce the burden on the applicant.

Numeric identifier ''<290>, Feature,'' has become numeric identifier ''<220>, Feature.'' This numeric identifier has become MANDATORY for those sequences in which numeric identifier ''<213>, Organism,'' is completed with either ''Artificial Sequence'' or ''Unknown.'' This numeric identifier is also required if the compound sequence is a mixture of DNA and RNA. Numeric identifier ''<220>, Feature'' is a header only. No data are added immediately following this numeric identifier. These changes are required to achieve harmonization with WIPO Standard ST.25 (1998).

Numeric identifier ''<291>, Name/Key,'' has become numeric identifier ''<221>, Name/Key.'' As proposed, the information provided was restricted to a maximum of four lines. The four line restriction has been removed to reduce the limitations on this field. The comment section of this numeric identifier has been changed in that it now indicates that the selection of a feature name or feature key is preferably made from those listed in Tables 5 and 6 of WIPO Standard ST.25 (1998). These tables are reproduced above and this preference for the listed feature names and keys is consistent with the requirement of WIPO Standard ST.25 (1998).

Numeric identifier ''<292>, Location,'' has become ''<222>, Location,'' so as to be consistent with the numeric identifiers contained in WIPO Standard ST.25 (1998).

Numeric identifier ''<294>, Other Information,'' has become numeric identifier ''<223>, Other Information,'' so as to be consistent with the numeric identifiers contained in WIPO Standard ST.25 (1998). This numeric identifier has become MANDATORY for those sequences in which numeric identifier ''<213>, Organism,'' is completed with either ''Artificial Sequence'' or ''Unknown''. Numeric identifier ''<223>, Other Information,'' should contain source information in those instances when the organism is unknown or is an artificial sequence. For example, the source may be unknown because the material was isolated from a mixed bacterial culture rather than a pure culture. In such a case, numeric identifier ''<223>, Other Information,'' should be completed by explaining the mixed culture source of the sequenced material. If a sequence is completely synthesized this should be indicated in numeric identifier ''<223>, Other Information,'' while numeric identifier ''<213>, Organism,'' would indicate ''Artificial Sequence.'' This change has been made to accomplish harmonization between these rules and WIPO Standard ST.25 (1998) which contains the same mandatory requirement in this regard.

Numeric identifiers ''<308>'' through ''<310>,'' referring to the '' Patent Document Number,'' ''Filing Date'' and '' Publication Date,'' of the proposed rule, have been moved to numeric identifiers ''<310>'' to ''<312>,'' respectively, of this Final Rule in order to harmonize with the numeric numbering scheme of WIPO Standard ST.25 (1998). Citations in the Sequence Listing must comply with WIPO Standard ST.6 for publication numbers and WIPO Standard ST.16 for document codes.

New numeric identifiers ''<308>, Database Accession Number,'' and ''<309> Database Entry Date,'' have been added to the final rules to harmonize with WIPO Standard ST.25 (1998). These fields were added to the publication information section of WIPO Standard ST.25 (1998) to give an applicant more opportunity to further identify a published citation.

Numeric identifier <400> ''Sequence Description: SEQ ID NO:#:'' has been changed to ''Sequence '' for clarity. Also for clarity, the explanation in the table has been changed to ''SEQ ID NO shall follow the numeric identifier and should appear on the line preceding the sequence.''

The format of the date fields has been changed throughout the Sequence Listing to accommodate for international conventions. All date fields referenced in the Sequence Listing shall conform to WIPO Standard ST.2. Because compliance with §§ 1.821 through 1.825 as amended should produce Sequence Listings that are acceptable to all receiving offices, a standardized date field convention was required.

Section 1.824

In paragraph (a)(6) of § 1.824, '', the date on which the data were recorded on the computer readable form'' was added after ''title of the invention'' to harmonize with WIPO Standard ST.25 (1998) requirements. While this requirement of § 1.824 was proposed to be eliminated, that proposal is not adopted for purposes of harmonization with WIPO Standard ST.25 (1998). Also in paragraph (a)(6) of § 1.824, '' name and type of computer and'' was deleted to reduce the requirements.

Section 1.825

In paragraphs (a), (b), and (d) of § 1.825, the sentence ''Such a statement must be a verified statement if made by a person not registered to practice before the Office'' has been deleted. The separate verification requirements in § 1.825 have been eliminated in view of the recent amendment to §§ 1.4(d) and 10.18. *See Changes to Patent Practice and Procedure*; Final Rule, 62 FR. 53131 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63 (October 21, 1997).

Response to and Analysis of Comments

Six written comments were received in response to the Notice of Proposed Rulemaking. Several of these comments address the three specific queries set forth in the Notice of Proposed Rulemaking.

The first query posed in the Notice of Proposed Rulemaking was: (1) Should the PTO accept voluntary submissions of computer readable forms and Sequence Listings where a D-amino acid is contained in the sequence? If such voluntary submissions are accepted, should there be a restriction on the choice of identifying a D-amino acid by an Xaa or by its L-amino acid counterpart abbreviation?

Comment: One comment indicated that not only should the PTO accept voluntary submissions under these rules where a D-amino acid is contained in the sequence, the Office should make such submissions mandatory and designated by an Xaa. One comment indicated that sequences containing D-amino acids should not be in the PTO databases.

Response: Upon careful consideration, the PTO has decided to accept voluntary submissions of protein sequences containing D-amino acids. The PTO strongly encourages anyone making such voluntary submissions to identify a D-amino acid with an Xaa, describing the D-amino acid in the Features section of the Sequence Listing. This section is indicated by numeric identifiers <220> through <223> in 37 CFR 1.823. Procedural concerns compel this acceptance of voluntary submissions. Computer readable forms are processed prior to examination. It is cumbersome to establish a viable procedure to redact any voluntary submissions out of the PTO database. The use of Xaa to indicate a D-amino acid, should such sequence information be submitted in accordance with these rules, is encouraged so as to alert anyone reviewing the sequence that a particular amino acid is other than a naturally occurring L-amino acid and to more accurately depict the extent of similarities between such a sequence and the L-amino acid containing sequences present in a database being searched for examination or other purposes.

Because the sequence databases do not currently include D-amino acids in sequences and thus are not searchable for such sequences, the submission of those sequences containing D-amino acids will not be made mandatory.

The second query posed in the proposed rules was: (2) Should the provisions of 37 CFR 1.821(c) be altered to exclude some prior art sequences from inclusion in the Sequence Listing even though they are presented in a patent application disclosure as sequences? Should the reference to an accession number of an admitted prior art sequence in a publicly available, electronic, sequence database suffice and exclude that sequence from the requirements of the sequence rules?

Comment: Four comments indicated that known ''prior art'' sequences should not be required in the Sequence Listing. A referral to a publicly available, electronic, sequence database for access to such ''prior art'' sequences would be an acceptable alternative to two of those commenting on this aspect; the other two did not address this point. The reasons given for excluding such sequences are the expense and time required by applicants and their representatives in the inclusion of ''prior art'' sequences that are considered to be ''non-inventive''. Reducing the bulk of the paper copy of the Sequence Listing was also mentioned.

Response: The requirement to submit all disclosed sequences in the format required by §§ 1.821 through 1.825 is

maintained. This point was discussed with officials from the JPO and EPO. The offices have considered the stated concerns with regard to costs to applicants. Sections 1.821 through 1.825 do not require any information to be disclosed in the form of a sequence, but rather require a particular format whenever information is presented in the form of a sequence. Those applicants for whom compliance with the rules remains a significant hardship may petition under § 1.183 for a waiver of the applicable requirement of §§ 1.821 through 1.825.

The technical and legal concerns mentioned in the Notice of Proposed Rulemaking still exist concerning the use of an alternative reference to a publicly available, electronic, sequence database. These concerns are: (1) What constitutes a publicly available, electronic, sequence database? (2) Would the USPTO and the other patent offices which have similar rules be required to produce a list of internationally accepted databases? (3) What would be the criteria for such acceptance? (4) An additional issue would exist involving electronic records maintenance: is there any assurance that once information is contained in a database that it will be retained and available indefinitely without alteration? Changes to the information in nucleic acid sequence databases resulting from the discovery of sequencing errors are well-known.

(5) Does the mere existence of the sequence information in such a record constitute reasonable means of retrieval? In other words, would one need some text basis or other identifier to retrieve the information?

Additional reasons for the inclusion of these prior art sequences remain relevant. These reasons are: (1) the assessment of whether a particular sequence falls within the requirements of the current rules is simple; (2) the general public is assured that all patents which contain any sequence information contain all of the sequence information in the Sequence Listing and all sequences are available in a computer accessible form; and (3) as a publication, the contextual association of new and old information is potentially unique to the patent and very valuable to anyone assessing the state of the art at the time of a patented invention, and thus are desirable to be present in electronic form in association with that patent.

The third query posed in the proposed rules was: (3) Should Sequence Listings filed in an international application filed under the PCT be published only electronically and made available for retrieval electronically by an accession number from several sequence repositories?

Comment: Two comments were received in response to this query, one in favor and one opposed to limiting the publication of the Sequence Listing to an electronic form for published PCT applications in the international phase.

Response: At this time paper copies of the Sequence Listings filed as part of the description will continue to be published in applications filed under PCT. The PTO together with the EPO, JPO and WIPO will continue to discuss the possibility of electronic publication. However, any implementation of such electronic publication in lieu of publication in paper form will not be undertaken until further study has been completed.

Comment: One comment suggested that informative English words be placed next to the numerical headings in the Sequence Listing as printed in a U.S. patent.

Response: The PTO will provide English words corresponding to the numeric identifiers in the printed U.S. patents.

Comment: One comment suggested addition of a descriptive comment line to the Sequence Listing.

Response: The ''Other Information'' line in the Features section, which is numeric identifier <223> in § 1.823, provides for a description of a sequence. While completion of this section is only mandatory when the sequence contains ''n'', ''Xaa'', a modified or unusual L-amino acid or a modified base, it is frequently completed in other circumstances.

Comment: One comment requested we harmonize §§ 1.821 through 1.825 with PCT, EPO and other authorities such that the differences in the requirements for Sequence Listing submissions are minimal.

Response: This change to §§ 1.821 through 1.825 is the result of such an effort to harmonize the PTO, PCT, EPO and JPO Sequence Listing requirements to the extent possible. The requirements of newly developed WIPO ST.25 are substantially identical to the requirements of amended §§ 1.821 through 1.825. PatentIn Version 2.0 software, now available, is drafted to meet all of the requirements of WIPO Standard ST.25 (1998). The requirements of §§ 1.821 through 1.825, however, are less stringent than the requirements of WIPO Standard ST.25 (1998). Thus, applicants who wish to file in countries which adhere to WIPO Standard ST.25 (1998) should consider the following when not using PatentIn Version 2.0:

1. The WIPO Standard ST.25 (1998) does not permit submissions using a Macintosh computer.
2. The WIPO Standard ST.25 (1998) does not accept the range of media permitted by amended §§ 1.821 through 1.825.
3. The answers in field <221> and <222> must use selections from Tables 5 and 6 of WIPO Standard ST.25 (1998) to comply with that standard. The terms from these Tables are considered language neutral vocabulary.
4. Any free text in numeric identifier <223> of a Sequence Listing will not be translated and thus must also appear in the specification of applications filed under WIPO Standard ST.25 (1998) for compliance.
5. A CRF filed after the filing of an application under the PCT does not form part of the disclosure and will not be published in the pamphlet.
6. Paragraph 39 of WIPO Standard ST.25 (1998) requires the specific wording ''the information recorded on the form is identical to the written sequence listing.''
7. WIPO Standard ST.25 (1998), paragraph 24, requires spaces between specified numeric identifiers in the Sequence Listing.

Comment: One comment requested a WINDOWS® based version of PatentIn.

Response: A WINDOWS® based version of PatentIn, PatentIn 2.0, has been developed through a Trilaterally-sponsored joint initiative and is being made available.

Comment: One comment expressed concern over application of the doctrine of equivalents by the courts to sequence-based claim language.

Response: Sections 1.821 through 1.825 do not establish a disclosure requirement, nor do they alter the requirements of 35 U.S.C. § 112. They merely require a particular format whenever information is presented in the form of a sequence. The use of sequence identification numbers (SEQ ID NO: #) only provides a shorthand way for applicants to refer to sequence information. These identification numbers do not in any way restrict the manner in which an invention can be claimed. Similarly, the use of this format does not impact the potential interpretations and legal determinations that could be made with respect to claims containing information in the form of a nucleotide or amino acid sequence.

Comment: One comment requested the flexibility to use single-letter amino acid codes.

Response: Sections 1.821 through 1.825 as amended do not constrain an applicant from using single letter codes

in the disclosure. The requirements of the sequence searching and the sequence storage mechanisms include only the three-letter codes, thus the need for the constraint on the Sequence Listing information. There is no such restriction on the sequence format in the body of the disclosure or in the figures imposed by §§ 1.821 through 1.825, or any of the rules of practice; only the format for the Sequence Listing is specified by §§ 1.821 through 1.825.

Review Under the Paperwork Reduction Act of 1995

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 (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collections of information requirements subject to the PRA. The principal impact of this Final Rule is: (1) Elimination of certain requirements of §§ 1.821 through 1.825; and (2) revision of §§ 1.821 through 1.825 for consistency with WIPO Standard ST.25 (1998), which will permit Sequence Listings to be presented in an international, language neutral format.

The public reporting burden for these collections of information have been approved by the Office of Management and Budget (OMB) under OMB control number 0651–0024. The public reporting burden for this collection of information is estimated to average 80 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the information. Send comments regarding this burden estimate or any other aspect of the data requirements, including suggestions for reducing this burden, to Esther M. Kepplinger at the address specified above or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Bldg., 725 17th St. NW, rm. 10235, Washington, DC 20230, Attn: Desk Officer for the Patent and Trademark Office.

Other Considerations

This Final Rule is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612 (October 26, 1987), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It has been determined that this rulemaking is not significant for the purposes of Executive Order 12866 (September 30, 1993).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that this Final Rule would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of this Final Rule is: (1) Elimination of certain requirements of §§ 1.821 through 1.825; and (2) revision of §§ 1.821 through 1.825 for consistency with WIPO Standard ST.25 (1998), which will permit Sequence Listings to be presented in an international, language neutral format.

The Office has determined that this Final Rule has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Incorporation by reference, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Title 37 of the Code of Federal Regulations, part 1, is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.821 is revised to read as follows:

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

(a) Nucleotide and/or amino acid sequences as used in §§ 1.821 through 1.825 are interpreted to mean an unbranched sequence of four or more amino acids or an unbranched sequence of ten or more nucleotides. Branched sequences are specifically excluded from this definition. Sequences with fewer than four specifically defined nucleotides or amino acids are specifically excluded from this section. ''Specifically defined'' means those amino acids other than ''Xaa'' and those nucleotide bases other than ''n'' defined in accordance with the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (1998), including Tables 1 through 6 in Appendix 2, herein incorporated by reference. (Hereinafter ''WIPO Standard ST.25 (1998)''). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of WIPO Standard ST.25 (1998) may be obtained from the World Intellectual Property Organization; 34 chemin des Colombettes; 1211 Geneva 20 Switzerland. Copies of ST.25 may be inspected at the Patent Search Room; Crystal Plaza 3, Lobby Level; 2021 South Clark Place; Arlington, VA 22202. Copies may also be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. Nucleotides and amino acids are further defined as follows:

(1) *Nucleotides:* Nucleotides are intended to embrace only those nucleotides that can be represented using the symbols set forth in WIPO Standard ST.25 (1998), Appendix 2, Table 1. Modifications, *e.g.*, methylated bases, may be described as set forth in WIPO Standard ST.25 (1998), Appendix 2, Table 2, but shall not be shown explicitly in the nucleotide sequence.

(2) *Amino acids:* Amino acids are those L-amino acids commonly found in naturally occurring proteins and are listed in WIPO Standard ST.25 (1998), Appendix 2, Table 3. Those amino acid sequences containing D-amino acids are not intended to be embraced by this definition. Any amino acid sequence that contains post-translationally modified amino acids may be described as the amino acid sequence that is initially translated using the symbols shown in WIPO Standard ST.25 (1998), Appendix 2, Table 3 with the modified positions; *e.g.*, hydroxylations or glycosylations, being described as set forth in WIPO Standard ST.25 (1998), Appendix 2, Table 4, but these modifications shall not be shown explicitly in the amino acid sequence. Any peptide or protein that can be expressed as a sequence using the symbols in WIPO Standard ST.25 (1998), Appendix 2, Table 3 in conjunction with a description in the Feature section to describe, for example, modified linkages, cross links and end caps, non-peptidyl bonds, etc., is embraced by this definition.

(b) Patent applications which contain disclosures of nucleotide and/or amino acid sequences, in accordance with the definition in paragraph (a) of this section, shall, with regard to the manner in which the nucleotide and/or amino

acid sequences are presented and described, conform exclusively to the requirements of §§ 1.821 through 1.825.

(c) Patent applications which contain disclosures of nucleotide and/or amino acid sequences must contain, as a separate part of the disclosure, a paper copy disclosing the nucleotide and/or amino acid sequences and associated information using the symbols and format in accordance with the requirements of §§ 1.822 and 1.823. This paper copy is hereinafter referred to as the ''Sequence Listing.'' Each sequence disclosed must appear separately in the ''Sequence Listing.'' Each sequence set forth in the ''Sequence Listing'' shall be assigned a separate sequence identifier. The sequence identifiers shall begin with 1 and increase sequentially by integers. If no sequence is present for a sequence identifier, the code ''000'' shall be used in place of the sequence. The response for the numeric identifier <160> shall include the total number of SEQ ID NOs, whether followed by a sequence or by the code ''000.''

(d) Where the description or claims of a patent application discuss a sequence that is set forth in the ''Sequence Listing'' in accordance with paragraph (c) of this section, reference must be made to the sequence by use of the sequence identifier, preceded by ''SEQ ID NO:'' in the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application.

(e) A copy of the ''Sequence Listing'' referred to in paragraph (c) of this section must also be submitted in computer readable form in accordance with the requirements of § 1.824. The computer readable form is a copy of the ''Sequence Listing'' and will not necessarily be retained as a part of the patent application file. If the computer readable form of a new application is to be identical with the computer readable form of another application of the applicant on file in the Patent and Trademark Office, reference may be made to the other application and computer readable form in lieu of filing a duplicate computer readable form in the new application if the computer readable form in the other application was compliant with all of the requirements of these rules. The new application shall be accompanied by a letter making such reference to the other application and computer readable form, both of which shall be completely identified. In the new application, applicant must also request the use of the compliant computer readable ''Sequence Listing'' that is already on file for the other application and must state that the paper copy of the ''Sequence Listing'' in the new application is identical to the computer readable copy filed for the other application.

(f) In addition to the paper copy required by paragraph (c) of this section and the computer readable form required by paragraph (e) of this section, a statement that the content of the paper and computer readable copies are the same must be submitted with the computer readable form, *e.g.*, a statement that ''the information recorded in computer readable form is identical to the written sequence listing.''

(g) If any of the requirements of paragraphs (b) through (f) of this section are not satisfied at the time of filing under 35 U.S.C. 111(a) or at the time of entering the national stage under 35 U.S.C. 371, applicant will be notified and given a period of time within which to comply with such requirements in order to prevent abandonment of the application. Any submission in reply to a requirement under this paragraph must be accompanied by a statement that the submission includes no new matter.

(h) If any of the requirements of paragraphs (b) through (f) of this section are not satisfied at the time of filing an international application under the Patent Cooperation Treaty (PCT), which application is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority, applicant will be sent a notice necessitating compliance with the requirements within a prescribed time period. Any submission in reply to a requirement under this paragraph must be accompanied by a statement that the submission does not include matter which goes beyond the disclosure in the international application as filed. If applicant fails to timely provide the required computer readable form, the United States International Searching Authority shall search only to the extent that a meaningful search can be performed without the computer readable form and the United States International Preliminary Examining Authority shall examine only to the extent that a meaningful examination can be performed without the computer readable form.

3. Section 1.822 is revised to read as follows:

§ 1.822 Symbols and format to be used for nucleotide and/or amino acid sequence data.

(a) The symbols and format to be used for nucleotide and/or amino acid sequence data shall conform to the requirements of paragraphs (b) through (e) of this section.

(b) The code for representing the nucleotide and/or amino acid sequence characters shall conform to the code set forth in the tables in WIPO Standard ST.25 (1998), Appendix 2, Tables 1 and 3. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ST.25 may be obtained from the World Intellectual Property Organization; 34 chemin des Colombettes; 1211 Geneva 20 Switzerland. Copies of ST.25 may be inspected at the Patent Search Room; Crystal Plaza 3, Lobby Level; 2021 South Clark Place; Arlington, VA 22202. Copies may also be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. No code other than that specified in these sections shall be used in nucleotide and amino acid sequences. A modified base or modified or unusual amino acid may be presented in a given sequence as the corresponding unmodified base or amino acid if the modified base or modified or unusual amino acid is one of those listed in WIPO Standard ST.25 (1998), Appendix 2, Tables 2 and 4, and the modification is also set forth in the Feature section. Otherwise, each occurrence of a base or amino acid not appearing in WIPO Standard ST.25 (1998), Appendix 2, Tables 1 and 3, shall be listed in a given sequence as ''n'' or ''Xaa,'' respectively, with further information, as appropriate, given in the Feature section, preferably by including one or more feature keys listed in WIPO Standard ST.25 (1998), Appendix 2, Tables 5 and 6.

(c) *Format representation of nucleotides.* (1) A nucleotide sequence shall be listed using the lower-case letter for representing the one-letter code for the nucleotide bases set forth in WIPO Standard ST.25 (1998), Appendix 2, Table 1.

(2) The bases in a nucleotide sequence (including introns) shall be listed in groups of 10 bases except in the coding parts of the sequence. Leftover bases, fewer than 10 in number, at the end of noncoding parts of a sequence shall be grouped together and separated from adjacent groups of 10 or 3 bases by a space.

(3) The bases in the coding parts of a nucleotide sequence shall be listed as triplets (codons). The amino acids corresponding to the codons in the coding parts of a nucleotide sequence shall be typed immediately below the corresponding codons. Where a codon spans an intron, the amino acid symbol

shall be typed below the portion of the codon containing two nucleotides.

(4) A nucleotide sequence shall be listed with a maximum of 16 codons or 60 bases per line, with a space provided between each codon or group of 10 bases.

(5) A nucleotide sequence shall be presented, only by a single strand, in the 5 to 3 direction, from left to right.

(6) The enumeration of nucleotide bases shall start at the first base of the sequence with number 1. The enumeration shall be continuous through the whole sequence in the direction 5 to 3. The enumeration shall be marked in the right margin, next to the line containing the one-letter codes for the bases, and giving the number of the last base of that line.

(7) For those nucleotide sequences that are circular in configuration, the enumeration method set forth in paragraph (c)(6) of this section remains applicable with the exception that the designation of the first base of the nucleotide sequence may be made at the option of the applicant.

(d) *Representation of amino acids.* (1) The amino acids in a protein or peptide sequence shall be listed using the three-letter abbreviation with the first letter as an upper case character, as in WIPO Standard ST.25 (1998), Appendix 2, Table 3.

(2) A protein or peptide sequence shall be listed with a maximum of 16 amino acids per line, with a space provided between each amino acid.

(3) An amino acid sequence shall be presented in the amino to carboxy direction, from left to right, and the amino and carboxy groups shall not be presented in the sequence.

(4) The enumeration of amino acids may start at the first amino acid of the first mature protein, with the number 1. When presented, the amino acids preceding the mature protein, *e.g.,* pre-sequences, pro-sequences, pre-pro-sequences and signal sequences, shall have negative numbers, counting backwards starting with the amino acid next to number 1. Otherwise, the enumeration of amino acids shall start at the first amino acid at the amino terminal as number 1. It shall be marked below the sequence every 5 amino acids. The enumeration method for amino acid sequences that is set forth in this section remains applicable for amino acid sequences that are circular in configuration, with the exception that the designation of the first amino acid of the sequence may be made at the option of the applicant.

(5) An amino acid sequence that contains internal terminator symbols (*e.g.*, ''Ter'', ''*'', or ''.'', etc.) may not be represented as a single amino acid sequence, but shall be presented as separate amino acid sequences.

(e) A sequence with a gap or gaps shall be presented as a plurality of separate sequences, with separate sequence identifiers, with the number of separate sequences being equal in number to the number of continuous strings of sequence data. A sequence that is made up of one or more noncontiguous segments of a larger sequence or segments from different sequences shall be presented as a separate sequence.

4. Section 1.823 is revised to read as follows:

§ 1.823 Requirements for nucleotide and/or amino acid sequences as part of the application papers.

(a) The ''Sequence Listing'' required by § 1.821(c), setting forth the nucleotide and/or amino acid sequences and associated information in accordance with paragraph (b) of this section, must begin on a new page and must be titled ''Sequence Listing''. The ''Sequence Listing'' preferably should be numbered independently of the numbering of the remainder of the application. Each page of the ''Sequence Listing'' should contain no more than 66 lines and each line should contain no more than 72 characters. A fixed-width font should be used exclusively throughout the ''Sequence Listing.''

(b) The ''Sequence Listing'' shall, except as otherwise indicated, include the actual nucleotide and/or amino acid sequence, the numeric identifiers and their accompanying information as shown in the following table. The numeric identifier shall be used only in the ''Sequence Listing.'' The order and presentation of the items of information in the ''Sequence Listing'' shall conform to the arrangement given below. Each item of information shall begin on a new line and shall begin with the numeric identifier enclosed in angle brackets as shown. The submission of those items of information designated with an ''M'' is mandatory. The submission of those items of information designated with an ''O'' is optional. Numeric identifiers <110> through <170> shall only be set forth at the beginning of the ''Sequence Listing.'' The following table illustrates the numeric identifiers.

Numeric identifier	Definition	Comments and format	Mandatory (M) or optional (O).
<110>	Applicant	Preferably max. of 10 names; one name per line; preferable format: Surname, Other Names and/or Initials.	M.
<120>	Title of Invention		M.
<130>	File Reference	Personal file reference	M when filed prior to assignment of appl. number.
<140>	Current Application Number.	Specify as: US 07/999,999 or PCT/US96/99999	M, if available.
<141>	Current Filing Date	Specify as: yyyy–mm–dd	M, if available.
<150>	Prior Application Number.	Specify as: US 07/999,999 or PCT/US96/99999	M, if applicable include priority documents under 35 USC 119 and 120.
<151>	Prior Application Filing Date.	Specify as: yyyy–mm–dd	M, if applicable.
<160>	Number of SEQ ID NOs	Count includes total number of SEQ ID NOs	M.
<170>	Software	Name of software used to create the Sequence Listing.	O.
<210>	SEQ ID NO:#:	Response shall be an integer representing the SEQ ID NO shown.	M.
<211>	Length	Respond with an integer expressing the number of bases or amino acid residues.	M.

Numeric identifier	Definition	Comments and format	Mandatory (M) or optional (O).
<212>	Type	Whether presented sequence molecule is DNA, RNA, or PRT (protein). If a nucleotide sequence contains both DNA and RNA fragments, the type shall be ''DNA.'' In addition, the combined DNA/RNA molecule shall be further described in the <220> to <223> feature section.	M.
<213>	Organism	Scientific name, i.e. Genus/ species, Unknown or Artificial Sequence. In addition, the ''Unknown'' or ''Artificial Sequence'' organisms shall be further described in the <220> to <223> feature section.	M
<220>	Feature	Leave blank after <220>. <221–223> provide for a description of points of biological significance in the sequence..	M, under the following conditions: if ''n,'' ''Xaa,'' or a modified or unusual L-amino acid or modified base was used in a sequence; if ORGANISM is ''Artificial Sequence'' or ''Unknown'; if molecule is combined DNA/RNA''
<221>	Name/Key	Provide appropriate identifier for feature, preferably from WIPO Standard ST.25 (1998), Appendix 2, Tables 5 and 6.	M, under the following conditions: if ''n,'' ''Xaa,'' or a modified or unusual L-amino acid or modified base was used in a sequence.
<222>	Location	Specify location within sequence; where appropriate state number of first and last bases/ amino acids in feature.	M, under the following conditions: if ''n,'' ''Xaa,'' or a modified or unusual L-amino acid or modified base was used in a sequence.
<223>	Other Information	Other relevant information; four lines maximum	M, under the following conditions: if ''n,'' ''Xaa,'' or a modified or unusual L-amino acid or modified base was used in a sequence; if ORGANISM is ''Artificial Sequence'' or ''Unknown''; if molecule is combined DNA/RNA.
<300>	Publication Information	Leave blank after <300>	O.
<301>	Authors	Preferably max of ten named authors of publication; specify one name per line; preferable format: Surname, Other Names and/or Initials.	O.
<302>	Title		O.
<303>	Journal		O.
<304>	Volume		O.
<305>	Issue		O.
<306>	Pages		O.
<307>	Date	Journal date on which data published; specify as yyyy–mm–dd, MMM–yyyy or Season-yyyy.	O.
<308>	Database Accession Number.	Accession number assigned by database including database name.	O.
<309>	Database Entry Date	Date of entry in database; specify as yyyy–mm–dd or MMM–yyyy.	O.
<310>	Patent Document Number.	Document number; for patent-type citations only. Specify as, for example, US 07/999,999.	O.
<311>	Patent Filing Date	Document filing date, for patent-type citations only; specify as yyyy–mm–dd.	O.
<312>	Publication Date	Document publication date, for patent-type citations only; specify as yyyy–mm–dd.	O.
<313>	Relevant Residues	FROM (position) TO (position)	O.
<400>	Sequence	SEQ ID NO should follow the numeric identifier and should appear on the line preceding the actual sequence.	M.

5. Section 1.824 is revised to read as follows:

§ 1.824 Form and format for nucleotide and/or amino acid sequence submissions in computer readable form.

(a) The computer readable form required by § 1.821(e) shall meet the following specifications:

(1) The computer readable form shall contain a single ''Sequence Listing'' as either a diskette, series of diskettes, or other permissible media outlined in paragraph (c) of this section.

(2) The ''Sequence Listing'' in paragraph (a) (l) of this section shall be submitted in American Standard Code for Information Interchange (ASCII) text. No other formats shall be allowed.

(3) The computer readable form may be created by any means, such as word processors, nucleotide/amino acid sequence editors or other custom computer programs; however, it shall conform to all specifications detailed in this section.

(4) File compression is acceptable when using diskette media, so long as the compressed file is in a self-extracting format that will decompress on one of the systems described in paragraph (b) of this section.

(5) Page numbering shall not appear within the computer readable form version of the ''Sequence Listing'' file.

(6) All computer readable forms shall have a label permanently affixed thereto on which has been hand-printed or typed: the name of the applicant, the title of the invention, the date on which the data were recorded on the computer readable form, the operating system used, a reference number, and an application serial number and filing date, if known.

(b) Computer readable form submissions must meet these format requirements:

(1) Computer: IBM PC/XT/AT, or compatibles, or Apple Macintosh;

(2) Operating System: MS–DOS, Unix or Macintosh;

(3) Line Terminator: ASCII Carriage Return plus ASCII Line Feed;

(4) Pagination: Continuous file (no ''hard page break'' codes permitted);

(c) Computer readable form files submitted may be in any of the following media:

(1) Diskette : 3.50 inch, 1.44 Mb storage; 3.50 inch, 720 Kb storage; 5.25 inch, 1.2 Mb storage; 5.25 inch, 360 Kb storage.

(2) Magnetic tape: 0.5 inch, up to 24000 feet; Density: 1600 or 6250 bits per inch, 9 track; Format: Unix tar command; specify blocking factor (not ''block size''); Line Terminator: ASCII Carriage Return plus ASCII Line Feed.

(3) 8mm Data Cartridge: Format: Unix tar command; specify blocking factor (not ''block size''); Line Terminator: ASCII Carriage Return plus ASCII Line Feed.

(4) CD–ROM: Format: ISO 9660 or High Sierra Format

(5) Magneto Optical Disk: Size/ Storage Specifications: 5.25 inch, 640 Mb.

(d) Computer readable forms that are submitted to the Office will not be returned to the applicant.

6. Section 1.825 is revised to read as follows:

§ 1.825 Amendments to or replacement of sequence listing and computer readable copy thereof.

(a) Any amendment to the paper copy of the ''Sequence Listing'' (§ 1.821(c)) must be made by the submission of substitute sheets. Amendments must be accompanied by a statement that indicates support for the amendment in the application, as filed, and a statement that the substitute sheets include no new matter.

(b) Any amendment to the paper copy of the ''Sequence Listing,'' in accordance with paragraph (a) of this section, must be accompanied by a substitute copy of the computer readable form (§ 1.821(e)) including all previously submitted data with the amendment incorporated therein, accompanied by a statement that the copy in computer readable form is the same as the substitute copy of the ''Sequence Listing.''

(c) Any appropriate amendments to the ''Sequence Listing'' in a patent; *e.g.*, by reason of reissue or certificate of correction, must comply with the requirements of paragraphs (a) and (b) of this section.

(d) If, upon receipt, the computer readable form is found to be damaged or unreadable, applicant must provide, within such time as set by the Commissioner, a substitute copy of the data in computer readable form accompanied by a statement that the substitute data is identical to that originally filed.

7. Appendix A To Subpart G to Part 1 is revised to read as follows:

BILLING CODE 3510–16–P

Appendix A To Subpart G to Part 1—Sample Sequence Listing

<110> Smith, John

Smith, Jane

<120> Example of a Sequence Listing

<130> 01-00001

<140> US 08/999,999

<141> 1998-02-28

<150> EP 91000000

<151> 1997-12-31

<160> 2

<170> PatentIn ver. 2.0

<210> 1

<211> 403

<212> DNA

<213> Paramecium aurelia

<220>

<221> CDS

<222> 341..394

<300>

<301> Doe, Richard

<302> Isolation and Characterization of a Gene Encoding a

Protease from Paramecium sp.

<303> Journal of Fictional Genes

<304> 1

<305> 4

<306> 1 - 7

<307> 1988-06-20

<400> 1

ctactctact ctactctcat ctactatctt ctttggatct ctgagtctgc ctgagtggta 60

ctcttgagtc ctggagatct ctcctctcac atgtgatcgt cgagactgac cgatagatcg 120

ctgactgact ctgagatagt cgagcccgta cgagacccgt cgagggtgac agagagtggg 180

cgcgtgcgcg cagagcgccg cgccggtgcg cgcgcgagtg cgcggtgggc cgcgcgaggg 240

ctttcgcggc agcggcggcg ctttccggcg cgcgcccgtc cgcccctaga cctgagaggt 300

cttctcttcc ctcctcttca ctagagaggt ctatatatac atg gtt tca atg ttc 355

Met Val Ser Met Phe

1 5

agc ttg tct ttc aaa tgg cct gga ttt tgt ttg ttt gtt tgtttgctc 403

Ser Leu Ser Phe Lys Trp Pro Gly Phe Cys Leu Phe Val

10 15

<210> 2

<211> 18

<212> PRT

<213> Paramecium aurelia

<400> 2

```
Met Val Ser Met Phe Ser Leu Ser Phe Lys Trp Pro Gly Phe Cys Leu

1               5                   10                  15



Phe Val
```

Dated: May 22, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–14194 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–16–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WY–001–0001a; FRL–6104–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Wyoming; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Wyoming plan and associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan was submitted to EPA on February 13, 1998, in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. The State's plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. EPA finds that Wyoming's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans.

DATES: This direct final rule is effective on July 31, 1998, unless EPA receives adverse comment by July 1, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Vicki Stamper, 8P2–A, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Division, Wyoming Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, EPA has established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes emissions guidelines in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published Emission Guidelines (EG) for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c–60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750–60.759). (See 61 FR 9905–29.) The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either (1) submit a plan for the control of the designated pollutant to which the EG applies or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG, or by December 12, 1996.

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et. al.,* No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. (See 62 FR 60898.) It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Accordingly, the currently-promulgated MSW landfill EG was used as a basis for EPA's review of Wyoming's submittal.

II. Analysis of State's Submittal

On February 13, 1998, the State of Wyoming submitted its plan and regulations (hereafter referred to as the ''State Plan'') for implementing EPA's MSW landfill EG. The Wyoming State Plan includes the State's implementing regulations in Section 35 of the Wyoming Air Quality Standards and Regulations (WAQSR) and supporting documentation for the other requirements of 40 CFR part 60, subpart B.

Wyoming has adopted provisions in Section 35 of the WAQSR which incorporate all of the requirements of the EG. Wyoming has also adopted compliance timelines in Section 35(b)(iv) and (e) of the WAQSR to address the compliance timelines of the EG and the increments of progress requirements of 40 CFR part 60, subpart B. Thus, the State's regulations adequately address the requirements of the EG, including the required applicability provisions, emission limitations, test methods and procedures, reporting and recordkeeping requirements, and compliance times. Specifically, Wyoming's regulation requires that existing MSW landfills that: (1) accepted waste since November 8, 1987; (2) have a design capacity equal to or greater than 2.5 million megagrams (Mg) or 2.5 million m^3; and (3) have a NMOC emission rate, calculated in accordance with the procedures of 40 CFR 60.754, equal to or greater than 50 Mg/year to install a gas collection and control system meeting the requirements of 40 CFR 60.33c(b) and (c) within thirty months from the effective date of the State regulation (or, for those existing MSW landfills whose initial NMOC emission rate is less than 50 Mg/yr on the effective date of the State regulation, within thirty months after the landfill's

NMOC emission rate equals or exceeds 50 Mg/yr).

The State Plan also includes documentation showing that all requirements of 40 CFR part 60, subpart B have been met. Specifically, the State Plan includes a demonstration of legal authority to adopt and implement the plan, an emissions inventory, increments of progress compliance deadlines, a commitment to submit to EPA annual State progress reports on plan implementation and enforcement, and documentation that the State addressed the public participation requirements of 40 CFR 60.23. In addition, as stated above, the State has adopted emission standards and compliance schedules as an enforceable State regulation that is no less stringent than the EG.

Consequently, EPA finds that the State Plan and implementing regulations meet all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The State did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country as defined in 18 U.S.C. 1151. Therefore, EPA is not approving this State Plan as it relates to those sources.

More detailed information on the requirements for an approvable plan and Wyoming's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Wyoming's plan and associated regulations, as submitted on February 13, 1998, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to Wyoming's State Plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and approved by EPA in accordance with 40 CFR part 60, subpart B.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective July 31, 1998 without further notice unless the Agency receives adverse comments by July 1, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 31, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Executive Order 13045

The [proposed/final] rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the Comptroller General

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

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

G. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks. Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is (1) likely to be ''economically significant'' as defined under Executive Order 12866, and (2) the Agency has reason to believe that the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' because this is not an ''economically significant'' regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: May 21, 1998.

Carol Rushin,

Acting Regional Administrator, Region VIII.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

2. Subpart ZZ is added to read as follows:

Subpart ZZ—Wyoming

Sec.
62.12600 Identification of plan.
62.12601 Identification of sources.
62.12602 Effective date.

Subpart ZZ—Wyoming

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.12600 Identification of plan.

Section 35, ''Municipal Solid Waste Landfills,'' of the Wyoming Air Quality Standards and Regulations and associated documentation submitted by the State on February 13, 1998.

§ 62.12601 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart CC.

§ 62.12602 Effective date.

The effective date of the plan for municipal solid waste landfills is July 31, 1998.

[FR Doc. 98–14435 Filed 5–29–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50630A; FRL–5789–5]

RIN 2070–AB27

Sinorhizobium meliloti strain RMBPC-2; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the microorganism described as *Sinorhizobium meliloti* strain RMBPC-2 which is the subject of premanufacture notice (PMN) P–92–403. This rule will require persons who intend to manufacture, import, or process this microorganism for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule is effective July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document 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/).

This SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the microorganism identified in PMN P–92–403 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) of TSCA with respect to a category of chemical substances. EPA interprets the definition of ''chemical substance'' under TSCA to include microorganisms as stated in the **Federal Register** of April 11, 1997 (62 FR 17910) (FRL–5577–2), June 26, 1986 (51 FR 23324), and December 31, 1984 (49 FR 50886).

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and (d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the

regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31248), EPA promulgated a ''User Fee Rule'' (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a proposed SNUR for the microorganism described as *Sinorhizobium meliloti* strain RMBPC-2, which is the subject of premanufacture notice (PMN) P–92–403, in the **Federal Register** of March 10, 1998 (63 FR 11643) (FRL–5765–6). The background and reasons for the SNUR are set forth in the preamble to the proposed rule. EPA proposed the significant new use as follows: Any manufacturer or importer who has not previously submitted a premanufacture notice or significant new use notice for this microorganism must submit a significant new use notice 90 days before engaging in any commercial activity while any manufacturer or importer who has previously submitted a premanufacture notice or a significant new use notice for this microorganism must submit a significant new use notice before manufacturing, importing, or processing greater than a maximum production volume of 500,000 pounds (lbs) in any consecutive 12-month period.

The Agency received no public comment concerning the proposed rule. As a result EPA is issuing the final rule as proposed.

IV. Objectives and Rationale of the Rule

EPA is issuing this SNUR for a specific microorganism which has undergone premanufacture review to ensure that:

(1) EPA will receive notice of any company's intent to manufacture, import, or process the microorganism for a significant new use before that activity begins.

(2) EPA will have an opportunity to review and evaluate data submitted in a significant new use notice (SNUN) before the notice submitter begins manufacturing, importing, or processing the microorganism for a significant new use.

(3) When necessary, to prevent potential unreasonable risks, EPA will be able to respond to a SNUN by issuing a TSCA section 5(e) consent order to regulate prospective manufacturers, importers, or processors of the microorganism before a significant new use of that substance occurs.

(4) All manufacturers, importers, and processors of the same microorganism which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a microorganism does not signify that the substance is listed on the TSCA Inventory and that its manufacture would not require a PMN. Manufacturers, importers, and processors are responsible for ensuring that a microorganism subject to a final SNUR is listed on the TSCA Inventory.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a ''significant new use'' as of the date of proposal, rather than as of the effective date of the rule. If uses which had commenced between the date of proposal and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the microorganism for uses that would be regulated through this SNUR after the proposal date, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with the proposed SNUR before it is promulgated. If a person meets the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person is considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the microorganism between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the microorganism subject to this rule. EPA's complete economic analysis is available in the rulemaking record for this final rule (OPPTS–50630A).

VII. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50630A (including comments and data submitted electronically). In addition, extensive information for this microorganism can also be found in OPPTS docket number 51786, which contains materials concerning the TSCA section 5(a) review of PMN P–92–403. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center Rm. NE–B607, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993),

this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), or require prior consultation with State officials as also specified in Executive Order 12875, entitled ''Enhancing the Intergovernmental Partnership'' (58 FR 58093, October 28, 1993). Nor does it involve special considerations of environmental justice related issues 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 additional 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).

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IX. 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 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 20, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.9518 to subpart E to read as follows:

§ 721.9518 Sinorhizobium meliloti strain RMBPC-2.

(a) *Microorganism and significant new uses subject to reporting.* (1) The microorganism identified as *Sinorhizobium meliloti* strain RMBPC-2 (PMN P–92–403) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Commercial activities before submitting a TSCA section 5(a) notice.* For any manufacturer or importer who has not previously submitted a premanufacture notice or significant new use notice for this microorganism, the significant new use is any use.

(ii) *Commercial activities after submitting a TSCA section 5(a) notice.* For any manufacturer or importer who has previously submitted a premanufacture notice or a significant new use notice for this microorganism, the significant new use is manufacture, import, or processing greater than a maximum production volume of 500,000 lbs in any consecutive 12-month period.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture or import this substance for commercial purposes must have submitted a premanufacture notice or submit a significant new use notice.

(2) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers and importers of this substance.

(3) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–14439 Filed 5–29–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 441 and 489

[HCFA–1152–1–F]

RIN 0938–AI86

Medicare and Medicaid Programs; Surety Bond Requirements for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises several provisions of an earlier final rule concerning surety bond requirements published in the **Federal Register** on January 5, 1998 (63 FR 292). This rule also establishes the surety bond submission compliance date, as described in a notice of intent and in a final rule concerning surety bond requirements published in the **Federal Register** on March 4, 1998 (63 FR 10730 and 10732). The March 4 documents advised the public that we intended to

make technical revisions to the January 5, 1998 final rule and extend the February 27, 1998 compliance date for all home health agencies (HHAs) to furnish a surety bond to HCFA and/or the State Medicaid agency, or both, until 60 days after the date of publication of this final rule. In this rule, for Medicare-participating HHAs, we are establishing a new compliance date to submit a surety bond that is 60 days after the date of publication of this final rule. For Medicaid-participating HHAs, we are establishing a new compliance date to furnish a surety bond that is a date established by the State Medicaid agency up to 120 days after the date of publication of this final rule. We are also responding to comments we received in response to the January 5, 1998 final rule that pertain to the technical revisions we discussed in our March 4, 1998 notice. It is our intention to respond to all comments not addressed herein in a future **Federal Register** document. This final rule revision does not change the beginning date of the term the initial surety bond is to cover, that is, January 1, 1998.

EFFECTIVE DATE: This final rule is effective on July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ralph Goldberg, (410) 786–4870 (Medicare Provisions). Mary Linda Morgan, (410) 786–2011 (Medicaid Provisions).

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997 (BBA '97) requires each home health agency (HHA) to secure a surety bond in an amount of at least $50,000 in order to participate in either the Medicare or the Medicaid programs. This requirement applies to all participating HHAs and those that seek to participate in the Medicare and Medicaid programs. On January 5, 1998, we published in the **Federal Register** a final rule with comment period (63 FR 292) to implement the surety bond requirements of BBA '97. The comment period for that final rule ended on March 6, 1998.

Generally, the rule requires each HHA participating in Medicare to obtain from an authorized Surety and then to furnish to HCFA a surety bond in an amount that is the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicare program, as such annual amount appears in the HHA's most recently accepted cost report.

The rule also prohibits payment to a State for home health services furnished to Medicaid recipients unless the HHA has furnished the Medicaid State agency with a surety bond similar to one that meets Medicare requirements. The amount of the Medicaid surety bond would be the greater of $50,000 or 15 percent of the annual amount paid to the HHA by the Medicaid State agency for home health services.

II. Provisions of the March 4 Notice and Final Rule

As a result of technical issues concerning potential Surety liability raised by representatives of both the Surety and HHA industries after the publication of the January 5, 1998 final rule, we published a notice in the **Federal Register** on March 4, 1998 (63 FR 10732). That notice advised the public that we intended to make technical revisions to the January 5, 1998 final rule and would extend the compliance date for submitting bonds. In a final rule also published in the March 4, 1998 **Federal Register** (63 FR 10730), we removed the February 27, 1998 compliance date, and announced that we intended to establish the compliance date as 60 days after the date of publication of a subsequent (i.e., this) final rule.

Described below are our responses to the comments we received concerning our technical changes, a discussion of their intended effect, and the changes that we are making in this rulemaking. In general, these changes address concerns regarding the uncertainty of the scope of a Surety's liability under the January 5, 1998 regulation, which appears to have resulted in less than a fully robust market for underwriting bonds for HHAs in Medicare and Medicaid.

III. Discussion of Public Comments

In response to the January 5, 1998 final rule, we received 344 timely items of correspondence. A summary of the comments that pertain to those issues discussed in our March 4, 1998 notice and our responses are set forth below. We will respond to the remaining comments on the January 5, 1998 final rule in a subsequent **Federal Register** document. The following sections generally follow the order the topics were discussed in the January 5, 1998 final rule.

Continuous Bond

Comment: Several Surety associations suggested that we consider using a continuous bond that, when necessary, would be updated by the Surety. The continuous bond would be an alternative option to the annual bond.

Response: We understand that the use of a continuous bond is common practice in the surety industry. A continuous bond is one that remains in full force and effect unless it is canceled or terminated. The use of a continuous bond would significantly reduce the paperwork burden and administrative processes for the HHAs, Sureties, and the Medicare and Medicaid programs. Therefore, in 42 CFR 441.16(i)(2) and 489.67(b), we are providing that the HHA—at its option—may submit an annual bond each year or may submit a continuous bond that remains in effect from year to year. A continuous bond would be updated by the Surety at the start of a new year if the amount of the required bond increases or decreases. The updating of a continuous bond would be accomplished by the Surety issuing a ''rider,'' which is a notice issued by a Surety that a change in the bond has occurred or will occur. A continuous bond should not be misinterpreted as providing cumulative liability. For example, this does not mean that an initial bond in the amount of $50,000 would increase to $100,000 in the second year, $150,000 in the third year, etc. This change affects several regulation sections and is more fully discussed in section IV. of this preamble.

Government Security

Comment: One commenter suggested that we consider allowing HHAs to furnish a Government security in lieu of furnishing a surety bond, in that the Department of Treasury regulations authorize such substitution.

Response: We are exploring the desirability of this option as well as the various means by which this option may be implemented. We will issue the result of our decision in a subsequent document.

Surety Liability

Comment: Several commenters had concerns regarding the uncertainty of the scope of a Surety's liability under the current regulation. The commenters were specifically concerned that our ability to reach back several years to recover payments leaves the door open for almost unlimited Surety liability.

Response: The uncertain scope of potential liability for Sureties has made it difficult for some apparently reputable and well-run HHAs to obtain an affordable surety bond. We are addressing this concern by limiting the Surety's liability on the bond to the term during which we determine that funds owed have become unpaid, regardless of when the overpayment or other events causing such funds to be owed took place. In the Medicare program, the Surety is liable if the claim, civil money

penalty, or assessment becomes unpaid, as defined in § 489.60, and we make a written demand for payment from the Surety during the term of the bond. If the HHA fails to furnish a bond that meets our requirements for the year following expiration of the term of the bond, or if the HHA's provider agreement terminates prior to the end of the fiscal year, the last bond in effect has an additional 2-year discovery period for unpaid claims, civil money penalties, and assessments that we impose on or assert against the HHA.

Likewise, in the Medicaid program, the Surety is liable for uncollected overpayments, as defined by paragraph (a), provided such uncollected overpayments are determined during the term of the bond and regardless of when the overpayments took place. In addition, the Surety remains liable if the HHA fails to furnish a subsequent annual bond that meets the requirements of this subpart or fails to furnish a rider for a year for which a rider is required to be submitted, or if the HHA's provider agreement terminates and that the Surety's liability will be based on the last bond or rider in effect for the HHA. The Surety's period of liability will remain in effect for an additional 2 year period.

Appeals

Comment: Several commenters recommended that the Surety be given appeal rights.

Response: To address this concern, we are making another technical revision to the regulation. In the Medicare program, we are giving Surety bond companies the right to appeal overpayments, civil money penalties, and assessments. This change grants the Surety standing to appeal any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA and provided the HHA is not, itself, actively pursuing its appeal rights, and provided further that, with respect to unpaid claims, the Surety has paid HCFA all amounts owed to HCFA by the HHA on such unpaid claims, up to the amount of the bond. In order to ensure that Sureties are furnished with proper notice of matters on which an appeal right may ripen, we are further specifying that surety bonds must include the Surety's full name and address to which we can send a written notice of an overpayment, civil money penalty, or assessment. In the Medicaid program, we are directing the State Medicaid agencies to grant Sureties appeal rights. This change affects several regulation sections and is more fully discussed in section IV. of this preamble.

Surety Reimbursement

Comment: A commenter recommended that we provide for reimbursing the Surety when HCFA collects from both the HHA and the Surety on the same overpayment, civil money penalty, or assessment.

Response: We have provided for reimbursement to the Surety in cases where both the HHA and Surety have repaid the Medicare or Medicaid program on the same overpayment, civil money penalty, or assessment. We are adding a new subsection (m) to § 441.16 and a new § 489.73 to effectuate this change.

HCFA Payment Demand

Comments: Several commenters wanted to know the circumstances under which we will demand payment from a Surety.

Response: We will first seek collection from the HHA, employing available administrative collection methods, e.g., offset of interim payments, repayment schedule, etc., prior to seeking payment from the Surety under the terms of the bond.

Computation of the 15 Percent of Annual Payments

Comment: Commenters questioned the application of the 15 percent standard to the annual payments paid to the HHA by the Medicare program as reflected on the most recently accepted cost report, in determining the bond amount.

Response: Approximately half of the current Medicare overpayments are attributable to HHAs. In comparing overpayments to revenues paid to the HHAs for four previous years, we also found that uncollected overpayments have been rising significantly both in absolute dollar amounts and as a percentage of the original amount of overpayment.

In developing our regulation, we reviewed the Office of Inspector General's (OIG) July 1997 report *Home Health: Problem Providers and Their Impact on Medicare* (page 18), in which the OIG recommended that each HHA be required to obtain a surety bond equal to the amount of anticipated Medicare billings during the fiscal year. We also consulted with industry representatives.

We believe that a bond amount of 15 percent of payments will adequately cover the overpayment amounts, if any, for which the vast majority of HHAs would be responsible and yet would not be so high that it would prevent reputable and well-run HHAs from obtaining bonds at a reasonable cost. The 15 percent standard was also adopted in conjunction with other provisions of this rule that afford us more protection by permitting us to apply the standard to more recent payment history and by permitting us to substitute the amount of prior overpayments as the bond amount when the overpayment amount exceeds 15 percent of payments. Thus, we believe that the rules established in § 489.65 for calculating the bond amount are a reasonable starting point for implementing the bond provision. However, we will continue to monitor payments to HHAs and will modify our policy for future years if conditions warrant. Any revisions would be proposed in a **Federal Register** document. Also, we are including a provision that will sunset the 15 percent bond amount provision on June 1, 2005. Prior to that time, we will analyze available data on the impact of the surety bond requirement and the prospective payment system for HHAs to determine if the 15 percent computation is appropriate. We will publish a **Federal Register** document addressing the 15 percent amount prior to the sunset date. However, we may act sooner if we believe circumstances warrant.

IV. Provisions of the Final Rule

In this final rule, we are revising certain sections of the January 5, 1998 final rule as a result of public comments on that rule that pertain to the issues discussed in our March 4, 1998 notice. These changes are as follows:

A. Surety Bond Requirements Under Medicare

In § 489.60 (''Definitions.''), we are revising the definition of ''Unpaid civil money penalty or assessment'' to add the Surety as a potential party to the administrative appeals process. We are also adding a new definition for the term ''Rider'' in this section.

In § 489.62 (''Requirement waived for Government-operated HHAs.''), we are making an editorial change by removing the word ''section'' and replacing it with the word ''subpart''.

In § 489.65(g) (''Expiration of the 15 percent provision.''), we provide that for an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this subpart to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as HCFA specifies in

accordance with paragraph (f) of this section, whichever amount is greater.

In § 489.66(b) (''Additional requirements of the surety bond.''), we specify that a Surety's liability is based on unpaid claims, unpaid civil money penalties, and unpaid assessments that are determined to have become unpaid during the term of the bond, regardless of when the payment, overpayment, or other event giving rise to the unpaid claim, civil money penalty, or assessment occurred. Also, we specify that if an HHA fails to furnish us with a subsequent annual bond that meets the requirements of this subpart, or fails to furnish us with a rider for a year for which a rider is required to be submitted, or if the HHA's provider agreement terminates prior to the end of the fiscal year, then the last bond or rider in effect for such HHA remains in effect and the Surety remains liable for an additional 2-year period.

We revise § 489.66(c) to correct a drafting error to clarify that the Surety's liability may be extinguished if the Surety furnishes us with a notice of an HHA's action to terminate or limit the scope of the bond not later than 10 days after receiving notice from the HHA of such action by the HHA, or not later than 60 days before the effective date of such action by the Surety or if the HHA has submitted to HCFA a new bond that meets our requirements.

In new § 489.66(e), we are making a technical change to specify that surety bonds must include the Surety's full name and address to which we can send a written notice of an overpayment, civil money penalty, or assessment.

In § 489.67(a) (''Submission date and term of the bond.''), we have amended this provision to specify that the initial bond must be submitted to HCFA by 60 days from the date of publication of this rule, for the term beginning January 1, 1998. An HHA that submitted an initial surety bond under the provisions of the January 5, 1998 final rule is not required to, but may, submit a substitute surety bond that conforms to the technical revisions established by this final rule. If an annual bond is submitted for the initial term, it must be effective through the ending date of the HHA's current fiscal year. For subsequent terms, an HHA must submit to us either an annual surety bond or where the HHA has submitted a continuous bond, a rider (showing the period for which the rider is effective), not later than 30 days before the beginning of the HHA's fiscal year. When an HHA has furnished a continuous bond, no action is necessary by the HHA to submit a rider as long as the continuous bond remains in full force and effect and there is no change in the bond amount.

In § 489.67(b), we specify the type of bond that an HHA must secure as either an annual or continuous bond.

In § 489.71 (''Surety's standing to appeal Medicare determinations.''), we specify that a Surety has standing to appeal any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA and provided the HHA, itself, is not pursuing its appeal rights, and provided further that, with respect to unpaid claims, the Surety has paid HCFA all amounts owed to HCFA by the HHA on such unpaid claims, up to the amount of the bond.

In new § 489.73 (''Effect of conditions of payment''), we specify that if the Surety has paid an amount on the basis of liability incurred under a bond obtained by an HHA, and we subsequently collect from the HHA on the same indebtedness that gave rise to the Surety's liability, we will reimburse the Surety the amount we collected from the HHA up to the amount paid to us by the Surety, provided the Surety has no other liability to us under the bond.

B. Surety Bond Requirements Under Medicaid

In keeping with our intent and practice of affording States flexibility in implementing these surety bond provisions, and in recognition that the States' administration of Medicaid may differ significantly from the Medicare model, we have not changed the Medicaid requirements in § 441.16 to conform to all of Medicare's changes in part 489, subpart F. We believe that allowing States the discretion to decide, for example, the means and mechanism by which the Surety is notified of any overpayment that is asserted against the HHA is the best way to retain State flexibility. Nevertheless, the Medicaid changes in part 441 that are discussed below were made generally in order to conform with changes being made to Medicare in part 489, subpart F.

In § 441.16(g)(7) (''Expiration of the 15 percent provision''), we provide that for an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this section to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as the Medicaid agency specifies in accordance with subparagraph (6) of this paragraph, whichever amount is greater.

In § 441.16(h)(2) (''Additional requirements of the surety bond''), we state that the bond must provide that the Surety is liable for uncollected overpayments as defined in paragraph (a), provided such uncollected overpayments are determined during the term of the bond and regardless of when the overpayments took place.

In addition, we state that if an HHA fails to furnish the Medicaid State agency with a subsequent annual bond that meets the requirements of this subpart, or fails to furnish a rider for a year for which a rider is required to be submitted, or if the HHA's agreement with the State Medicaid agency terminates, then the last bond or rider in effect for such HHA remains in effect for an additional 2-year period.

In § 441.16(h)(3)(i), we state that the Surety's potential liability under a bond may be extinguished if the Surety furnishes the Medicaid agency with notice of an HHA's action to terminate or limit the scope of the bond not later than 10 days after receiving notice from the HHA of such action by the HHA or not later than 60 days before the effective date of such action by the Surety, or if the HHA has submitted a new bond to the Medicaid agency and the bond meets all Federal and State requirements.

In § 441.16(i)(1) (''Submission date, term, and type of the bond''), we have amended this provision to specify that the initial bond must be submitted by a date specified by the State Medicaid agency up to 120 days following the publication of this rule. (The term of the initial bond is for a term beginning January 1, 1998.) In the preamble to the March 4, 1998 rule, we stated our intention to establish a new surety bond compliance date that would be 60 days after the date of publication of this rule. However, upon further consideration and analysis, we concluded that 60 days may not be sufficient time for all States to furnish appropriate notice to Medicaid-participating HHAs. Therefore, we are providing for each State to establish a compliance date for the submission of a surety bond up to 120 days from the date of publication of this rule.

We have also amended this provision to specify that an HHA must submit a ''rider'' to the Medicaid agency for subsequent terms in the event the HHA has previously submitted a continuous bond and the required amount of the bond changes.

In § 441.16(i)(2), we specify that the bond submitted by an HHA must be either an annual bond (that is, a bond that specifies an effective annual period corresponding to an annual period

specified by the Medicaid agency) or a continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) and which must be updated by the Surety, for a particular annual period via the issuance of a ''rider,'' when the bond amount changes. We have defined a ''rider'' to mean a notice issued by a Surety that a change in a bond has occurred or will occur. In addition, we state that if the HHA has submitted a continuous bond and there is no increase or decrease in the bond amount, no action is necessary by the HHA to submit a rider as long as the continuous bond remains in full force and effect.

In § 441.16(l) (''Surety's standing to appeal Medicaid determinations''), we specify that the Medicaid agency must establish procedures for granting appeal rights to Sureties.

In new § 441.16(m) (''Effect of conditions of payment''), we require that in the event a Surety has paid the Medicaid agency an amount on the basis of liability incurred under a bond obtained by an HHA under this section, and the Medicaid agency subsequently collects an amount on the overpayment from the HHA, which overpayment gave rise to the Surety's liability, the Medicaid agency must reimburse the Surety the amount the agency collected from the HHA up to the amount paid to the agency by the Surety, provided the Surety has no other liability under the bond.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers and suppliers as small entities. Individuals and States are not included in the definition of a small entity.

Also, 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. That 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.

Publication of this rule generally limits the Surety's liability on the bond to the term when it is determined that funds owed to Medicare and Medicaid have become ''unpaid,'' regardless of when the payment, overpayment, or other action causing such funds to be owed took place; establishes that a Surety remains liable on a bond for an additional 2 years after the date an HHA leaves the Medicare or Medicaid program; gives a Surety the right to appeal, under Medicare, any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA and provided the HHA, itself, is not pursuing its appeal rights and provided the Surety has paid HCFA on amounts relating to unpaid claims; directs State Medicaid agencies to grant appeal rights to Sureties; and establishes the use of a continuous or annual bond.

While we cannot predict the effect these revisions will have on the number of HHAs having an agreement with us and with the Medicaid agencies, we believe these revisions will remove the uncertainty of the scope of a Surety's liability. The removal of this underwriting uncertainty, coupled with the fact that Sureties are provided with their own appeal rights, should result in a more robust surety bond market, thereby giving HHAs an increased opportunity to obtain a bond.

Although we are unable to estimate either savings or costs to the Medicare Trust Funds, the savings that may result from this regulation would be, principally, from recovery of overpayments that Medicare and Medicaid may collect from the Sureties and from the prevention of overpayments that would have been generated by HHAs that are unable to obtain surety bonds. In the final rule published on January 5, 1998, we estimated Medicare savings at $10 million beginning in 2000 and $20 million each year thereafter. These estimates were based on the assumption that HHAs will not repeat their past aberrant billing activities and that we will experience a reduction in unrecovered program overpayments as a result of either having debts guaranteed by a Surety company, or by high risk businesses being unable to obtain surety bonds and, thus, leaving the Medicare and/or Medicaid program. While the changes made by this rule may make it possible for some of the HHAs that were not able to obtain a surety bond that met the requirements of the January 5, 1998 rule to now obtain a bond, we do not believe that those HHAs will be the high-risk business whose departure from the program was a factor in making our savings estimates.

For these reasons, we have determined, and we certify, that this regulation does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on the proposed rule. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of the finding and its reasons in the rule issued.

In this final rule, we are addressing matters on which we received public comments to our January 5, 1998 final rule with comment, as well as on matters on which we received interim comments from both the Surety and HHA industries that concern the technical issues discussed in our March 5, 1998 notice.

We find good cause to waive notice-and-comment procedures for this final rule because it is impracticable to employ notice-and-comment procedures with respect to both the Medicare and Medicaid regulations and establish new, timely compliance dates for submission of surety bonds. Because a fully viable market for HHA surety bonds apparently failed to develop following the publication on January 5, 1998 of a final rule establishing surety bond requirements for HHAs, on March 4, 1998 we published a final rule to remove from the January 5th rule the date by which HHAs were required to submit surety bonds. This measure was taken in order to consider technical revisions to the rule that might be necessary in order to facilitate the development of a fully viable surety bond market for reputable and well-run HHAs. This rule includes those revisions and establishes new submission compliance dates for both

the Medicare and Medicaid bonds. We believe that the new submission compliance dates should not be so remote in time from the effective date of the initial bonds, i.e., January 1, 1998, so as, possibly, to create another market disincentive for surety bond companies and possible access problems for program beneficiaries. However, employing notice and comment procedures would substantially delay establishing new, timely submission compliance dates. Accordingly, we find it impracticable both to employ notice and comment procedures and to establish new submission compliance dates that are not temporally remote from the effective date of the term of the initial bonds.

We also find good cause to waive notice-and-comment procedures because employing such procedures for this rule would be contrary to the public interest. For the reasons just discussed, this final rule must be published as soon as possible so as to ensure a fully viable surety bond market for reputable and well-run HHAs and to establish new bond submission compliance dates. Employing notice-and-comment procedures would, as a practical matter, substantially delay the implementation of the surety bond requirement and such substantial delay would be contrary to the public interest.

For these reasons, we find good cause to waive notice-and-comment procedures and to issue this final rule.

VII. 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 (PRA) 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.

In compliance with section 3506(c)(2)(A) of the PRA, we are submitting to the 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, effective 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 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.

Written comments and recommendations will be accepted from the public if received by the individuals designated below within 10 workings days from the date of this publication. HCFA is requesting OMB review and approval of this collection within 11 working days of this publication, with a 180-day approval period. 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.

The information collection requirements contained in the rule published in the **Federal Register** on January 5, 1998 have been approved by OMB under approval number 0938–0713, with an expiration date of May 31, 1998. Under the terms of OMB approval, HCFA is required to submit this revised final rule for emergency PRA clearance. As such, we are requesting an emergency review of the information collections contained in this final rule and re-approval of the information collection requirements currently approved under OMB approval number 0938–0713.

Type of Information Request: Revision of a currently approved collection.

Title of Information Collection: Surety Bond Requirements for Home Health Agencies (HHA) and Supporting Regulations in 42 CFR §§ 441.16, 489.66, and 489.67.

Form Number: HCFA–R–213.

OMB Approval Number: 0938–0713.

Use: In summary, these information collection requirements ensure that HHAs furnish the required surety bond and continue to demonstrate that they meet the applicable requirements set forth in 42 CFR Parts 441 and 489, in order to continue participation in the Medicare and Medicaid programs.

Frequency: Other; As needed.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 8,062.

Total Annual Responses: 7,001.

Total Annual Hours Requested: 18,071.

In addition to HCFA's continued solicitation of comments on the currently approved information collection requirements we are particularly interested in obtaining comment on each of the modifications to the currently approved information collections requirements, as referenced in this regulation and summarized below.

Section 441.16(h)(3)(i) requires that if a Surety wants to avoid future liability with respect to a particular bond, the 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 of an 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 3 hours to generate and furnish a notice of such action for a total burden of 240 hours.

Section 441.16(i)(1)(ii) requires that, for subsequent terms of a bond, by a date as the Medicaid agency specifies, the HHA must submit to the Medicaid agency a surety bond or, if the HHA has furnished a continuous bond and the required amount of the bond has changed, a rider, that is effective for an annual period specified by the Medicaid agency.

Previously, all HHAs were required to submit, on an annual basis, a copy of an annual surety bond. However, HHAs now have the option to submit a continuous surety bond. If an HHA submits a continuous surety bond it must thereafter submit a rider to the

Medicaid agency when the amount of the continuous surety bond changes.

Therefore, the burden associated with this modified requirement is the time required to submit either an annual bond or, if necessary, a rider with a continuous bond. Since we anticipate that virtually all HHAs will obtain a continuous surety bond, but only approximately 1,100 HHAs will require a bond in a different amount each year, we estimate it will take 1 hour each for 1,100 HHAs to submit a rider on an annual basis.

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 of an 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 3 hours to generate and furnish a notice of such action for a total burden of 240 hours.

Section 489.66(e) has been modified to explicitly require that the bond provide the Surety's name, street address or post office box number, city, state, and zip code to which the HCFA notice provided for in paragraph (a) of this section is to be sent. Since this requirement was inherent to the previous surety bond submission requirement, there is no additional burden associated with this requirement.

Section 489.67(a)(2) now requires that not later than 30 days before the beginning of the HHA's fiscal year, a surety bond or, if necessary, a rider, effective for a term concurrent with the HHAs fiscal year, be submitted to HCFA.

Previously, all HHAs were required to submit, on an annual basis, a copy of an annual surety bond. However, HHAs now have the option to submit a continuous surety bond. If an HHA submits a continuous surety bond, it must thereafter submit a rider to HCFA when the amount of the continuous surety bond changes.

Therefore, the burden associated with this modified requirement is the time required to submit either an annual bond or, if necessary, a rider reflecting a change to a continuous bond. Since, we anticipate that virtually all HHAs will obtain a continuous surety bond, but only approximately 1,100 HHAs will require a bond in a different amount each year, we estimate it will take 1 hour each for 1,100 HHAs to submit a rider on an annual basis.

We have submitted a copy of this final rule and the revised PRA submission to OMB for its review of the information collection requirements. These revised requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 10 working days of this publication:

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–1152–1–F 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 number: (202) 395–6974 or (202) 395–5167.

List of Subjects

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and record keeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and record keeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

A. 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 441.16 is amended by adding paragraph (g)(7), republishing the introductory text of paragraph (h), revising paragraph (h)(2), republishing the introductory text of paragraph (h)(3), revising paragraph (h)(3)(i), revising the title of paragraph (i), paragraphs (i)(1)(i) and (ii), redesignating paragraphs (i)(2) through (i)(5) as (i)(3) through (i)(6), respectively and adding a new paragraph (i)(2), revising paragraph (l), and adding a new paragraph (m), to read as follows:

§ 441.16 Home health agency requirements for surety bonds; Prohibition on FFP.

(g) *Amount of the bond.*

* * * * *

(7) *Expiration of the 15 percent provision.* For an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this section to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as the Medicaid agency specifies in accordance with paragraph (g)(6) of this section, whichever amount is greater.

(h) *Additional requirements of the surety bond.* The surety bond that an HHA obtains under this section must meet the following additional requirements:

* * * * *

(2) The bond must provide that the Surety is liable for uncollected overpayments, as defined in paragraph (a), provided such uncollected overpayments are determined during the term of the bond and regardless of when the overpayments took place. Further, the bond must provide that the Surety remains liable if the HHA fails to furnish a subsequent annual bond that meets the requirements of this subpart or fails to furnish a rider for a year for which a rider is required to be submitted, or if the HHA's provider agreement terminates and that the Surety's liability shall be based on the last bond or rider in effect for the HHA, which shall then remain in effect for an additional 2-year period.

(3) The bond must provide that, except as provided in paragraph (h)(3)(i)

of this section, 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. The Surety's liability may be extinguished, however, when—

(A) The Surety furnishes the Medicaid agency with notice of such action not later than 10 days after receiving notice from the HHA of action by the HHA to terminate or limit the scope of the bond, or not later than 60 days before the effective date of such action by the Surety; or

(B) The HHA furnishes the Medicaid agency with a new bond that meets the requirements of both this section and the Medicaid agency.

* * * * *

(i) *Submission date, term, and type of bond.*

(1) Each participating HHA that is not exempted by paragraph (d) of this section must submit to the Medicaid agency a surety bond for a term as follows:

(i) *Initial submission date and term.* By a date specified by the State Medicaid agency up to September 29, 1998. The initial bond is for a term beginning January 1, 1998. If an annual bond is submitted for the initial term, it must be effective for an annual period specified by the State Medicaid agency.

(ii) *Subsequent submission date and term.* By a date the Medicaid agency specifies, effective for an annual period specified by the Medicaid agency a surety bond or rider as described in subparagraph (e).

(2) *Type of bond.* The type of bond required to be submitted by an HHA, under this section, may be either—

(i) An annual bond (that is, a bond that specifies an effective annual period that corresponds to an annual period specified by the Medicaid agency); or

(ii) A continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) that is updated by the Surety for a particular period, via the issuance of a ''rider,'' when the bond amount changes. For the purposes of this section, ''Rider'' means a notice issued by a Surety that a change to a bond has occurred or will occur. If the HHA has submitted a continuous bond and there is no increase or decrease in the bond amount, no action is necessary by the HHA to submit a rider as long as the continuous bond remains in full force and effect.

* * * * *

(l) *Surety's standing to appeal Medicaid determinations.* The Medicaid agency must establish procedures for granting appeal rights to Sureties.

(m) *Effect of conditions of payment.* If a Surety has paid the Medicaid agency an amount on the basis of liability incurred under a bond obtained by an HHA under this section, and the Medicaid agency subsequently collects from the HHA, in whole or in part, on such overpayment that was the basis for the Surety's liability, the Medicaid agency must reimburse the Surety such amount as the Medicaid agency collected from the HHA, up to the amount paid by the Surety to the Medicaid agency, provided the Surety has no other liability under the bond.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

B. 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. In section 489.60, the definition of ''Unpaid civil money penalty or assessment, the words ''90 days after the HHA'' are removed, and the words ''after the HHA or Surety'' are added in their place. Section 489.60 is further amended by adding the definition of the term ''Rider'', in alphabetical order, to read as follows:

§ 489.60 Definitions.

Rider means a notice issued by a Surety that a change in the bond has occurred or will occur.

* * * * *

§ 489.62 [Amended]

3. In § 489.62 introductory text, the word ''section'' is removed, and the word ''subpart'' is added in its place.

4. In § 489.65, paragraph (g) is added to read as follows:

§ 489.65 Amount of the bond.

* * * * *

(g) *Expiration of the 15 percent provision.* For an annual surety bond, or for a rider on a continuous surety bond, that is required to be submitted on or after June 1, 2005, notwithstanding any reference in this subpart to 15 percent as a basis for determining the amount of the bond, the amount of the bond or rider, as applicable, must be $50,000 or such amount as HCFA specifies in accordance with paragraph (f) of this section, whichever amount is greater.

5. In § 489.66, paragraph (b) is revised, paragraph (c) introductory text is republished, paragraph (c)(1) is revised, and new paragraph (e) is added, to read as follows:

§ 489.66 Additional requirements of the surety bond.

* * * * *

(b) The bond must provide the following:

(1) The Surety is liable for unpaid claims, unpaid civil money penalties, and unpaid assessments that are discovered when the surety bond is in effect, regardless of when the payment, overpayment, or other event giving rise to the claim, civil money penalty, or assessment occurred, provided HCFA makes a written demand for payment from the Surety during, or within 90 days after, the term of the bond.

(2) If the HHA fails to furnish a bond meeting the requirements of this subpart F for the year following expiration of the term of an annual bond, or if the HHA fails to submit a rider when a rider is required to be submitted under this subpart, or if the HHA's provider agreement is terminated, the last bond or rider, as applicable, submitted by the HHA to HCFA, which bond or applicable rider meets the requirements of this subpart, remains effective and the Surety remains liable for unpaid claims, civil money penalties, and assessments that—

(i) HCFA determines or imposes on or asserts against the HHA based on overpayments or other events that took place during or prior to the term of the last bond or rider; and

(ii) Were determined or imposed during the 2 years following the date the HHA failed to submit a bond or required rider or the date the HHA's provider agreement is terminated, whichever is later.

(c) The bond must provide that, except as provided in paragraph (c)(1) of this section, 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) Action by the HHA or the Surety to terminate or limit the scope or term of the bond. The Surety's liability may be extinguished, however, when—

(i) The Surety furnishes HCFA with notice of such action not later than 10 days after receiving notice from the HHA of action by the HHA to terminate or limit the scope of the bond, or not later than 60 days before the effective date of such action by the Surety; or

(ii) The HHA furnishes HCFA with a new bond that meets the requirements of this subpart.

* * * * *

(e) The bond must provide the Surety's name, street address or post office box number, city, state, and

zipcode to which the HCFA notice provided for in paragraph (a) of this section is to be sent.

6. In § 489.67, paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), respectively, paragraph (a) is revised, and a new paragraph (b) is added to read as follows:

§ 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 submission date and term:* By July 31, 1998. The term of the initial bond is for a term beginning January 1, 1998. If an annual bond is submitted for the initial term, it must be effective through the end of the HHA's current fiscal year.

(2) *Subsequent submission date and term.* Not later than 30 days before the beginning of the HHA's fiscal year, a surety bond, or, if necessary, a rider, effective for a term concurrent with the HHA's fiscal year.

(b) *Type of bond.* The type of bond required to be submitted by an HHA under this subpart may be either—

(1) An annual bond (that is, a bond that specifies an effective annual period corresponding to the HHA's fiscal year); or

(2) A continuous bond (that is, a bond that remains in full force and effect from term to term unless it is terminated or canceled as provided for in the bond or as otherwise provided by law) that is updated by the Surety, via the issuance of a rider, for a particular fiscal year for which the bond amount has changed or will change.

* * * * *

7. Section 489.71 is revised to read as follows:

§ 489.71 Surety's standing to appeal Medicare determinations.

A Surety has standing to appeal any matter that the HHA could appeal, provided the Surety satisfies all jurisdictional and procedural requirements that would otherwise have applied to the HHA, and provided the HHA is not, itself, actively pursuing its appeal rights under this chapter, and provided further that, with respect to unpaid claims, the Surety has paid HCFA all amounts owed to HCFA by the HHA on such unpaid claims, up to the amount of the bond.

8. Section 489.73 is redesignated as § 489.74 in subpart F, and a new § 489.73 is added to read as follows:

§ 489.73 Effect of conditions of payment.

If a Surety has paid an amount to HCFA on the basis of liability incurred under a bond obtained by an HHA under this subpart F, and HCFA subsequently collects from the HHA, in whole or in part, on such unpaid claim, civil money penalty, or assessment that was the basis for the Surety's liability, HCFA reimburses the Surety such amount as HCFA collected from the HHA, up to the amount paid by the Surety to HCFA, provided the Surety has no other liability to HCFA under the bond.

(Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.778, Medical Assistance Program)

Dated: April 8, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: May 8, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–14309 Filed 5–26–98; 4:58 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 80

[CI Docket No. 95–55, FCC 98–75]

Inspection of Radio Installations on Large Cargo and Small Passenger Ships

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* (*R & O*) which requires that large cargo vessels and small passenger ships arrange for an inspection of such ships by an FCC-licensed technician. The Commission adopted this *R & O* to incorporate changes to the Communications Act related to the inspection of ships and to improve the Commission's ship inspection process. These rules should increase the availability of competent, private sector inspectors to conduct inspections of cargo vessels and small passenger vessels required to be inspected by the Commission without adversely affecting safety and, thus, provide greater convenience for the maritime industry.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: George R. Dillon of the Compliance and Information Bureau at (202) 418–1100.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, CI Docket No. 95–55, FCC 98–75, adopted April 20, 1998, and released, May 1, 1998. The full text of this *Report and Order* 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 may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th St. NW, Washington, DC 20036, telephone (202) 857–3800.

Summary of Report and Order

The Commission proposed rules in a *Notice of Proposed Rule Making* (*Notice*), CI Docket 95–55, 61 FR 21151, May 9, 1996, that changed the way in which the Commission inspected large cargo vessels and small passenger ships. This *Report and Order* (*R&O*) incorporates changes to the Communications Act related to the inspection of ships, improves the Commission's ship inspection process, reduces administrative burdens on the public and the Commission, and provides continued Commission oversight to ensure that vessel safety is not adversely affected. Currently, the Commission inspects the radio installations of approximately 1,110 vessels each year subject to the Communications Act or the Safety Convention. The amended rules will replace the requirement that the Commission inspect such ships with a requirement that ship owners or operators arrange for an inspection by an FCC-licensed technician.

2. *Comments.* We received 19 comments and 2 reply comments in response to the *Notice.* Most commenters supported the Commission's efforts to streamline the inspections of ships and provide faster service to the public. Two commenters opposed the proposal citing concerns about safety as reason not to permit privatization. The Coast Guard supported the Commission's efforts to streamline government regulation and reduce the regulatory burden on the maritime industry. The United States Coast Guard (Coast Guard) states that it fully supports the Commission's efforts to streamline government regulation and reduce the regulatory burden on the maritime industry wherever these efforts are consistent with the maintenance of a high level of safety. The Coast Guard notes that it has

undertaken a similar delegation for some of its commercial ship inspections—the alternative compliance program (ACP)—and asked that the Commission give due consideration to aligning its delegation approach to that chosen by the Coast Guard.

3. The Coast Guard also provided specific comments to questions raised in the *Notice* regarding the qualifications of FCC-licensed technicians. The Coast Guard states that while it supports the minimum licensing requirements proposed it does not appear the prerequisite for licensing incorporates any training or demonstration of qualifications in the actual conduct of safety inspections or in the skills necessary to maintain or operate the equipment. Several commenters support our proposal regarding the qualifications of technicians. Sea-Land Service, Inc. (Sea-Land), an operator of U.S. flag container ships, states that the qualifications required for the GMDSS maintainers license ensure that individuals inspecting the ships will have a demonstrated knowledge of the operational and technical requirements of the (radio) installation being inspected and that the system is being properly repaired, maintained and operated. Sea-Land states that it has experienced problems with FCC inspector availability due to the constraints of tight operating schedules and short port stays and the proposed rules will alleviate that problem.

4. The American Institute of Merchant Shipping, now the United States Chamber of Shipping (USCS), filed comments and reply comments. USCS notes that it represents 20 U.S. based companies which own or operate over ten million deadweight tons of U. S. flag tankers and liners, which USCS stated is a majority of U. S. flag tanker and liner tonnage. USCS contends that the proposed changes will increase the number of experienced entities available to conduct inspections and will allow it increased flexibility in arranging inspections. USCS also states that the Masters of ships that it represents will ensure that GMDSS equipment will operate safely before leaving every port and that it is, thus, appropriate that the Master should certify the completion of the annual inspection. In reply comments, USCS reiterated its position that the shipowner is the final inspector whether the equipment has been inspected by a GMDSS maintainer, installed by a vendor, looked at by a radio officer or even inspected by the FCC.

5. The Passenger Vessel Association states that the proposed regulations meet the needs of safety and that the FCC's current licensing system insures that FCC-licensed technicians have adequate knowledge for the inspection activity proposed. The National Marine Electronics Association (NMEA) states that the proposal to use private sector inspectors enlarges the field of qualified inspectors and permits ship owners and operators to arrange for inspections at their convenience. NMEA notes that because FCC-licensed technicians are called in advance to evaluate the equipment prior to the inspection the vessel's owner will save time and money by having the same person do both jobs. Finally, the Coast Guard suggested that the Commission maintain oversight of the ship inspection program because of safety concerns.

6. Because these inspections are conducted to ensure that ships have reliable distress communications capability we are incorporating the Coast Guard's suggestions. Further, we believe that privatization will result in the following benefits:

(a) It will increase the number of experienced entities available to inspect the radio stations of ships.

(b) Privatization will permit ship owners and operators to arrange for inspections at any time or place.

(c) Privatization should not adversely affect safety, we are adopting rules that will require two separate certifications that the ship has passed the safety inspection. Additionally, we are coordinating this item with the U. S. Coast Guard.

(d) It will also decrease administrative burdens on the Commission by shifting the responsibility to arrange ship inspections from the Commission to ship owners or operators.

7. The Communications Act requires that the Commission must inspect the radio installation of large cargo ships and certain passenger ships of the United States at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act. Additionally, the Communications Act requires that the Commission must inspect the radio installation of small passenger vessels as necessary to ensure compliance with the radio installation requirements of the Communications Act. Currently, the Commission inspects small passenger vessels once every five years.

8. The Safety Convention, to which the United States is signatory and which applies to large cargo ships and certain passenger vessels, also requires an annual inspection. The Safety Convention, however, permits an Administration to *entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it.* The United States can, therefore, have either Commission inspectors or other entities conduct the radio station inspections of vessels for compliance with the Safety Convention.

9. The purpose of these inspections is to ensure that passengers and crew members of certain U. S. ships have access to distress communications in an emergency. The 1996 Act adopted the statutory changes in this area requested by the Commission in 1995.

In part, these changes permit the Commission to designate entities to perform the inspections required by the Communications Act. We are adopting a significant change to the current rules and procedures regarding safety inspections. As a result, we are incorporating the Coast Guard's suggestions that we maintain oversight of the ship inspection process and will inspect a random sample of subject ships each year. We have also concluded that it is important to the integrity of this ship inspection program that the inspectors be independent of the vessel owners and operators. We are, therefore, providing that the vessel's owner, operator, master, employees or their affiliates may not conduct the required inspections. Finally, we will vigorously enforce these rules and take all appropriate steps available to us in the event of violations that affect ship safety.

Final Regulatory Flexibility Analysis

10. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the rules adopted in this Report and Order.

11. *Need for and purpose of this action.* The rules we adopt in this proceeding will require the owners and operators of large cargo vessels, passenger vessels, and small passenger vessels to arrange for an inspection by an FCC-licensed operator instead of requiring that all inspections be conducted by FCC personnel. This change will improve the speed and convenience of service to the owners and operators of such vessels, many of which are small businesses and will conserve scarce government resources.

12. *Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis.* There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

13. *Significant alternatives considered.* We initially considered limiting the inspection of subject vessels to classification societies. Commenters

overwhelmingly opposed limiting the inspections solely to classification societies in response to the NOI and suggested that we permit anyone with an FCC license to inspect the vessels. The United States Coast Guard suggested that we maintain oversight of the ship inspection process. We agree and are incorporating a random inspection process.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedures.

47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Chapter I of Title 47 of the Code of Federal Regulations, Parts 0, 1 and 80, are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by redesignating paragraph (i) as (i)(1) and adding a new paragraph (i)(2) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(i)(1) * * *

(2) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents, or log entries made by the holder of an FCC license or Certificate—detailed in § 80.59 of this Chapter—as certification that a U.S. vessel required to be equipped with a radio installation and inspected by the Commission or an entity designated by the Commission, under the Safety Convention or subparts Q, R, S, U, or W of part 80 of this chapter meets such inspection requirements. The Chief, Compliance and Information Bureau is further authorized to delegate this authority.

3. Section 0.314 is amended by revising paragraphs (e)(1) and (j) to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(e)(1) For periodic survey as required by section 385 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and issuance of Communications Act radiotelephony certificates in accordance with § 80.903 of this chapter. The District Director or Resident Agent will require that the inspection be conducted by an FCC-licensed technician holding an appropriate class of FCC license in accordance with § 80.59 of this chapter.

* * * * *

(j) For ship radio inspection and certification of the ship radio license, pursuant to the requirements of Section 362(b) and 385 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996. The District Director or Resident Agent will require that the inspection be conducted by an FCC-licensed technician holding an appropriate class of FCC license in accordance with § 80.59 of this chapter.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225 and 303(r).

5. Section 1.1103 is amended by removing the four entries for ''801'' under the header titled '' FCC Form No.'' and replacing them with ''159 and corres.''

PART 80—STATIONS IN THE MARITIME SERVICES

6. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

7. Section 80.5 is amended by revising the definitions of *Cargo ship safety radio-telegraphy certificate* and *Cargo ship safety radioletelphony certificate* and adding a definition of *Cargo ship safety radio certificate* to read as follows:

§ 80.5 Definitions.

* * * * *

Cargo ship safety radio certificate. A certificate issued after a ship passes an inspection of the required radiotelegraph, radiotelephone or GMDSS radio installation. Issuance of this certificate indicates that the vessel complies with the Communications Act and the Safety Convention.

Cargo ship safety radiotelegraphy certificate. A certificate issued after a ship passes an inspection of a radiotelegraph installation. Issuance of this certificate indicates that the vessel complies with the Communications Act and the Safety Convention.

Cargo ship safety radiotelephony certificate. A certificate issued after a ship passes an inspection of a radiotelephone installation. Issuance of this certificate indicates that the vessel complies with the Communications Act and the Safety Convention.

* * * * *

8. Section 80.19 is amended by removing the entry ''Radio inspection and certification'' under the column titled ''Application for'' and removing the entry and corresponding footnote ''FCC Form 801.1'' under the column titled ''Use''.

9. Section 80.59 is amended by revising paragraphs (a), (d) introductory text, (d)(1) introductory text, (d)(1)(v), adding a new paragraph (d)(2) and removing paragraph (e) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) Inspection of ships subject to the Communications Act or the Safety Convention.

(1) The FCC will not normally conduct the required inspections of ships subject to the inspection requirements of the Communications Act or the Safety Convention.

Note: Nothing in this section prohibits Commission inspectors from inspecting ships. The mandatory inspection of U. S. vessels must be conducted by an FCC-licensed technician holding an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate in accordance with the following table:

Category of vessel	Minimum class of FCC license required by private sector technician to conduct inspection—only one license required			
	General radiotelephone operator license	GMDSS radio maintainer's license	Second class radiotelegraph operator's certificate	First class radiotelegraph operator's certificate
Radiotelephone equipped vessels subject to 47 CFR part 80, subpart R or S	√	√	√	√
Radiotelegraph equipped vessels subject to 47 CFR part 80, subpart Q			√	√
GMDSS equipped vessels subject to 47 CFR part 80, subpart W or subpart Q		√		

(2) A certification that the ship has passed an inspection must be entered into the ship's log by the inspecting technician. The technician conducting the inspection and providing the certification must not be the vessel's owner, operator, master, or employee or their affiliates. Additionally, the vessel owner, operator, or ship's master must certify in the station log that the inspection was satisfactory. There are no FCC prior notice requirements for any inspection pursuant to paragraph (a)(1) of this section. An inspection of the bridge-to-bridge radio stations on board vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act must be conducted by the same FCC-licensed technician.

(3) Additionally, for passenger vessels operated on an international voyage the inspecting technician must send a completed FCC Form 806 to the Officer in Charge, Marine Safety Office, United States Coast Guard in the Marine Inspection Zone in which the ship is inspected.

(4) In the event that a ship fails to pass an inspection the inspecting technician must make a log entry detailing the reason that the ship did not pass the inspection. Additionally, the technician must notify the vessel owner, operator, or ship's master that the vessel has failed the inspection.

(5) Because such inspections are intended to ensure the availability of communications capability during a distress the Commission will vigorously investigate reports of fraudulent inspections, or violations of the Communications Act or the Commission's Rules related to ship inspections. FCC-licensed technicians, ship owners or operators should report such violations to the Commission through its National Call Center at 1–888–CALL FCC (1–888–225–5322).

* * * * *

(d) *Waiver of annual inspection.* (1) The Commission may, upon a finding that the public interest would be served, grant a waiver of the annual inspection required by Section 362(b) of the Communications Act, 47 U.S.C. 360(b), for a period of not more than 90 days for the sole purpose of enabling a United States vessel to complete its voyage and proceed to a port in the United States where an inspection can be held. An informal application must be submitted by the ship's owner, operator or authorized agent. The application must be submitted to the Commission's District Director or Resident Agent in charge of the FCC office nearest the port of arrival at least three days before the ship's arrival. The application must include:

* * * * *

(v) The reason why an FCC-licensed technician could not perform the inspection; and

* * * * *

(2) Vessels that are navigated on voyages outside of the United States for more than 12 months in succession are exempted from annual inspection required by section 362(b) of the Communications Act, provided that the vessels comply with all applicable requirements of the Safety Convention, including the annual inspection required by Regulation 9, Chapter I, and the vessel is inspected by an FCC-licensed technician in accordance with this section within 30 days of arriving in the United States.

10. Section 80.101 is amended by revising the fourth sentence in paragraph (b) to read as follows:

§ 80.101 Radiotelephone testing procedure.

* * * * *

(b) * * * U. S. Coast Guard stations may be contacted on 2182 kHz or 156.800 MHz for test purposes only when tests are being conducted by Commission employees, when FCC-licensed technicians are conducting inspections on behalf of the Commission, when qualified technicians are installing or repairing radiotelephone equipment, or when qualified ship's personnel conduct an operational check requested by the U.S. Coast Guard. * * *

11. Section 80.409 is amended by revising paragraphs (b)(1) introductory text and (f)(1) to read as follows:

§ 80.409 Station logs.

* * * * *

(b) * * *

(1) Logs must be retained by the licensee for a period of two years from the date of entry, and, when applicable, for such additional periods as required by the following paragraphs:

* * * * *

(f) * * *

(1) Radiotelephony stations subject to the Communications Act, the Safety Convention, or the Bridge-to-Bridge Act must record entries indicated by paragraphs (e)(1) through (e)(12) of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship's radio station. Entries must be made in this section giving at least the following information.

(i) For ships that pass the inspection:

(A) The date the inspection was conducted.

(B) The date by which the next inspection needs to completed.

(C) The inspector's printed name, address and class of FCC license (including the serial number).

(D) The results of the inspection, including any repairs made.

(E) The inspector's signed and dated certification that the vessel meets the requirements of the Communications Act and, if applicable, the Safety Convention and the Bridge-to-Bridge Act contained in subparts Q, R, S, U, or W of this part and has successfully passed the inspection.

(F) The vessel owner, operator, or ship's master's certification that the inspection was satisfactory.

(ii) For ships that fail the inspection:

(A) The date the inspection was conducted.

(B) The inspector's printed name, address and class of FCC license (including the serial number).

(C) The reason that the ship did not pass the inspection.

(D) The date and time that the ship's owner, operator or master was notified that the ship failed the inspection.

* * * * *

12. Section 80.802 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.802 Inspection of station.

(a) Every ship of the United States subject to Part II of Title III of the Communications Act or Chapter IV of the Safety Convention equipped with a radiotelegraph installation must have the required radio equipment inspected by an FCC-licensed technician holding a Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate once every 12 months. If the ship passes the inspection the technician will issue a Cargo Ship Safety Radio Certificate. Cargo Ship Safety Radio Certificates may be obtained from the Commission's National Call Center—(888) 225–5322—or from its Forms contractor.

* * * * *

13. Section 80.818 is amended by revising paragraph (b) to read as follows:

§ 80.818 Direction finding and homing equipment.

* * * * *

(b) *On or after May 25, 1980,* must be equipped with radio direction finding apparatus having a homing capability in accordance with § 80.824.

14. Section 80.819 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.819 Requirements for radio direction finder.

(a) The radio direction finding apparatus must:

* * * * *

15. Section 80.822 is revised to read as follows:

§ 80.822 Contingent acceptance of direction finder calibration.

When the required calibration can not be made before departure from a harbor or port for a voyage in the open sea, the direction finder may be tentatively approved on condition that the master certifies in writing that the direction finder will be calibrated by a competent technician.

16. Section 80.835 is amended by removing the fourth sentence in paragraph (a).

17. Section 80.851 is amended by redesignating the text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 80.851 Applicability.

* * * * *

(b) Until February 1, 1999, the inspection of all cargo vessels equipped with a radiotelephone installation operated on domestic or international voyages must be conducted by an FCC-licensed technician in accordance with § 80.59 once every 12 months. If the ship passes the inspection the technician will issue a Safety Certificate. Cargo Ship Safety Radio Certificates may be obtained from the Commission's National Call Center—(888) 225–5322—or from its forms contractor.

18. Section 80.903 is revised to read as follows:

§ 80.903 Inspection of radiotelephone installation.

Every vessel subject to Part III of Title III of the Communications Act must have a detailed inspection of the radio installation by an FCC-licensed technician in accordance with § 80.59 once every five years. The FCC-licensed technician must use the latest FCC Information Bulletin, *How to Conduct an Inspection of a Small Passenger Vessel.* If the ship passes the inspection, the technician will issue a Communications Act Safety Radiotelephony Certificate. Communications Act Radiotelephony Certificates may be obtained from the Commission's National Call Center—(888) 225–5322—or from its forms contractor.

19. Section 80.1067 is amended by revising paragraph (a) to read as follows:

§ 80.1067 Inspection of station.

(a) Ships must have the required equipment inspected at least once every 12 months by an FCC-licensed technician holding a GMDSS Radio Maintainer's License. If the ship passes the inspection the technician will issue a Safety Certificate. Safety Certificates may be obtained from the Commission's National Call Center at 1–888–CALL FCC (1–888–225–5322) or from its field offices. The effective date of the ship Safety Certificate is the date the station is found to be in compliance or not later than one business day later. The FCC-licensed technician must use the latest FCC Information Bulletin, *How to Conduct a GMDSS Inspection.* Contact the FCC's National Call Center at 1–888–CALL FCC (1–888–225–5322) to request a copy.

* * * * *

[FR Doc. 98–13463 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 11 and 76

[FO Dockets No. 91–171, 91–301; FCC 97–338]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Report and Order* modifies the Emergency Alert System (EAS) as it applies to wired cable TV systems. Also, wireless cable TV systems are required to participate in EAS. Deadlines for compliance are established. Small cable systems are allowed five years to phase-in EAS and may operate with reduced EAS equipment requirements. Larger cable systems must comply by December 31, 1998. Satellite Master Antenna TV and Video Dial Tone/Open Video Systems are not required to participate. State and local regulations relating to emergency communications and EAS are not preempted, but will be if these regulations interfere with EAS.

EFFECTIVE DATE: July 31, 1998.

FOR FURTHER INFORMATION CONTACT: David Sturdivant, Compliance and Information Bureau, (202) 418–1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Second Report and Order* in FO Dockets 91–171; 91–301, adopted September 24, 1997, and released September 29, 1997.

The full text of this Federal Communications Commission's (FCC) *Second Report and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, D.C. 20036; phone: (202) 857–3800, facsimile: (202) 857–3805.

Synopsis of Second Report and Order

The FCC adopted a *Second Report and Order* pertaining to the participation by wired and wireless cable TV systems in the Emergency Alert System (EAS). The rule changes are provided at the end of this synopsis.

EAS replaced the Emergency Broadcast System (EBS), and uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies.

EAS, compared to EBS, includes more sources capable of alerting the public and specifies new equipment standards and procedures to improve alerting capabilities.

In 1994, the Commission issued a *Report and Order* 59 FR 67090, December 28, 1994 in this proceeding dealing largely with the participation by broadcast stations in EAS, but also directing that wired cable TV systems participate, and specifying the nature of this participation. The *Report and Order* added a new part 11 (47 CFR part 11) to the FCC's rules containing EAS regulations. At the same time, the Commission issued a *Further Notice of Proposed Rule Making (FNPRM)* 59 FR 67104, December 28, 1994.

The *Second Report and Order* modifies some of the requirements in the *Report and Order* applying to wired cable systems, and addresses issues raised in the *FNPRM*.

The *FNPRM* asked for comments regarding whether small wired cable systems should be exempted from participation in EAS. The *Second Report and Order* concludes that the FCC lacks legal authority to exempt small cable systems, but allows them five years to comply with the EAS requirements. The new rules addressing this issue and establishing deadlines for large systems state the following:

—Wired cable TV systems serving less than 5,000 subscribers from a headend must by October 1, 2002, provide either the national level EAS message (including tests) on all programmed channels or operate EAS equipment that provides a video interrupt and audio alert (informing listeners of the channel carrying emergency information) on all programmed channels and an EAS audio and video message (providing emergency information) on at least one programmed channel.

—Wired cable systems serving 5,000 or more, but fewer than 10,000 subscribers must by October 1, 2002, operate EAS equipment that provides EAS audio and video messages (emergency information) on all programmed channels.

—Wired cable systems serving 10,000 or more subscribers must by December 31, 1998, operate EAS equipment that provides EAS audio and video messages (emergency information) on all programmed channels.

The *FNPRM*, proposed to require wireless cable TV systems to participate in EAS. The *Second Report and Order* concludes that wireless cable systems that own or lease facilities and channels that transmit programming to the subscribing public by the Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS) or Instructional Television Fixed Service (ITFS) must comply with the EAS requirements. The following is required of these wireless cable systems:

—Wireless cable systems serving less than 5,000 subscribers from a single transmission site must by October 1, 2002, provide either the national level EAS message (including required tests) on all programmed channels or operate EAS equipment that provides a video interrupt and audio alert (informing listeners of the channel carrying emergency information) on all programmed channels and an EAS audio and video message (providing emergency information) on at least one programmed channel.

—Wireless cable systems serving 5,000 or more subscribers must by October 1, 2002, operate EAS equipment that provides EAS audio and video messages (emergency information) on all programmed channels.

The *FNPRM* also requested comments concerning whether Satellite Master Antenna TV (SMATV) systems and Video Dial Tone (VDT) (video programming delivered by common carriers)(now referred to as Open Video Systems (OVS)) should be required to operate EAS equipment. The *Second Report and Order* concludes that participation by these services in EAS will be voluntary. However, the FCC will monitor these services regarding whether mandatory participation might be appropriate in the future. Other services are encourage to participate in EAS.

Finally, the *FNPRM* asked for comments regarding whether EAS can coexist with state and local government regulations and franchise agreements relating to emergency communications and EAS on cable systems, and whether the FCC should preempt conflicting state and local requirements. The *Second Report and Order* declines to exercise preemption, but warns that if a jurisdiction takes action that interferes with the national warning functions of EAS, the action will be preempted by the FCC.

Paperwork Reduction Act of 1995 Analysis

As required by the Paperwork Reduction Act of 1995, the *Second Report and Order* contains a paperwork reduction analysis. The analysis concludes that the requirements adopted in the *Second Report and Order* impose new or modified information collection requirements on the public. The FCC as part of its effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in the *Second Report and Order*.

Written comments by the public are due within 30 days after publication of this notice in the **Federal Register**. Comments should be submitted to Judy Boley, FCC, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503, or via the Internet to fain__t@al.eop.gov. For additional information, contact Judy Boley at 202–418–0214 or at above Internet address.

The information collection requirements contained in the attached rules becomes effective July 31, 1998, following OMB approval, unless timely notice is published in the **Federal Register** stating otherwise.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the *Second Report and Order* contains a final regulatory flexibility analysis. No comments were submitted in response to the initial Regulatory Flexibility Analysis. However, comments in response to the *FNPRM* raised issues regarding small cable systems. Concern was expressed that if small cable systems were required to buy EAS equipment, this would adversely impact on their finances. The Commission, though, concluded that it did not have legal authority to exempt small cable systems from the EAS requirements. Furthermore, participation by small cable systems in EAS would provide emergency messages to people that otherwise would not receive these messages, and this would save lives and property. However, the Commission acknowledged that EAS equipment costs could have a detrimental financial impact on small cable systems and their surrounding communities. To minimize this financial burden, the FCC allowed small systems to phase-in EAS over five years and reduced some of the EAS equipment requirements.

Legal Basis

The *Second Report and Order* is issued under the authority contained in sections 1, 4(i) and (o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

List of Subjects

47 CFR Part 11

Emergency alert system, Radio, Television.

47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Amendments

For the reasons stated in the preamble parts 11 and 76 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Section 11.11 is revised to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems; wireless cable systems which may consist of Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), or Instructional Television Fixed Service (ITFS) stations; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. It requires that at a minimum all participants use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates in the following tables:

TIMETABLE

Broadcast stations				
Requirement	AM & FM	TV	FM class D	LPTV [1]
Two-tone encoder [2] [3]	Y	Y	N	N
Two-tone decoder [4] [5]	Y	Y	Y	Y
EAS decoder	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97
EAS encoder	Y 1/1/97	Y 1/1/97	N	N
Audio message	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97
Video message	N/A	Y 1/1/97	N/A	Y 1/1/97

[1] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.
[2] Effective July 1, 1995, the two-tone signal must be 8–25 seconds.
[3] Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.
[4] Effective July 1, 1995, the two-tone decoder must respond to two-tone signals of 3–4 seconds duration.
[5] Effective January 1, 1998, the two-tone decoder will no longer be used.

EAS REQUIREMENTS CABLE SYSTEMS

A. Cable systems serving fewer than 5,000 subscribers from a headend must either provide the national level EAS message on all programmed channels—including the required testing—by October 1, 2002, or comply with the following EAS requirements. All other cable systems must comply with B.

B. EAS Equipment Requirement.

	System size and effective dates		
	≥10,000 subscribers	≥5,000 but <10,000 subscribers	<5,000 subscribers
Two-tone signal from storage device[1]	Y 12/31/98	Y 10/1/02	Y 10/1/02
Two-tone decoder	N	N	N
EAS decoder	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels;[2] Audio and Video EAS message on at least one channel.	N	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.
[2] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data such as interactive games.

WIRELESS CABLE SYSTEMS

(MDS/MMDS/ITFS Stations)

A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the national level EAS message on all programmed channels—including the required testing—by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.

B. EAS Equipment Requirement.

	System size and effective dates	
	≥5,000 subscribers	<5,000 subscribers.
EAS decoder	Y 10/1/02	Y 10/1/02
EAS encoder[1]	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 10/1/02	N
Video interrupt and audio alert message on all channels;[2] Audio and Video EAS message on at least one channel.	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.

[2] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data services such as Internet.

(b) Class D non-commercial educational FM stations as defined in § 73.506 and LPTV stations as defined in § 74.701(f) are not required to comply with § 11.32. LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) are not required to comply with the requirements of this part. FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part.

(c) For purposes of the EAS, Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) stations operated in accordance with subpart K of part 21 of this chapter and Instructional Television Fixed Service (ITFS) stations operated as part of wireless cable systems in accordance with subpart I of part 74 of this chapter are defined as follows:

(1) A ''wireless cable system'' is a collection of channels in the MDS, MMDS, or ITFS used to provide video programming services to subscribers. The channels may be licensed to or leased by the wireless cable system operator.

(2) A ''wireless cable operator'' is the entity that has acquired the right to use the channels of a wireless cable system for transmission of programming to subscribers.

(d) Local franchise authorities and cable television system operators may enter into mutual agreements that require the installation of EAS equipment before the required dates listed in the tables in pargraph (a). Additionally, local franchise authorities may use any EAS codes authorized by the FCC in any agreements.

(e) Organizations using other communications systems or technologies such as, Direct Broadcast Satellite (DBS), low earth orbit satellite systems, paging, computer networks, etc. may join the EAS on a voluntary basis by contacting the FCC. Organizations that choose to voluntarily participate must comply with the requirements of this part.

3. Section 11.13 is revised to read as follows:

§ 11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).

(a) The Emergency Action Notification (EAN) is the notice to all broadcast stations, cable systems and wireless cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAS has been activated for a national emergency.

(b) The Emergency Action Termination (EAT) is the notice to all broadcast stations, cable systems and wireless cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAN has terminated.

4. Section 11.15 is revised to read as follows:

§ 11.15 EAS Operating Handbook.

The EAS Operating Handbook states in summary form the actions to be taken by personnel at broadcast stations, cable systems and wireless cable systems, and other participating entities upon receipt of an EAN, an EAT, tests, or State and Local Area alerts. It is issued by the FCC and contains instructions for the above situations. A copy of the Handbook must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.

5. Section 11.17 is amended by revising the fourth sentence of the introductory text to read as follows:

§ 11.17 Authenticator word lists.

* * * LPTV stations and cable systems and wireless cable systems do not receive authenticator lists.

* * * * *

6. Section 11.19 is revised to read as follows:

§ 11.19 EAS Non-participating National Authorization Letter.

This authorization letter is issued by the FCC to broadcast station licensees and cable systems and wireless cable systems. It states that the licensee, cable operator or wireless cable operator has agreed to go off the air or in the case of cable discontinue programming on all channels during a national level EAS message. For Broadcast licensees this authorization will remain in effect through the period of the initial license and subsequent renewals from the time of issuance unless returned by the holder or suspended, modified or withdrawn by the Commission.

7. Section 11.21 is amended by revising the first sentence of the introductory text and paragraph (a) to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by broadcast and cable personnel, emergency officials and National Weather Service (NWS) personnel to activate the EAS. * * *

(a) The State plan contains procedures for State emergency management and other State officials, the NWS, and broadcast and cable personnel to transmit emergency information to the public during a State emergency using the EAS.

* * * * *

8. Section 11.31 is amended by revising the last sentence of paragraph (b), the last sentence of paragraph (c) introductory text, and in paragraph (c), in the definitions following the format example, the third and fifth sentences of the definition of ''PSSCCC'' code and the first sentence of the definition of the ''LLLLLLL''—code to read as follows:

§ 11.31 EAS protocol.

* * * * *

(b) * * * FM or TV call signs must use a slash ASCII character number 47 (/) in lieu of a dash.

(c) * * * Examples are provided in FCC Public Notices.

* * * * *

PSSCCC—* * * The Location code uses the Federal Information Processing Standard (FIPS) numbers as described by the U.S. Department of Commerce in National Institute of Standards and Technology publication FIPS PUB 6–4. * * * Each county and some cities are assigned a CCC number. * * *

* * * * *

LLLLLLLL—This is the identification of the broadcast station, cable system, MDS/MMDS/ITFS station, NWS office, etc., transmitting or retransmitting the message. * * *

* * * * *

9. Section 11.35 is revised to read as follows:

§ 11.35 Equipment operational readiness.

(a) Broadcast stations and cable systems and wireless cable systems are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, broadcast stations and cable systems and wireless cable systems must determine the cause of any failure to receive the required tests or activations specified in §§ 11.61(a) (1) and (2). Appropriate entries must be made in the broadcast station log as specified in § 73.1820 and § 73.1840 of this chapter, cable system record as specified in § 76.305 of this chapter, MDS/MMDS station records as specified in § 21.304 of this chapter, indicating reasons why any tests were not received.

(b) If the EAS Encoder or EAS Decoder becomes defective, the broadcast station, cable system or wireless cable system may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. Entries shall be made in the broadcast station log, cable system or wireless cable system station records showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

(c) If repair or replacement of defective equipment is not completed within 60 days, an informal request shall be submitted to the District Director of the FCC field office serving the area in which the broadcast station, cable system or wireless cable system is located for additional time to repair the defective equipment. This request must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service, and when the defective equipment will be repaired or replaced.

10. Section 11.41 is revised to read as follows:

§ 11.41 Participation in EAS.

(a) All broadcast stations and cable systems and wireless cable systems specified in § 11.11 are categorized as Participating National (PN) sources unless authorized by the FCC to be a Non-Participating (NN) sources.

(b) A broadcast station and cable system and wireless cable system may submit a written request to the FCC asking to be a Non-Participating National (NN) source. The FCC may then issue a Non-participating National Authorization letter. NN sources must go off the air during a national EAS activation after transmitting specified information.

(1) A station or system that is a Non-participating National (NN) source under § 11.18(f) that wants to become a Participating National (PN) source in the national level EAS must submit a written request to the FCC.

(2) NN sources may voluntarily participate in the State and Local Area EAS. Participation is at the discretion of broadcast station and cable system and wireless cable system management and should comply with State and Local Area EAS Plans.

(c) All sources, including NN, must have immediate access to an EAS Operating Handbook. They should contact the FCC to ensure that they are on the FCC EAS mailing list. Broadcast stations must also have a current copy of the Red Envelope Authenticator List.

11. Section 11.46 is amended by revising the first sentence to read as follows:

§ 11.46 EAS public service announcements.

Broadcast stations, cable systems and wireless cable systems may use Public Service Announcements or obtain commercial sponsors for announcements, infomercials, or programs explaining the EAS to the public. * * *

12. Section 11.51 is amended by revising paragraph (b); redesignating paragraphs (e) through (l) as paragraphs (f) through (m), adding a new paragraph (e), and revising paragraphs (f) through (m) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

* * * * *

(b) When relaying EAS messages, broadcast stations and cable systems and wireless cable systems may transmit only the EAS header codes and the EOM code without the Attention Signal and emergency message for State and local emergencies. Television stations, cable systems and wireless cable systems should ensure that pauses in video programming before EAS message transmission do not cause television receivers to mute EAS audio messages. No Attention Signal is required for EAS messages that do not contain audio programming, such as a Required Weekly Test.

* * * * *

(e) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter and low power TV stations as defined in § 74.701(f) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

(f) Broadcast station equipment generating the EAS codes and the Attention Signal shall modulate a broadcast station transmitter so that the signal broadcast to other broadcast stations and cable systems and wireless cable systems alerts them that the EAS is being activated or tested at the National, State or Local Area level. The minimum level of modulation for EAS codes, measured at peak modulation levels using the internal calibration output required in § 11.32(a)(4), shall modulate the transmitter at no less than 80% of full channel modulation limits. Measured at peak modulation levels, each of the Attention Signal tones shall be calibrated separately to modulate the transmitter at no less than 40%. These two calibrated modulation levels shall have values that are within 1 dB of each other.

(g) Effective October 1, 2002, cable systems with fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention Signal may be produced from a storage device. Additionally, cable systems and wireless cable systems must:

(1) Install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal shall comply with the aural signal requirements in § 76.605 of this chapter,

(2) Provide a video interruption and an audio alert message on all channels.

The audio alert message must state which channel is carrying the EAS video and audio message,

(3) Cable systems and wireless cable systems shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location, and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) Cable systems and wireless cable systems may elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, cable systems and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(h) Effective December 31, 1998, cable systems with 10,000 or more subscribers; and, effective October 1, 2002, cable systems serving 5,000 or more, but less than 10,000 subscribers per headend and wireless cable systems with 5,000 or more subscribers; shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention Signal may be produced from a storage device. Additionally, after the dates indicated, these cable systems and wireless cable systems must:

(1) Install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for cable systems shall comply with the aural signal requirements in § 76.605 of this chapter. This will provide sufficient signal levels to operate cable subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers. Wireless cable systems shall also provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers.

(2) The cable systems and wireless cable systems in this paragraph (h) shall transmit the EAS audio message required in paragraph (a) of this section on all downstream channels.

(3) The cable systems and wireless cable systems in this paragraph (h) shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) Cable systems and wireless cable systems may elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, cable systems and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(i) If manual interrupt is used as authorized in paragraph (k) of this section, EAS Encoders must be located so that broadcast station, cable system or wireless cable system staff, at normal duty locations, can initiate the EAS code and Attention Signal transmission.

(j) Broadcast stations, and cable systems and wireless cable systems that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or cable systems or wireless cable systems with one EAS Encoder. The requirements of § 11.32 must be met by the combined facility.

(k) Broadcast stations and cable systems and wireless cable systems are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL-code which identifies the broadcast station, cable system, wireless cable system, or other entity retransmitting the message. See § 11.31(c). If an EAS source originates an EAS message with the Event codes in this paragraph, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, broadcast stations and cable systems and wireless cable systems shall use the event code RWT. The location codes are the state and county for the broadcast station city of license or cable system or wireless cable system community or city. Other location codes may be included upon approval of broadcast station, cable system or wireless cable system management. EAS messages may be transmitted automatically or manually.

(1) *Automatic* interrupt of programming and transmission of EAS messages are required when facilities are unattended. Automatic transmissions must include a permanent record that contains at a minimum the following information: Originator, Event, Location and valid time period of the message. The decoder performs the functions necessary to determine which EAS messages are automatically transmitted by the encoder.

(2) *Manual* interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 15 minutes. All actions must be logged and include the minimum information required for EAS video messages.

(l) Broadcast stations and cable systems and wireless cable systems may employ a minimum delay feature, not to exceed 15 minutes, for automatic interrupt of EAS codes. However, this may not be used for the EAN Event which must be transmitted immediately.

(m) Either manual or automatic operation of EAS equipment may be used at broadcast stations and cable systems and wireless cable systems that use remote control. If manual operation is used, an EAS decoder must be located at the remote control location and it must directly monitor the signals of the two assigned EAS sources. If direct monitoring of the assigned EAS sources is not possible at the remote location, automatic operation is required. If automatic operation is used, the remote control location may be used to override the transmission of an EAS alert. Broadcast stations and cable systems and wireless cable systems may change back and forth between automatic and manual operation.

13. Section 11.52 is amended by revising the third sentence of paragraph (a), paragraphs (b) through (d)(2), and the introductory sentence of paragraph (e) to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) * * * The effective dates for cable and wireless cable systems to install and operate EAS equipment are set forth in § 11.11.

* * * * *

(b) If manual interrupt is used as authorized in § 11.51(j)(2), decoders must be located so that operators at their normal duty stations at broadcast stations and cable systems and wireless cable systems can be alerted

immediately when EAS messages are received.

(c) Broadcast stations and cable systems and wireless cable systems that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facility.

(d) Broadcast stations and cable systems and wireless cable systems must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.

(1) If the required EAS sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the FCC's EAS office. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(2) Broadcast station and cable system and wireless cable system management shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) Broadcast stations and cable systems and wireless cable systems are required to interrupt normal programming either automatically or manually when they receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT) for their State or State/county location.

* * * * *

14. Section 11.53 is amended by revising paragraph (a)(2) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

* * * * *

(a) * * *

(2) Cable networks and program suppliers to cable systems, wireless cable systems and subscribers.

* * * * *

15. Section 11.54 is amended by revising paragraph (b)introductory text; redesignate paragraph (b)(8) through paragraph (b)(14) as paragraph(b)(9) through paragraph (b)(15); adding new paragraph (b)(8); revising newly designated paragraphs (b)(10), (b)(11) and (b)(14), and paragraphs (c) and (d) to read as follows:

§ 11.54 EAS operation during a National Level emergency.

* * * * *

(b) Immediately upon receipt of an EAN message, broadcast stations and cable systems and wireless cable systems must:

(1) * * *

* * * * *

(8) Cable systems and wireless cable systems shall transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h).

* * * * *

(10) Broadcast stations may transmit their call letters and cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation. State and EAS Local Area identifications must also be given as provided in State and Local Area EAS plans.

(11) All broadcast stations and cable systems and wireless cable systems operating and identified with a particular EAS Local Area must transmit a common national emergency message until receipt of the Emergency Action Termination.

* * * * *

(14) The time of receipt of the EAN and Emergency Action Termination messages shall be entered by broadcast stations in their logs (as specified in § 73.1820 and § 73.1840 of this chapter), by cable systems in their records (as specified in § 76.305 of this chapter), and by subject wireless cable systems in their records (as specified in § 21.304 of this chapter).

(c) Upon receipt of an Emergency Action Termination Message, broadcast stations and cable systems and wireless cable systems must follow the termination procedures in the EAS Operating Handbook.

(d) Broadcast stations and cable systems and wireless cable systems originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by Section 325(a) of the Communications Act of 1934, to other participating broadcast stations, cable systems and wireless cable systems.

16. Section 11.55 is amended by revising the first sentence of paragraph (a), revising paragraph (c) introductory text, (c)(4) and (c)(7) to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) The EAS may be activated at the State and Local Area levels by broadcast stations, cable systems and wireless cable systems at their discretion for day-to-day emergency situations posing a threat to life and property. * * *

* * * * *

(c) Immediately upon receipt of a State or Local Area EAS message, broadcast stations, cable systems and wireless cable systems participating in the State or Local Area EAS must do the following:

* * * * *

(4) Broadcast stations, cable systems and wireless cable systems participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area Plans. Television stations must comply with § 11.54(b)(7) and cable systems and wireless cable systems must comply with § 11.54(b)(8). Broadcast stations providing foreign language programming shall comply with § 11.54(b)(9).

* * * * *

(7) The times of the above EAS actions must be entered in the broadcast station, cable system or wireless cable system records as specified in § 11.54(b)(14). FCC Form 201 may be used to report EAS activations to the FCC.

* * * * *

17. Section 11.61 is amended by revising paragraph (a)(1)(ii); redesignating paragraphs (a)(1)(iii) as (a)(1)(v); adding new paragraphs (a)(1)(iii) and (a)(1)(iv); revising newly redesignated paragraph (a)(i)(v)and (a)(2)(ii)(B); adding new paragraphs (a)(2)(ii)(C), (a)(2)(ii)(D), (a)(2)(ii)(E), and (a)(2)(v); and, revising paragraphs (a)(6) and (b) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(1) * * *

(ii) Effective October 1, 2002, cable systems with fewer than 5,000 subscribers per headend.

(iii) Effective December 31, 1998, cable systems with 10,000 or more subscribers; and, effective October 1, 2002, cable systems serving 5,000 or more, but less than 10,000 subscribers per headend.

(iv) Effective October 1, 2002, all wireless cable systems.

(v) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from EAS Local or State Primary sources. The time of the test and script content will be developed by State Emergency Communications Committees in cooperation with affected broadcast stations, cable systems, wireless cable

systems, and other participants. Script content may be in the primary language of the broadcast station. These monthly tests must be transmitted within 15 minutes of receipt by broadcast stations and cable systems and wireless cable systems in an EAS Local Area or State. Class D non-commercial educational FM and LPTV stations are required to transmit only the test script.

(2) * * *

(ii) * * *

(B) Effective December 31, 1998, cable systems with 10,000 or more subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(C) Effective October 1, 2002, cable systems serving fewer than 5,000 subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel.

(D) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(*1*) Cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and,

(*2*) Wireless cable systems with 5,000 or more subscribers.

(E) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel:

(*1*) Cable systems with fewer than 5,000 subscribers per headend; and,

(*2*) Wireless cable systems with fewer than 5,000 subscribers. * * *

(v) TV stations, cable television systems and wireless cable systems are not required to transmit a video message when transmitting the required weekly test.

* * * * *

(6) EAS activations and special tests. The EAS may be activated for emergencies or special tests at the State or Local Area level by a broadcast station, cable system or wireless cable system instead of the monthly or weekly tests required by this section. To substitute for a monthly test, activation must include transmission of the EAS header codes, Attention Signal, emergency message and EOM code and comply with the visual message requirements in § 11.51. To substitute for a weekly test of the Attention Signal in paragraph (a)(2)(i) of this section, activation must include transmission of the Attention Signal and emergency message. To substitute for the weekly test of the EAS header codes and EOM codes in paragraph (a)(2)(ii) of this section, activation must include transmission of the EAS header and EOM codes. Television stations and cable systems and wireless cable systems shall comply with the aural and visual message requirements in § 11.51. Special EAS tests at the State and Local Area levels may be conducted on daily basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in broadcast station and cable system and wireless cable system records as specified in § 11.54(b)(14) concerning EAS tests received and transmitted.

PART 76—CABLE TELEVISION SERVICE

18. The Authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

19. Section 76.5 is amended by revising paragraph (qq) to read as follows:

§ 76.5 Definitions.

* * * * *

(qq) Emergency Alert System (EAS). The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems and wireless cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels.

[FR Doc. 98–13462 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 86–179; FCC 98–70]

Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Consistent with previous determinations by the Federal Communications Commission and judicial decisions, this *Second Report and Order* continues to classify subscription Multipoint Distribution Service (''MDS'') as a non-broadcast service. The order defers the classification of non-subscription MDS, and requires prior notification and Commission approval before MDS service can be offered on a non-subscription basis.

EFFECTIVE DATE: August 10, 1998, following approval by the Office of Management and Budget, unless a notice is published in the **Federal Register** stating otherwise.

FOR FURTHER INFORMATION CONTACT: Charles Dziedzic or Jerianne Timmerman at (202) 418–1600.

SUPPLEMENTARY INFORMATION: A summary of the *Second Report and Order* follows. The complete text is available for inspection and copying during normal business hours in the MDS public reference room, Room 207, at the Federal Communications Commission, 2033 M Street, N.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

1. *Synopsis of Second Report and Order.* Following the remand of petitions to review by the United States Court of Appeals for the District of Columbia Circuit, the Federal Communications Commission, in this *Second Report and Order,* reaffirmed its previous determination to classify subscription Multipoint Distribution Service (''MDS'') as a non-broadcast service. Consistent with judicial precedent, the *Second Report and Order* defers the regulatory classification of non-subscription MDS, and requires prior notification and Commission approval before MDS can be offered on a non-subscription basis.

2. *Final Regulatory Flexibility Act Certification.* Pursuant to the Regulatory Flexibility Act of 1980, as amended (''RFA''),[1] it is hereby certified that the notification requirement for non-subscription MDS service adopted herein will not have a significant economic impact on a substantial number of small entities. As indicated above in ¶¶ 6–8, we are not aware of any instances in which MDS service has been offered on a non-subscription basis. Thus, the only impact of the notification requirement will be the submission of data concerning non-subscription MDS service from the limited number (if any) of MDS

[1] See 5 U.S.C. § 605(b). The RFA, *see* 5 U.S.C. 601 *et seq.,* was amended by the Contract With America Advancement Act of 1996, Pub.L. No. 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996.

applicants and licensees that may one day choose to develop and provide such service.

3. The Commission will send a copy of this final certification, along with this *Second Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register**.

4. *Ordering Clauses.* Accordingly, it is ordered, that pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 393(r), this *Second Report and Order* is adopted, and Part 21 of the Commission's Rules are amended.

5. It is further ordered, that the rule amendment will become effective August 10, 1998, following approval by the Office of Management and Budget, unless a notice is published in the **Federal Register** stating otherwise.

6. It is further ordered, that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

7. It is further ordered, that CC Docket No. 86–179 is terminated.

List of Subjects in 47 CFR Part 21

Communications common carriers, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 21 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 602; 47 U.S.C. 552, 554.

2. Section 21.940 is added to read as follows:

§ 21.940 Non-subscription MDS service.

The Commission must be notified, and prior Commission approval obtained, before Multipoint Distribution Service or Multichannel Multipoint Distribution Service may be provided on a non-subscription basis.

[FR Doc. 98–14376 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–171; RM–8846, RM–9145]

Radio Broadcasting Services; Indian Springs, NV, Mountain Pass, CA, Kingman, AZ, St. George, UT

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of final rule.

SUMMARY: The Commission, on its own motion, pursuant to section 1.113(a) of the Commission's Rules, withdraws the final rule in this proceeding, DA 98–689, published at 63 FR 23226, April 28, 1998. That document substituted Channel 257C for Channel 257A at Indian Springs, Nevada, modified the construction permit of Station KPXC to specify the higher powered channel, substituted Channel 259B for Channel 258B at Mountain Pass, California, modified the license of Station KHYZ to specify the alternate Class B channel, substituted Channel 261C2 for Channel 260C2 at Kingman, Arizona, modified the license of Station KGMN to specify the alternate Class C2 channel, substituted Channel 260C for Channel 259C at St. George, Utah, modified the license of Station KZEZ to specify the alternate Class C channel, and allotted Channel 272C to Indian Springs, Nevada, as a new allotment.

DATES: This withdrawal is effective May 27, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, DA No. 98–1003, adopted May 22, 1998, and released May 27, 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, International Transcription Services, 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.

The final rule amending § 73.202 published on April 28, 1998, at 63 FR 23226, is withdrawn.

[FR Doc. 98–14471 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Notice No. 98–5]

Hazardous Materials Ticketing Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notification continuing the ticketing program.

SUMMARY: On May 15, 1996, RSPA initiated a pilot program for issuing tickets for certain hazardous materials transportation violations. The goal of the program has been to streamline administrative procedures, cut costs, and reduce regulatory burdens on persons subject to Federal hazardous materials transportation law. Tickets have been issued for violations that had little or no direct impact on safety. Penalties have been substantially reduced for persons who paid the amounts assessed in the tickets.

This program is consistent with the recommendation in the National Performance Review to streamline the enforcement process by implementing pilot programs to offer greater flexibility in enforcement methods. RSPA's ticketing program has successfully cut costs, simplified the processing of violations, and achieved compliance through more efficient and effective processes. RSPA has decided to make ticketing a permanent part of its compliance program.

EFFECTIVE DATE: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Director, Office of Hazardous Materials Enforcement, (202) 366–4700; or Donna L. O'Berry, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of

Transportation, 400 Seventh Street SW, Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation (DOT) primarily responsible for implementing the Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101–5127. RSPA does this by issuing and enforcing the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

Under delegations from the Secretary of Transportation [49 CFR Part 1], the authority for enforcement under Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, is shared by RSPA and each of the four modal administrations: the Federal Highway Administration, the Federal Railroad Administration, the Federal Aviation Administration and the United States Coast Guard. RSPA has primary jurisdiction over packaging manufacturers, reconditioners, and retesters (except with respect to bulk packagings, which are the responsibility of the applicable modal administrations) and shared authority over shippers of hazardous materials.

RSPA's Office of the Chief Counsel (OCC) may initiate administrative proceedings for violations of the HMR, and these proceedings may result in a civil penalty, an order directing compliance actions, or both. 49 CFR 107.307. OCC initiates an administrative proceeding by mailing a notice of probable violation (NOPV) to a person believed to have violated the HMR. 49 CFR 107.311. The NOPV specifies the alleged violations(s) of the HMR, states the proposed penalty, and includes a copy of the inspection/investigation report. Within 30 days of receiving the NOPV, the recipient of the notice may admit the allegations by paying the proposed penalty, make an informal response, or request a formal hearing. 49 CFR 107.313, 107.315.

The recipient who chooses to respond informally submits a written response to OCC to contest the alleged violations or the proposed penalty. OCC considers the inspection report, the response, and any additional evidence obtained to determine whether the recipient committed the alleged violations and, if so, the appropriate penalty in accordance with the statutory criteria for penalty determination, 49 U.S.C. 5123(c). See also RSPA's civil penalty guidelines at 49 CFR 107, Subpart D, Appendix A. If the recipient requests an informal conference, RSPA provides an opportunity to supplement the written response in person or by telephone with the OCC attorney and the inspector. Information obtained by OCC during the informal conference becomes part of the case file. Unless the NOPV is withdrawn, the Chief Counsel issues an order finding a violation or violations and, for each violation found, assesses a civil penalty. The order may be appealed to the RSPA Administrator. See generally 49 CFR 107.317, 107.325(b).

Alternatively, the recipient may request a formal administrative hearing on the record before an ALJ from DOT's Office of Hearings. At the conclusion of the hearing, the ALJ determines whether the alleged violations have been committed and, if so, imposes a penalty in accordance with the statutory assessment criteria. Either party may appeal a decision of the ALJ to the RSPA Administrator. See generally, 49 CFR 107.319, 107.325(a).

At any time during an informal or a formal proceeding, RSPA and the recipient of the notice may agree upon an appropriate resolution of the case. 49 CFR 107.327.

II. Procedures Under the Ticketing Program

On August 21, 1995, RSPA published a notice of proposed rulemaking (NPRM), under Docket HM–207E [60 FR 43430], seeking public comment on a proposal to implement a pilot program for ticketing certain violations of the HMR. On October 17, 1995, RSPA extended the comment period for an additional 30 days. *See* 60 FR 53729. On February 26, 1996, RSPA published the final rule for the ticketing program; that rule contained no expiration date. The final rule was effective on May 15, 1996. *See* 61 FR 7178.

Under the program, the Associate Administrator for Hazardous Materials Safety is authorized to issue tickets for certain HMR violations that were handled through the civil penalty process. Violations eligible for inclusion in the pilot ticketing program are those that do not have a substantial impact on safety. Because the program is designed to ease administrative and regulatory burdens on persons subject to enforcement proceedings under the HMR, violations eligible, under 49 CFR 107.309, for letters of warning generally are not included in the pilot ticketing program. This procedure will remain the same.

The preamble of the final rule also suggested a number of violations for inclusion in the ticketing program. These violations included, among others, operating under an expired exemption, failing to register as a hazardous materials shipper when required, failing to maintain training records, and failing to file hazardous materials incident reports. In the final rule, RSPA indicated that, based on comments received and experience gained through administration of the pilot ticketing program, additional types of violations might be added to the program. RSPA has determined to continue to include all of the previously mentioned violations as part of the ticketing program. In addition, RSPA has added to the program violations such as failing to conduct hazardous materials training, marking a packaging with unauthorized DOT specification markings after October 1, 1994, using unauthorized DOT specification packagings after October 1, 1996, and failing to follow the packaging manufacturer's closing instructions for closing a package. RSPA believes that there is a continuing need for flexibility and, therefore, will not establish a definitive list of violations under this program.

RSPA will continue its policy of not processing violations under the ticketing program when more serious violations are also alleged. Furthermore, a previous ticketing violation will continue to be considered a ''prior'' violation in the event of a future violation of the HMR by the same party.

As contemplated in the final rule, the Associate Administrator for Hazardous Materials Safety has delegated the ticketing authority to the Director, Office of Hazardous Materials Enforcement (OHME), who in turn has redelegated the authority to the six OHME unit chiefs. RSPA field inspectors conduct the inspections of parties. Unit chiefs then evaluate the inspector reports and issue tickets to parties when appropriate. Tickets are not issued on the spot by inspectors following an inspection.

A ticket includes a statement of the facts supporting the alleged violation. In addition, the ticket sets forth the maximum penalty provided by statute, the proposed penalty determined according to the RSPA civil penalty guidelines, *see* 49 CFR part 107, Subpart D, Appendix A, and the ticket penalty amount. The ticket states that the recipient must pay the penalty or contest the violation or penalty within 45 days of receipt of the ticket.

Typically, the civil penalty contained in the ticket is substantially less than the penalty that would be imposed under current procedures or that could be imposed by an ALJ at a hearing. RSPA's policy is to calculate a penalty as it does under its current procedures

and guidelines and then reduce that penalty by 50 percent for each violation processed under this program. In no case will a penalty be less than the statutory minimum of $250.

If the recipient pays the ticket amount and states that action has been taken to correct the violation, the matter is closed and there is no further agency action. If the recipient elects to contest a ticket, that person may do so, within 45 days of receiving the ticket, by making an informal response under 49 CFR 107.317 or requesting a formal hearing under 49 CFR 107.319. In this situation, the ticket will be the functional equivalent of an NOPV, and contested matters will be handled by OCC. OCC will not be bound by the reduced penalty amount shown on the ticket and could impose a penalty as high as the unreduced proposed penalty determined under RSPA's civil penalty guidelines, which is also shown on the ticket. OCC will not seek a penalty greater than the highest penalty amount shown on the ticket.

A recipient waives the right to a hearing by failing to respond to the ticket within 45 days. Moreover, failure to respond is deemed an admission of the violation, and the reduced penalty is owed to RSPA. Unpaid penalty amounts constitute a debt owed to the United States Government.

III. Pilot Ticketing Program Evaluation

The NPRM contained a proposal for a two-year pilot program. RSPA indicated in the preamble of the final rule that, at the end of two years from May 15, 1996, it would evaluate the program in terms of cost savings, time savings, and impact on the effectiveness of its compliance program.

1. Experience Under the Program

Between June 1, 1996 and April 30, 1998, RSPA issued 380 tickets and closed 285 tickets with collection of $351,757 in civil penalties. Regarding the closed tickets, 231 of them (82%) involved one or more of the violations previously listed. Nearly half of all the closed tickets involved failure to train employees, failure to maintain records of training or both. The next most frequent violations were manufacture of unauthorized DOT specification packaging after its expiration date (8%), failure to register with RSPA (7%), and operating under an expired exemption (6%).

2. Cost Savings

RSPA has determined that, because of its streamlined approach, the ticketing program has produced significant costs savings for its compliance program and for the regulated community. A party who chooses to pay the ticket receives an immediate cost saving because the proposed penalty is half of what it would have been in a civil penalty proceeding. The ticket recipient also avoids the need to make a detailed written response to the agency (other than a statement addressing corrective action) and avoids the oral and written communications that arise during OCC processing of the case. The formal hearing process is bypassed and legal fees are avoided.

OHME and OCC realize cost savings when a party elects to pay a ticket because there is no OCC or post-ticket OHME involvement in the matter. OCC does not have to issue an NOPV, hold an informal conference, respond to a compromise offers, issue an order, participate in ALJ proceedings, draft a decision on appeal, or issue a close-out letter. OHME avoids involvement in informal conferences or ALJ proceedings and does not have to interact with the OCC on factual and technical issues.

Even where a ticket is contested, there are cost savings to OCC, which will not be required to issue an NOPV, but can rely on the ticket to have provided notice of the alleged violations to the ticket recipient. The information that OCC receives from OHME will contain the ticket, a response to the ticket (which may set forth corrective action) and possibly a compromise offer. This information allows OCC to begin processing the case in a more advanced state than would otherwise be the case and reduces the overall processing time.

3. Time Savings

As stated in the discussion of cost savings, the ticketing program has produced significant time savings in the amount of work required by OHME, OCC and the ticket recipient to process an enforcement case. In addition, the average length of time it takes to process a ticket is significantly less than the time it takes to process a case under the current procedures. To illustrate, RSPA closed 200 civil penalty cases in 1997; the average time from issuance of the Notice of Probable Violation to closure of the case was 17 months. By contrast, RSPA closed 145 tickets in 1997; the average time from issuance to closure was 1.5 months.

4. Impact on the Effectiveness of RSPA's Compliance Program

The primary means for RSPA to determine the effectiveness of its enforcement program is to conduct reinspections of companies involved in enforcement actions. Although RSPA's reinspection program with regard to civil penalties cases is extensive, RSPA only recently began to do reinspections of parties which had received tickets. Thus far, the compliance rate is over 90%.

Another direct result of the effectiveness of the ticketing program is the ability of RSPA personnel to spend the time saved by disposing of cases through tickets on other matters, such as outreach programs, inspection and investigation of more serious types of violations and more expeditious processing of existing enforcement cases.

IV. Conclusion

In light of the cost and time savings for all involved parties and the positive impact on the effectiveness of RSPA's hazardous materials compliance program, RSPA has decided to continue the ticketing program.

Issued in Washington, DC on May 22, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Transportation.

[FR Doc. 98–14285 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 052698A]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels using Hook-and-Line Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 26, 1998, until 1200 hrs, A.l.t., September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for the hook-and-line groundfish fisheries, (defined at § 679.21(d)(4)(iii)(C)), other than sablefish or demersal shelf rockfish, was established by the Final 1998 Harvest Specifications for Groundfish for the GOA (63 FR 12027, March 12, 1998) for the second season, the period May 18, 1998, through August 31, 1998, as 15 mt.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the second seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the GOA hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish. A delay in the effective date is impracticable and contrary to the public interest. The second seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught. Further delay would only result in exceeding the second seasonal apportionment. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

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

Dated: May 27, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–14430 Filed 5–27–98; 4:22 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 104
Monday, June 1, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1631

Availability of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing proposed amendments to the Board's Freedom of Information Act rules to implement the Electronic Freedom of Information Act Amendments of 1996. The proposed amendments provide for expedited processing of certain requests and enlarge the time for responding to initial requests. The proposed amendments also provide the address for the Board's electronic reading room and add a category of documents to be made available in the reading room. The proposed amendments also update the fees charged to search for records.

DATES: Comments must be received by July 1, 1998.

ADDRESSES: Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942–1662, FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: Section 4 of the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Pubic Law 104–231, section 4, 110 Stat. 3048, 3049, amended 5 U.S.C. 552(a)(2) to require Federal agencies to make documents available in electronic form. In accordance with this requirement, the Board proposes to amend 5 CFR 1631.4 to provide the address of its electronic reading room. The Board maintains a reading area with paper documents that is open to the public. The Board also maintains a business Web site at http://www.frtib.gov which contains, in addition to business information, its electronic reading room. The Board maintains a Web site at http://www.tsp.gov to provide program information about the Thrift Savings Plan, and that site is linked to the business site. Both Web sites contain documents in readily accessible electronic form which can be downloaded by the requester. In accordance with the EFOIA, the Board will add to its reading area and Web site those records that it determines are repeatedly requested under the Freedom of Information Act Amendments (FOIA). A list of such records will be maintained on the Board's business Web site.

Section 3 of the EFOIA, 110 Stat. at 3051–52, amended 5 U.S.C. 552(a)(E)(6) to require Federal agencies to pro mulgate rules on expedited processing of FOIA requests in cases of compelling need or in other cases determined by the agency. To implement this requirement, the Board is proposing to add new paragraphs (f) and (g) to 5 CFR 1631.6 to set forth the circumstances under which the Board will honor a request for expedited processing and establish procedures for expediting requests. Proposed amendments to 5 CFR 1631.8(a) advise that a determination whether to provide expedited processing of a request will be made within 10 work days. The Board normally processes FOIA requests on a first-in, first-out basis. If a request for expedited processing is approved, that request will be processed ahead of other requests. In addition, the Board proposes to amend 5 CFR 1631.8(b) and (c) to implement the new 20-day time limit for responding to initial requests for records and to provide procedures the Board will follow if additional time is needed to process a request for records.

Proposed amendments to 5 CFR 1631.10 provide procedures for processing appeals of requests for expedited processing, distinguish procedures for handling a request for expedited processing from procedures for processing an appeal of a request for records, and state that an appeal from the denial of a request for expedited processing will be handled within five work days of receipt in the Office of General Counsel.

The Board also proposes to amend 5 CFR 1631.11 and 1631.14 to increase the benefits factor which, along with the employee's salary, determines the amount the Board will charge to search for records. Sections 1631.11 and 1631.14 currently provide for charging the salary rate of the employee who conducts the search plus 16 percent for benefits. The benefits factor was set at 16 percent based on an Office of Management and Budget FOIA fee schedule and guidelines published in the **Federal Register** on March 27, 1987 (52 FR 10012, 10013), and it has not been revised since that time. For Board employees, the current benefits rate is 23.5 percent. Included in this rate are retirement contributions, Social Security taxes, health and life insurance premiums, and lump sum awards and bonuses.

Finally, 5 CFR 1631.18 is amended to address the new annual reporting requirement imposed by section 10 of the EFOIA, 110 Stat. at 3053–54, which will be codified at 5 U.S.C. 552(e).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They require the Board to disclose information in certain instances and to address when and the form in which information will be disclosed.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Under the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. These regulations will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1631

Administrative practice and procedure, Freedom of information, Records.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Federal Retirement Thrift Investment Board proposes to revise 5 CFR Part 1631 to read as follows:

PART 1631—AVAILABILITY OF RECORDS

1. The authority citation for part 1631 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1631.4 is amended by revising paragraph (a) to read as follows:

§ 1631.4 Public reference facilities and current index.

(a) The Board maintains a public reading area located in room 4308 at 1250 H Street, NW, Washington, DC. Reading area hours are from 9:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of Federal holidays. Electronic reading room documents are available through http://www.frtib.gov. In the reading area and through the Web site, the Board makes available for public inspection, copying, and downloading materials required by 5 U.S.C. 552(a)(2), including documents published by the Board in the **Federal Register** which are currently in effect.

* * * * *

3. Section 1631.6 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 1631.6 How to request records—form and content.

* * * * *

(f) When a person requesting expedited access to records has demonstrated a compelling need, or when the Board has determined that it is appropriate to expedite its response, the Board will process the request ahead of other requests.

(g) To demonstrate compelling need in accordance with paragraph (f) of this section, the requester must submit a written statement that contains a certification that the information provided therein is true and accurate to the best of the requester's knowledge and belief. The statement must demonstrate that:

(1) The failure to obtain the record on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a person primarily engaged in the dissemination of information, and there is an urgent need to inform the public concerning an actual or alleged Federal Government activity that is the subject of the request.

4. Section 1631.8 is revised to read as follows:

§ 1631.8 Prompt response.

(a)(1) When the FOIA Officer receives a request for expedited processing, he or she will determine within 10 work days whether to process the request on an expedited basis.

(2) When the FOIA Officer receives a request for records which he or she, in good faith, believes is not reasonably descriptive, he or she will so advise the requester within 5 work days. The time limit for processing such a request will not begin until receipt of a request that reasonably describes the records being sought.

(b) The FOIA Officer will either approve or deny a reasonably descriptive request for records within 20 work days after receipt of the request, unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from other establishments that are separate from the office processing the request (e.g., the record keeper);

(2) It is necessary to search for, collect, and examine a voluminous amount of records which are demanded in a single request;

(3) It is necessary to consult with another agency which has a substantial interest in the determination of the request or to consult with two or more offices of the Board which have a substantial subject matter interest in the records; or

(4) It is necessary to devote resources to the processing of an expedited request under § 1631.6(f) of this part.

(c) When additional time is required for one of the reasons stated in paragraph (b) of this section, the FOIA Officer will extend this time period for an additional 10 work days by written notice to the requester. If the Board will be unable to process the request within this additional time period, the requester will be notified and given the opportunity to——

(1) Limit the scope of the request, or

(2) Arrange with the FOIA Officer an alternative time frame for processing the request.

5. Section 1631.10 is revised to read as follows:

§ 1631.10 Appeals to the General Counsel from initial denials.

(a) When the FOIA Officer has denied a request for expedited processing or a request for records, in whole or in part, the person making the request may, within 30 calendar days of receipt of the response of the FOIA Officer, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005, and be clearly labeled as a ''Freedom of Information Act Appeal.''

(b)(1) The General Counsel will act upon the appeal of a denial of a request for expedited processing within 5 work days of its receipt.

(2) The General Counsel will act upon the appeal of a denial of a request for records within 20 work days of its receipt.

(c) The General Counsel will decide the appeal in writing and mail the decision to the requester.

(d) If the appeal concerns an expedited processing request and the decision is in favor of the person making the request, the General Counsel will order that the request be processed on an expedited basis. If the decision concerning a request for records is in favor of the requester, the General Counsel will order that the subject records be promptly made available to the person making the request.

(e) If the appeal of a request for expedited processing of records is denied, in whole or in part, the General Counsel's decision will set forth the basis for the decision. If the appeal of a request for records is denied, in whole or in part, the General Counsel's decision will set forth the exemption relied on and a brief explanation of how the exemption applies to the records withheld and the reasons for asserting it, if different from the reasons described by the FOIA Officer under § 1631.9. The denial of a request for records will state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in Federal court. (A Federal court does not have jurisdiction to review a denial of a request for expedited processing after the Board has provided a complete response to the request.)

(f) No personal appearance, oral argument, or hearing will ordinarily be permitted in connection with an appeal of a request for expedited processing or an appeal for records.

(g) On appeal of a request concerning records, the General Counsel may reduce any fees previously assessed.

§ 1631.11 [Amended]

6. In § 1631.11 amend paragraph (a)(4) by removing the phrase ''plus 16 percent'' in the second sentence and adding the phrase ''plus 23.5 percent'' in its place.

§ 1631.13 [Amended]

7. In section 1631.13 amend paragraph (c) by removing the number ''10'' and adding in its place the number ''20''.

§ 1631.14 [Amended]

8. In § 1631.14 amend the first sentence of paragraph (a) and the first sentence of paragraph (b) by removing the phrase ''plus 16 percent'' and adding the phrase ''plus 23.5 percent'' in its place.

9. Section 1631.18 is revised to read as follows:

§ 1631.18 Annual report.

The Executive Director will submit annually, on or before February 1, a Freedom of Information report covering the preceding fiscal year to the Attorney General of the United States. The report will include matters required by 5 U.S.C. 552(e).

[FR Doc. 98–14358 Filed 5–29–98; 8:45 am]

BILLING CODE 6760–01–U

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1655

Thrift Savings Plan Loans

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed revision to regulations concerning Thrift Savings Plan (TSP) loans. The amendment will affect participants who are alleged to have submitted false information in support of their request for a TSP loan. The amendment establishes a process for investigating written allegations of such fraudulent activity. When the Board finds that the evidence suggests the participant provided false information to the TSP during the loan process, the Board will refer the case to the appropriate authorities for criminal prosecution and, in the appropriate case, administrative action.

DATES: Comments must be submitted on or before July 1, 1998.

ADDRESSES: Comments may be sent to Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, (202) 942–1661.

SUPPLEMENTARY INFORMATION: A final rule governing TSP loans was published in the **Federal Register** on April 14, 1997 (62 FR 18019). That rule revised interim regulations that were published in the **Federal Register** on November 18, 1996 (61 FR 58754). Current regulations require participants who are applying for a loan from their TSP accounts to provide certain information and certify the truth of the information on the application. The terms and conditions of a TSP loan are then reflected in a Loan Agreement/Promissory Note which the participant signs, thereby certifying, under penalty of perjury, the truth of all statements made and documentation provided with this signed document.

Before the TSP will permit a loan to a TSP participant, the participant must indicate his or her marital status on the Loan Application and, if married, the spouse's name. In the case of a married Federal Employees' Retirement System (FERS) participant, the participant must obtain the signature of his/her spouse on the Loan Agreement/ Promissory Note to show that the spouse has consented to the loan. In the case of a married Civil Service Retirement System (CSRS) participant, the consent of the spouse is not required; however, the TSP must send a notice to the spouse. The CSRS participant is therefore required to provide the spouse's address on the loan application. These consent and notice requirements can be waived upon application to the TSP pursuant to 5 CFR 1655.18.

This regulation adds paragraph (f) to § 1655.18 to provide that, if the Board receives a written allegation from the spouse stating that a participant misrepresented his/her marital status or the address of the spouse of a CSRS participant, or that the participant submitted a Loan Agreement/ Promissory Note with a forged signature of the spouse of a FERS participant, the Board will submit the questioned document to the spouse and request that the allegation of fraud or forgery be affirmed. If the allegation is affirmed and the loan has been disbursed, the Board will give the participant an opportunity to repay the loan within a 60-day period. This will permit the participant to return the account to the status quo, thus restoring the spouse's interest in the account.

The notice will also advise that if the participant does not repay the loan in full within the 60 days provided, the Board will conduct an investigation into the allegation. The Board will not give this repayment opportunity to a participant who has received a final divorce from his/her spouse before the funds are received by the TSP. In such a case, the Board will immediately begin its investigation.

Where the Board finds evidence to suggest that the participant misrepresented his/her marital status or spouse's address or that the signature of the spouse was forged, the Board will refer the case to the Department of Justice for criminal prosecution and, where the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action. The Board will also freeze the participant's account and will not permit a withdrawal or another loan until the loan is repaid, the Board receives assurance from the spouse in writing that the notice or consent requirements have been met, the participant is divorced, or the Board's investigation does not yield persuasive evidence to support the allegation.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities because the regulations will only affect TSP participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1655

Credit, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1655 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1655—LOAN PROGRAM

1. The authority citation for part 1655 continues to read as follows:

Authority: 5 U.S.C. 8433(g) and 8474.

2. Section 1655.18 is amended by adding paragraph (f) as follows:

§ 1655.18 Spousal rights.

* * * * *

(f)(1) By signing the Loan Application and the Loan Agreement/Promissory Note, the participant represents that all information provided to the TSP during the loan process is true and correct, including statements concerning the participant's marital status and spouse's address at the time the application is filed and documentation that the current spouse has consented to the loan.

(2) If the Board receives a written allegation from the spouse that the participant may have misrepresented his/her marital status or the spouse's address (in the case of a CSRS participant), or that the signature of the spouse of a FERS participant was forged, the Board will submit the questioned document to the spouse and request that he or she state in writing that the information is false or that the spouse's signature has been forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three signature samples.

(3) If the spouse affirms the allegation in accordance with the procedure set forth in paragraph (f)(2) of this section and the loan has been disbursed, the Board will give the participant an opportunity to repay, within 60 days, the unpaid loan principal, plus unpaid interest. If the loan is repaid, the Board will not investigate the spouse's allegation.

(4) Paragraph (f)(3) of this section will not apply where the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan.

(5) If the unpaid loan principal, plus unpaid interest, is not repaid to the Plan in full within the time period provided in paragraph (f)(3) of this section, the Board will conduct an investigation into the allegation. If the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan, the Board will begin its investigation immediately.

(6) If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his/her marital status or spouse's address (in the case of a CSRS participant), or submitted the Loan Agreement/Promissory Note with a forged signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

(7) Upon receipt of an allegation described in paragraph (f)(2) of this section, the participant's account will be frozen and no withdrawal or loan will be permitted until after:

(i) Thirty days have elapsed since the participant's spouse was sent a copy of the questioned document and no written affirmation of the alleged false information or forgery (together with signature samples in the case of an alleged forgery) has been received by the Board;

(ii) The loan is repaid pursuant to paragraph (f)(3) of this section;

(iii) The Executive Director concludes that the Board's investigation did not yield persuasive evidence that supports the spouse's allegation;

(iv) The Executive Director has been assured in writing by the spouse that any future request for a loan or withdrawal comports with the applicable requirement of notice or consent; or

(v) The participant is divorced.

[FR Doc. 98–14360 Filed 5–29–98; 8:45 am]

BILLING CODE 6760–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–4]

Importation of Rhododendron Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period on a proposal to allow the importation of *Rhododendron* established in growing media. Final action on that proposal had been deferred to allow consultation regarding the action with the United States Fish and Wildlife Service, in accordance with the Endangered Species Act. That consultation has been completed, and, as a result, the proposed action has been limited to *Rhododendron* imported from Europe only. This extension of the comment period will allow interested groups and individuals with additional time to prepare comments on the proposal.

DATES: Consideration will be given only to comments received on or before July 30, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 89–154–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 89–154–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Pete M. Grosser, Senior Import Specialist, PIMT, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, we published in the **Federal Register** a proposed rule (58 FR 47074–47084, Docket No. 89–154–1) to allow the importation of five genera of plants established in growing media. That proposal is referred to below as ''the proposed rule.'' We accepted comments on the proposed rule for a period of 90 days, ending December 6, 1993.

In a final rule published in the **Federal Register** on January 13, 1995, and effective on February 13, 1995 (60 FR 3067–3078, Docket No. 89–154–2), the Animal and Plant Health Inspection Service (APHIS) finalized provisions for the importation of *Alstroemeria, Ananas, Anthurium,* and *Nidularium*. The final rule postponed action on *Rhododendron* established in growing media.

On April 30, 1998, we published in the **Federal Register** (63 FR 23683–23685, Docket No. 89–154–3) a notice reopening and extending the comment period on the proposal to allow the importation of *Rhododendron* established in growing media. Final action on the initial proposal had been deferred to allow consultation regarding the action with the United States Fish and Wildlife Service, in accordance with the Endangered Species Act. That consultation has been completed, and, as a result, the notice also announced APHIS's intention to limit the proposed action to *Rhododendron* imported from Europe only.

Comments were required to be received on or before June 1, 1998. We received two requests to extend the period during which comments will be accepted. The requests were from trade organizations. In response, we are extending the comment period on Docket No. 89–154–3 until July 30, 1998. This action will allow interested groups and individuals additional time to prepare and submit comments.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 27th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–14421 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Securitization of the Unguaranteed Portion of Section 7(a) Loans

AGENCY: Small Business Administration.

ACTION: Proposed Rule; Correction; Clarification of Date of Public Hearing.

SUMMARY: This Document corrects the preamble in the Summary of a proposed rule published in the **Federal Register** on May 18, 1998, regarding a public hearing on allowing all participating lenders to securitize the unguaranteed portions of 7(a) loans (63 FR 27219). The correction date for the public hearing is June 16, 1998. Only one public hearing will be held. It will take place in the Eisenhower Conference Room on the 8th floor of the SBA Headquarters building located at 409 3rd Street SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, (202) 205–7505.

Correction

In proposed rule, 63 FR 27219, dated May 18, 1998, make the following correction in the Summary section. On page 27219, in the first column, replace the second-to-last sentence of the first paragraph of the Summary section with the following:

''In addition, SBA is providing notice of a public hearing set for 2:00 p.m. on June 16, 1998.''

Dated: May 27, 1998.

LeAnn M. Oliver,

Acting Associate Administrator for Financial Assistance.

[FR Doc. 98–14405 Filed 5–29–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–009]

RIN 2115–AE47

Drawbridge Operation Regulations; Billy's Creek, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create regulations governing the operation of the State Road 80 drawbridge across Billy's Creek, Fort Myers, Lee County, Florida. The proposed regulations would allow the draw to remain closed permanently. The bridge has not received an opening notice since 1987. This action should accommodate the needs of vehicle traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 31, 1998.

ADDRESSES: Comments must be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 am and 4:00 p.m. Monday through Friday, except federal highways. The telephone number is (305) 536–4103. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Manager, Bridge Section, (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking [CGD08–98–009] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed in **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the Federal Register.

Background and Purpose

The State Road 80 bridge over Billy's Creek near Fort Myers Florida currently opens with 24 hours advance notice. However no requests for bridge openings have been received since 1987. The Florida Department of Transportation (DOT) has stated that the bridge currently handles two lanes of one way land traffic going into the city, and that there is no practical way to reroute traffic around the bridge if it were opened.

Additionally, the Florida DOT found that there is no boat traffic in the area that requires an opening. Therefore, the Coast Guard has agreed to propose permanent regulations stating that the draw need not be opened for the passage of vessels.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10 e of the regulatory policies and procedures of DOT is unnecessary as there has not been a demand for an opening in the last 10 years.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities due to the lack of any vessel traffic in the area that would require the bridge to be opened. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact

on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

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

Federalism

The Coast Guard has analyzed the rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2.a (CE#32(e)) of Commandant Instruction M16475.1C, that the promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—[AMENDED]

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

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

2. A new section 117.268 is added to read as follows:

§ 117.268 Billy's Creek.

The draw of the State Road 80 bridge over Billy's Creek at Fort Myers need not be opened for the passage of vessels.

Dated: April 23, 1998.

N.T. Saunders,

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

[FR Doc. 98–14395 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–014]

RIN 2115–AE47

Drawbridge Operation Regulations; Elizabeth River, South Branch, Portsmouth-Chesapeake, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating regulations for the Belt Line Railroad drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 2.6, at Portsmouth and Chesapeake, Virginia. The proposed rule would eliminate the need for a bridgetender by allowing the bridge to be operated by the bridge/train controller from a remote location at the Berkley Yard office. The Belt Line Bridge would be left in the open position, and would only close for the passage of trains and to perform maintenance.

This proposal would maintain the bridge's current level of operational capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

DATES: Comments must be received on or before July 31, 1998.

ADDRESSES: Comments should be mailed to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become a part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–98–014) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander, Fifth Coast Guard District, at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid in this proposed rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Belt Line Railroad Company has requested that the operating procedures for their drawbridge across the Southern Branch of the Elizabeth River, mile 2.6, located in Portsmouth and Chesapeake, Virginia, be changed by allowing operation of the bridge from a remote location for train crossings or maintenance. Currently, the bridge is left in the open position and only closed by a bridgetender on site. Belt Line has requested that the bridge be operated by the bridge/train controller at the Berkeley Yard office.

Before closing the bridge, the off-site controller would monitor waterway traffic on the Southern Branch of the Elizabeth River in the area of the Belt Line Bridge with closed circuit cameras and surface navigational radar. The cameras would be mounted on top of the bridge and provide visual surveillance of waterway traffic upriver, downriver, and underneath the bridge for the controller. The controller would announce over marine radio at 30 minutes and 15 minutes prior to a bridge closing that the bridge will close to marine traffic. The controller would make a third, final announcement just before lowering the bridge. Channel lights located on top of the bridge would change from green to red any time the bridge is not in the full up position.

This change is being requested to make the closure process more efficient during train crossings and periodic maintenance and to save operational expenses by eliminating bridgetenders while still providing the same bridge operational capabilities.

Discussion of Proposed Amendments

The Coast Guard proposes to amend 33 CFR 117.997, which governs the Belt Line Railroad Bridge across the Southern Branch of the Elizabeth River, mile 2.6, located in Portsmouth and Chesapeake, Virginia, by allowing remote operation of the draw. The bridge would be lowered and raised off site by the controller at the Berkeley Yard office. The drawbridge would be left in the open position and would only close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

When the bridge closes for any reason, the controller would announce 30 minutes in advance, over marine channel 13, that the Belt Line Railroad Bridge is going to close for river traffic in 30 minutes. All concerned river traffic would be requested to acknowledge on marine channel 13. Then, 15 minutes prior to closing the bridge, the bridge/train controller would again announce the closing over the radio, and request acknowledgment on marine channel 13. Immediately prior to lowering the bridge, the controller would make a final announcement that the bridge is now being lowered and request acknowledgment on marine channel 13.

The bridge would only be lowered if closed circuit visual and radar information shows there are no vessels in the area and if no opposing radio communications have been received.

If the off-site bridge/train controller's visibility of the navigational channel is less than ¾ of a mile, the bridge would not be operated from the remote site. Operation in visibility of less than ¾ of a mile would be done only by a drawtender at the bridge site.

While the Belt Line Bridge is moving from the full open position to the full closed position, the controller would maintain constant surveillance of the waterway above and below the bridge to ensure no conflict with maritime traffic exists. In the event of failure of a camera or the radar system or loss of marine-radio communications, the bridge shall not be operated from the remote location. In these situations, a bridgetender must be called to operate the bridge on-site.

The Belt Line Bridge mid-channel lights would change from green to red any time the bridge is not in the full open position. During the downward span movement, a warning alarm would sound until the bridge is seated and locked down.

When the rail traffic has cleared, the controller would announce over channel 13 that the draw is about to return to its full open position. While the draw is being raised, the alarm would sound, and when the bridge is in the fully open position, the bridge/train controller would announce over marine channel 13 that the Belt Line Bridge is open for river traffic. The mid-channel lights would turn from red to green. Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 543–1996 or (757) 545–2941.

The Coast Guard proposes to revise 33 CFR 117.997 by redesignating paragraphs (a) through (h) as paragraphs (b) through (i) and adding a new paragraph (a).

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to adhere to the proposed new operation procedures during transits of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the U.S. Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small independently owned and operated businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3510–3520).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed regulation will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C this proposed rule is categorically excluded from further environmental documentation based on the fact that this is a promulgation of an operating regulation for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subject in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.997 is amended by redesignating paragraphs (a) through (h) as paragraphs (b) through (i) and by adding a new paragraph (a) to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albermarle and Chesapeake Canal.

(a) The draw of the Belt Line Railroad Bridge, mile 2.6, in Portsmouth and Chesapeake will operate as follows:

(1) The bridge will be left in the open position at all times and will only be lowered for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(2) The bridge will be operated by the controller at the Berkley Yard office.

(3) The controller will monitor waterway traffic in the area of the bridge and directly beneath the bridge with closed circuit cameras mounted on top of the bridge and with surface navigational radar.

(4) When the bridge closes for any reason, the controller will announce 30 minutes in advance, 15 minutes in advance, and immediately preceeding the actual lowering, over marine

channel 13, that the Belt Line Railroad Bridge is closing for river traffic. In each of these three announcements, the bridge/train controller will request all concerned river traffic to please acknowledge on marine channel 13.

(5) The bridge shall only be operated from the remote site if closed circuit visual and radar information shows there are no vessels in the area and no opposing radio communications have been received.

(6) While the Belt Line Bridge is moving from the full open position to the full closed position, the bridge/train controller will maintain constant surveillance of the navigational channel to ensure no conflict with maritime traffic exists. In the event of failure of a camera or the radar system, or loss of marine-radio communications, the bridge shall not be operated by the off-site bridge/train controller from the remote location.

(7) If the off-site bridge/train controller's visibility of the navigational channel is less than ¾ of a mile, the bridge shall not be operated from the remote location.

(8) When the draw cannot be operated form the remote site, a bridgetender must be called to operate the bridge in the traditional on-site manner.

(9) The Belt Line mid-channel lights will change from green to red anytime the bridge is not in the full open position.

(10) During the downward and upward span movement, a warning alarm will sound until the bridge is seated and locked down or in the full open position.

(11) When the bridge has returned to its full up position, the mid-channel light will turn from red to green, and the controller will announce over marine radio channel 13, ''Security, security, security, the Belt Line bridge is open for river traffic.'' Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 543–1996 or (757) 545–2941.

* * * * *

Dated: May 20, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–14394 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–15–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Chapter XI

[Docket No. 98–4]

Petition for Rulemaking; Request for Information on Acoustics

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Request for information.

SUMMARY: The Architectural and Transportation Barriers Compliance Board has received a petition for rulemaking from a parent of a child with a hearing loss requesting that the ADA Accessibility Guidelines be amended to include new provisions for acoustical accessibility in schools for children who are hard of hearing. Several acoustics professionals, parents of children with hearing impairments, individuals who are hard of hearing, and a consortium of organizations representing them have also urged the Board to consider research and rulemaking on the acoustical performance of buildings and facilities, in particular school classrooms and related student facilities. The Board seeks comment on the issues outlined in this request for information. After evaluating responses to this request for information, the Board will determine a course of action. Alternatives under consideration include research, rulemaking, and technical assistance on acoustical issues.

DATES: Comments should be received by July 31, 1998. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. E-mail comments should be sent to acoustic@access-board.gov. Comments sent by e-mail will be considered only if they include the full name and address of the sender in the text. The petition and comments are available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Lois Thibault, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 32 (voice); (202) 272–5449 (TTY). These are not toll-free numbers. Electronic mail address: thibault@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication C–11. Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication C–11. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). The petition and this request for information are also posted on the Board's Internet site at http://www.access-board.gov/rules/acoustic.htm.

Background

The Architectural and Transportation Barriers Compliance Board [1] (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act of 1990 (ADA) to ensure that new construction and alterations of facilities covered by the law are readily accessible to and usable by individuals with disabilities. The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. The guidelines contain scoping provisions and technical specifications for designing elements and spaces that typically comprise a building and its site so that individuals with disabilities will have ready access to and use of a facility.

Although ADAAG contains a number of provisions for access to communications, including requirements for text telephones, assistive listening systems, and visible alarms, it does not include provisions for the acoustical design or performance of spaces within buildings and facilities.

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

The Department of Justice (DOJ) regulations implementing titles II and III of the ADA contain additional requirements for communications with individuals with disabilities and for auxiliary aids and devices to aid in communication.[2]

On April 6, 1997, the Access Board received a petition for rulemaking from a parent of a child with a severe to profound hearing loss requesting that the Board address ''architectural acoustics in schools'' and develop ''new rules'' for children who are hard-of-hearing. The petition argues that children who have hearing and other disabilities, including learning, auditory processing, speech and language, and developmental disabilities, face numerous communications barriers in schools because of poor acoustics and that these barriers may prevent them from receiving a meaningful education. The petition requests that the Board develop ''acoustical guidelines * * * [to] ensure adequately low noise and reverberation so that the speech-to-noise ratio and speech-to-reverberation ratio allow satisfactory communication and learning.''

A consortium of organizations representing persons with disabilities (Alexander Graham Bell Association for the Deaf, Inc., the American Speech-Language-Hearing Association (ASHA), Auditory-Verbal International, Inc., the National Center for Law and Deafness, the National Cued Speech Association, and Self Help for Hard of Hearing People (SHHH)) submitted comments to the Board in previous rulemakings asserting that a poor acoustical environment is as significant a barrier to individuals with hearing, speech, and language impairments as stairs are to persons who use wheelchairs.

The consortium's comments included a position paper on acoustics in educational settings developed by ASHA in 1994. The paper cited data on the increasing prevalence of hearing loss, particularly among children and young adults, and reported on research that identified children with mild hearing losses as more at risk for general psychosocial dysfunction and lags in academic progress than were children with normal hearing. Other cited studies showed the relationship between poor room acoustics and low speech comprehension in children with hearing, learning, and developmental disabilities. Reverberant classrooms with high ambient noise levels were identified as significant contributors to communications difficulties. The position paper included a number of recommendations for the acoustical performance of classrooms to improve conditions for listening, hearing, and understanding speech.

Other commenters to ADAAG rulemakings noted that the acoustics of many restaurants adversely affected the ability of individuals who are hard of hearing to communicate with companions and with service staff. In response, the Access Board contracted with Batelle, a research organization in Columbus, OH, to study improved speech communication for persons with hearing impairments in dining areas. A literature study, post-occupancy evaluations of several facilities, and recommendations were developed by Batelle engineers and reviewed by an eight-member advisory panel. The authors identified background noise levels and reverberation as the acoustical characteristics most subject to design and construction manipulation and most significant for adequate speech communication. Several panel members suggested that other facility types, particularly schools, could benefit from the application of such acoustical requirements.

Hearing Loss and Other Disabilities

Government health statistics document that more Americans report a hearing loss than any other disability, and the incidence of hearing loss has increased significantly in the last 25 years. A recent assessment by the Centers for Disease Control and Prevention (CDC) found that 13% of a representative sample of children between the ages of 6 and 19 had a high frequency hearing loss and 7% a low frequency hearing loss of 16 dB or more, a level at which perceiving and understanding words would be affected.

Increasing numbers of young children experience mild temporary and recurring hearing loss caused by otitis media, an inflammation of the middle ear that is the most frequent medical diagnosis for children. Research also shows that children with learning, speech, and developmental disabilities have a higher incidence of abnormal hearing and of repeated instances of ear problems. ''Hearing Loss: The Journal of Self Help for Hard of Hearing People'' reported in 1997 that one-fourth to one-third of the students in typical kindergarten and first-grade classrooms will not hear normally on a given day.

Speech Communication

Effective speech reception—understanding, not just hearing—is the primary educational issue for people with auditory disabilities. A Cornell University study published in the journal ''Environment and Behavior'' indicates that excessive classroom noise impedes the acquisition of language and cognitive skills by all children. The acquisition of language is necessary for brain and intellectual development. Research with children who are deaf has shown that the mastery of a system of communication is essential to future learning and that failure to acquire effective language skills by the age of six cannot be fully remediated.

Language acquisition is dependent in large part upon exposure to an organized system of communication, such as a signed, voiced, or tactile language. For children who will use voice communication, the intelligibility of the spoken language is a critical factor. Speech intelligibility is a measure of the proportion of the spoken message that gets through to the listener, and is affected by signal volume, the distance between the speaker and listener, and the acoustic characteristics of the room, including background noise levels and reverberation time.

A large body of clinical and scientific research supports the particular need for good acoustics in teaching environments. The Acoustical Society of America (ASA) has established a Classroom Acoustics Subcommittee of its Architectural Acoustics Committee that has held four symposia on classroom acoustics issues. At an ASA conference held in June 1997, researchers presented evidence that excessive noise levels impair a young child's speech perception, reading and spelling ability, behavior, attention, and overall academic performance.

Because the ability to understand speech does not mature in children before the age of 15, children are less effective listeners generally than are adults. Additionally, children have less experience in deriving meaning from context. A representative sample of children without hearing loss or other audiological disability, even when tested in above-average listening environments, could make out only 71% of a teacher's words. Those in the worst environments ''got'' only 30% of the message directed at them.

The listening abilities of children with hearing impairments, particularly those with mild to moderate hearing loss, are even more affected by poor acoustics than are those of children whose hearing falls within normal

[2] Under the ADA, the Departments of Justice and Transportation are responsible for issuing regulations to implement titles II and III of the Act. The regulations must include accessibility standards for newly constructed and altered facilities. The standards must be consistent with the accessibility guidelines issued by the Access Board. The Department of Justice and the Department of Transportation regulations currently include ADAAG 1–10.

ranges. A 1997 study of children with minimal sensorineural hearing loss showed lower scores for basic skills and communications testing and a high rate—37%—of retention in grade. In addition, these students functioned below normally hearing children in evaluations of behavior, energy, stress, social support, and self-esteem. Other studies have shown that children with learning and developmental disabilities perform less effectively in noisy spaces.

In their chapter on ''Speech Perception in Specific Populations'' (from the book ''Sound-Field FM Amplification''), Drs. Carl Crandell, Joseph Smaldino, and Carol Flexer have identified at-risk populations as young students generally (less than 13–15 years of age); children who have a history of otitis media, children for whom English is a second language, and children with auditory disabilities, including those with hearing loss, central auditory processing deficits, learning disabilities, developmental delay, and attention, speech, and language disorders.

Acoustical Performance of Rooms and Spaces

In analyzing how effectively an individual can hear and understand in a given space, an acoustician or audiologist will consider three criteria: Distance from the sound source (the 'signal'), the level of background sound (noise), and the effects of reverberation. By controlling background noise levels and room reverberation time, designers can provide good speech intelligibility, measured by the signal-to-noise ratio. The signal-to-noise ratio is the relationship between the loudness of the message and the background sound it must overcome to be heard and understood. A significantly positive signal-to-noise ratio is necessary for maximum performance where room sound levels are high; children with hearing impairments require a higher signal-to-noise ratio than do children with normal hearing.

Distance from the source has a significant effect on signal-to-noise ratio, since the loudness of a direct sound falls off in proportion to the distance between the speaker and listener. Children with hearing impairments and other disabilities affecting listening need to maintain a consistent and close relationship with the sound source. Speech intelligibility can be enhanced by delivery and performance styles, by the use of reflective surfaces at the speaking location, and by amplification.

Background noise—whether from heating, ventilating, and air conditioning (HVAC) systems, other noise generated within the space, or outside noise—also interferes with effective listening because it competes with the spoken message. High background noise values across the frequencies of speech (500 to 2000 Hz) require louder speech signals to overcome. Background noise (or ambient sound) design criteria are typically expressed as a range between two noise criteria (NC) curves, which plot sound levels across 8 standard frequencies. Sound levels in existing spaces can be tested at these frequencies using a sound meter. The NC rating for a room is typically between 5 to 10 points below the dBA reading. Design engineers can specify HVAC equipment with low noise ratings and limit sound generated by system operation in a variety of ways. Rooms and spaces can be protected from unwanted exterior sound by mass, insulation, and isolation in wall and slab construction and by minimizing (or sound protecting) openings.

Reverberation—reflected sound that persists within a room or space—also masks the sound of the spoken message and increases background sound levels. The longer the reverberation time, the greater the effect. Reverberation is expressed in seconds (R60), measured as the time it takes for sound to decay 60 dB after the source has stopped producing it. Reverberation is a function of the physical properties of the room and can be calculated if the volume, surface area, and surface absorbencies of a space are known. Reverberation can be controlled by a manipulation of the absorbency of surfaces within a space and the proportions and volume of the space.

When reverberation time and background noise are controlled, speech effort and sound levels decline, leading to a reduction in room noise. It has been estimated that over 90% of those who have a hearing loss have usable residual hearing and would benefit from an enhanced speech environment. Where classrooms and child care centers do not provide acceptable listening conditions, even amplification will not achieve maximum effect in improving speech communication. Poor acoustics can also compromise the effectiveness of personal hearing aids and devices and limit the usefulness of auxiliary aids and services. Good acoustics can enhance the usefulness of such aids and improve listener reception of unamplified speech, as may occur in group interchange. Because most mild hearing losses in children are not diagnosed, children with such losses (15–25 dB), including those with temporary hearing loss due to otitis media, will not generally be using amplification devices.

Many groups concerned with the acoustics of educational environments recommended that new implementing regulations for the Individuals with Disabilities Education Act (IDEA), currently being developed by the U.S. Department of Education, require that services for covered students be delivered in an acoustically appropriate environment. Two cases have been reported to the Board in which IDEA or Rehabilitation Act decisions directed that the room acoustics in existing school classrooms be improved to accommodate children with hearing loss. Requirements that students with disabilities be educated in the least restrictive environment mean that every classroom is likely to have a youngster with a diagnosed auditory disability in attendance; additionally, during the course of a school year, many children will be temporarily affected by mild and possibly recurring hearing loss associated with otitis media and other illnesses.

Classroom Acoustics

Studies of classrooms around the country and test data submitted by parents and acoustical consultants indicate that classrooms and day care facilities are not being designed to provide adequate speech intelligibility even for children without auditory impairments. Research on seven child-care facilities in Canada documented noise conditions in four centers that exceeded the 75 dB limit considered safe for day-long exposure for adults by the World Health Organization. Open plan centers had particularly excessive noise levels and were reported to have more health problems among children and staff as well as other disadvantages. Acoustical treatment that reduced reverberation time in the noisiest setting from 1.6 seconds to .6 seconds resulted in a 5 dB decrease in sound level and staff assessments of substantial improvement in comfort. A 1994 survey of school facility conditions conducted by the General Accounting Office (GAO) reported that poor acoustics were ranked by administrators as the most significant problem affecting the learning environment. Twenty-eight percent of responding schools identified acoustics for noise control as being unsatisfactory or very unsatisfactory. Eleven million children were estimated to be affected. Of these, CDC estimates suggest, more than a million and a half children may have a temporary or permanent hearing loss.

Acoustical Design Standards and Guidelines

Reverberation and background noise limits are common elements in existing acoustical standards, recommendations, and good-practice guidelines for classroom design and construction. Audiometry rooms and educational classrooms designed specifically for persons with auditory impairments have short reverberation times and very low background noise levels. Similar requirements are applied to rooms such as broadcast and recording studios, including teleconferencing facilities, where speech communication is the primary function, and in sound testing facilities such as anechoic chambers. Low background noise and short reverberation times contribute to positive sound-to-noise ratios, maximal sound transmission indices, and high speech intelligibility values.

Achievements in the design of concert hall acoustics and specialized environments for materials testing and measurement demonstrate that good hearing environments can be accomplished with current design, modeling, construction, and testing procedures. It appears that a consensus on the general scope and content of acoustical performance criteria for classrooms is developing among audiologists, acousticians, and consumers and that existing acoustical guidelines for educational and other facilities may be adaptable for incorporation into ADAAG.

While some factors—for instance, a rise in exterior noise levels due to a change in nearby noise sources—are beyond the control of the design professional, 'bad' acoustics are largely architectural problems, solvable by architectural means. Architects and other design professionals routinely practice simple acoustical design procedures in specifying floor, wall, and ceiling finishes. Acousticians are regularly retained for the more demanding design and engineering of music and performance facilities. Several software programs are available to model the acoustical performance of spaces that have been designed but not built. Criteria for the acoustical design of spaces are widely available in textbooks and technical publications.

Acoustical testing protocols are developed and maintained by several private sector organizations. The American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) issues standards that include the acoustical performance of equipment installed in buildings and facilities. The American National Standards Institute (ANSI), in conjunction with the ASA, has established several protocols for the measurement of room sound levels, including ANSI S12.2 Criteria for Room Noise Measurement. ANSI has recently established a committee to develop a classroom acoustics standard. Foreign and international standards also exist. Model codes contain both standards and requirements for sound-rated construction components in multi-family housing and other occupancy types. The developers and operators of hotel, medical, and housing facilities typically establish similar acoustical standards for sound transmission through floors, walls, structure, and HVAC systems.

''Architectural Acoustics'', by M. David Egan (McGraw-Hill, Inc., 1988), a standard reference work for design professionals, recommends a background noise level of less than 20 dB (NC–20) for critical music performance (including broadcast and recording studios) and audiological spaces; a range of NC–20 to NC–30 for less demanding, speech-focused halls and rooms, and NC–30 to NC–35 for classrooms. Recommended reverberation limits range between .6 and .8 seconds. The author notes, however, that NC curves to provide satisfactory listening environments for persons with hearing impairments need to be lower by 5 (resulting in a recommendation of NC–25 to NC–30 for classrooms serving adults with hearing loss). Egan recommends that reverberation time in such rooms should not exceed .5 seconds.

The ASA recommends an average reverberation time in classrooms between .6 seconds minimum and .8 seconds maximum; ambient room noise, when measured without occupants, between 30 dBA minimum and 35 dBA maximum; room criteria (RC) curve—used to measure HVAC and equipment-generated noise—should not exceed RC–25, and the signal-to-noise ratio should be able to achieve +15 dB. The ASA has recently established a multi-committee initiative to work on the development of guidelines for acoustics. A workshop seminar was held in Los Angeles in December 1997 to begin the process of developing consensus recommendations.

The ASHA recommends that noise levels in unoccupied classrooms not exceed 30 dBA (or a NC–20 curve) and that reverberation time not exceed .4 seconds across speech frequencies. Signal-to-noise ratios (measured at the student's ear) should exceed +15 dB.

Dr. Crandell et al. recommend that elementary and secondary school classrooms for 'at-risk' students should have unoccupied ambient noise levels that do not exceed NC–25 or a sound pressure level of 35 dBA and a reverberation time that does not exceed .4 seconds in the speech frequency range.

Portugal's classroom noise standards, adopted in 1988, limit reverberation time in general classrooms to .6–.8 seconds and in special classrooms to .6 seconds; equipment background noise may not exceed 35 dBA. Wall construction between classrooms must have a sound transmission class (STC) rating of at least 50 dB. The Swedish Board of Housing, Building and Planning has adopted Building Regulations BBR 94, with amendments, that include detailed guidelines for protection against noise for several building types, including schools, by means of specified areas of sound absorbent surfaces within classrooms, acoustical isolation between classrooms, and limits on background noise from building systems and equipment.

The State of Washington Department of Health rules, WAC 248–64–320 Sound Control, include a limit (NC–35) on background noise in classrooms. The Los Angeles County Unified School District—the largest in the world in numbers of students enrolled—has recently adopted a similar standard for the noise output of classroom HVAC equipment. ANSI S12.2–1995 suggests an NC range of 25–30 for classrooms and an RC in the same range. A tabular comparison of values for acoustical criteria in classrooms is presented in Table 1.

Other bases for prescribing and testing acoustical characteristics, including values for speech-to-noise ratio and the speech transmission index (STI), may be applied to diagnose existing acoustical conditions in classrooms, but do not appear useful in a new construction standard. The STI takes into account the effects of noise and reverberation and can be adjusted to obtain values for listeners with hearing impairments. Both rely on in-use measurements.

Cost

High-performing acoustical environments are achieved at some premium in construction cost. Knowledgeable design, construction, and materials specification, an investment in high-quality HVAC equipment, and careful installation and workmanship are required to ensure that design values are reflected in performance. Special consideration of room configuration, proportion, and location may also be necessary. Furthermore, the measures necessary to

control sound in classrooms may raise other issues affecting cost. For instance, carpeting is recommended to add absorbency for reverberation control and to minimize the self-noise of student movement. However, carpeting may require a change in maintenance procedures. Controlling ambient noise in many urban schools may require that windows be kept closed even in pleasant weather, when HVAC systems might operate at lesser capacities. Students with moderate to severe hearing impairments may also require the use of amplification systems to increase speech intelligibility to effective values.

ADAAG Criteria

To be useful, acoustical recommendations and standards should employ design techniques, data, and sound measurement protocols available and familiar to architecture, engineering, and construction practitioners and applicable during design phases. Like a building code, ADAAG is intended for use in new construction and alterations of buildings and facilities. It contains provisions for construction elements, items, and finishes that are fixed to the building structure. Furniture and equipment, including portable communications devices, are covered by the DOJ regulation, not ADAAG.

The Board recognizes that amplification technologies may be required for effective communications in some rooms and spaces and for some individuals. Such solutions, including those that use portable assistive listening systems and sound field technology, are beyond the scope of the building and facility provisions in ADAAG. However, such technologies cannot be fully effective in noisy environments; amplification in highly reverberant environments will exacerbate listening and hearing problems. Furthermore, the effectiveness of personal devices, particularly hearing aids, is also compromised in noisy environments. And, because the learning environment includes interaction with peers and other individuals in classrooms and other settings, instructor amplification only may not fully remove barriers to hearing, listening, and learning where acoustical design is flawed.

Based upon public comments to this notice and on information already available and outlined in this notice, the Board will consider whether it is appropriate for ADAAG to include criteria for such acoustical performance characteristics as reverberation time and background noise. Several non-rulemaking options will also be considered, including additional research, the development of advisory materials, and guidance and technical assistance for design professionals.

In response to the petition, the Board wishes to focus this request for information on the acoustical performance of classrooms and related spaces used by children, including day care settings for pre-primary ages. However, the Board will consider comments and recommendations on the scope and technical provisions of acoustical criteria appropriate for buildings and facilities and other occupancies, as well.

The Board seeks relevant research, standards, data, test reports, analyses, and recommendations from acoustical engineers and consultants, design professionals, educators and educational administrators and counselors, audiologists, specialists in hearing impairments, parents of children with disabilities and persons with hearing, speech, and language disabilities, including learning and developmental disorders, and the organizations that represent them. Commenters are encouraged to address their responses to the issues outlined below.

Question 1: Implementing acoustical guidelines in educational facilities for children may be necessary for youngsters with auditory and related disabilities to function effectively in school. (a) Should all rooms and spaces within a school setting be included in coverage? Some comment has identified gymnasiums, pools, and cafeterias as particularly problematic for students with hyperacusis, a heightened sensitivity to noise, and for those with learning and auditory processing disabilities. Such facilities are often highly reverberant due to their large areas of hard, sound-reflective surfaces. (b) Should acoustic guidelines include coverage of these spaces? Would a less stringent standard be appropriate in non-classroom school facilities? What acoustical properties are appropriate in multi-purpose spaces that accommodate recreation, performance, and food service activities at different times during a school day? (c) In view of the importance of early language acquisition, how should child care settings be covered? Are there acoustical criteria in current health and safety standards for child care facilities? (d) Should the Board consider the development of guidelines for a wider range of facility types for a more universal range of users? If so, what facilities might be included?

Question 2: The Board has received information on several cases in which the acoustical environment was an issue in an Individualized Education Plan prepared by a school system for a child with a hearing impairment. Would a common standard for the acoustical design of educational facilities be helpful to design professionals seeking to provide acoustically satisfactory environments and to school systems seeking to comply with educational mandates for children with disabilities? Are current design manuals, recommendations, and other technical assistance on acoustical design sufficient?

Question 3: There is considerable research that shows that controlling classroom noise and reverberation will benefit student learning. However, it is not clear at what levels effective listening by children with mild, moderate, severe, or profound hearing losses and other disabilities is compromised and whether such conditions can be achieved in some classroom environments, where ''self-noise'' and student activity also contribute to a poor listening environment. (a) Is there research that identifies the specific acoustic requirements necessary for effective listening by children with various hearing, speaking, and learning disabilities? What acoustical performance and testing standards are appropriate for classrooms in which children with auditory disabilities are integrated? Are there data that relate specific acoustical criteria to the usability of buildings and facilities by children with learning disabilities, developmental disabilities, and other disabilities that affect speech reception, learning, and communication? (b) What are the relative contributions of low reverberation values and low background noise values to effective communication for people with hearing loss? (c) Can the acoustical environment be improved sufficiently through design and construction measures for children with hearing and other impairments to receive significant communications benefit?

Question 4: The Board also seeks information on the acoustical environment necessary for effective use of assistive technology, including hearing aids and assistive listening devices, by children with hearing loss. Because assistive technologies will be part of many student accommodations, the Board is interested in the extent to which poor acoustics compromise the effectiveness of technologies such as sound field enhancement (in which the amplified voice of a teacher fitted with

a microphone can be distributed to speakers placed around the perimeter of a classroom) and direct broadcast to children with hearing loss through personal assistive listening devices. At what thresholds of background sound and reverberation will children with various degrees of hearing loss be able to participate in meaningful classroom listening if aided by amplification technology?

Question 5: The GAO report on school conditions highlighted the multimedia classroom as the educational facility of the future. The Board is interested in understanding the nature and characteristics of such a classroom, particularly the extent to which it may be interactive, with small group listening and discussion, multiple inputs from speakers and media devices, frequent changes in speaker-listener relationships, and other audio source conditions that may not be fully adaptable to amplification technologies.

Question 6: The Board recognizes that decisions made by building design professionals during the design phases of a project affect the ultimate acoustical performance of a room or space. Determinations of building siting, overall facility planning, and individual room volume and proportion, floor, wall and ceiling assembly construction and finishes, equipment specification, and HVAC system design all contribute to the acoustic functioning of a room or space. However, most recommendations for acoustical performance measure the results of such design decisions, setting limits on reverberation and background noise. (a) Can good speech listening conditions be achieved by setting standards for reverberation time and background noise only? (b) Should other design variables, for example, room configuration or proportion, ceiling height, or size, be considered? The Swedish guidelines specify wall and ceiling construction types and values in addition to limiting background noise. Are these a useful model for possible guidelines? (c) How might considerations of speech intelligibility, speech transmission indices, and other measures that rely on in-use testing be incorporated in acoustical design? What are the margins of error in acoustical equipment, testing, simulation, and construction? (d) What are effective means of acoustically retrofitting an existing classroom or other space that performs poorly for speech perception? How successful can such corrective action be in correcting perceived hearing and listening problems?

Question 7: What is the square foot cost for new classroom construction today? What additional square foot cost would be necessary to meet average industry recommendations for reverberation time (R .6—.8 seconds) and background noise (NC 35–40) for classrooms? What would be the added cost, per square foot, of achieving values within the ranges suggested by ASA (R .4—.6 seconds; NC 25–30)? What are the relative costs of meeting reverberation limits as opposed to background sound limits? What data are available on the costs of alterations to existing environments to improve acoustical conditions?

Question 8: The Board also seeks information on the non-capital costs and savings associated with constructing and maintaining acoustically-appropriate classrooms and related educational facilities. What are the cost implications of such design and finishes decisions and operating procedures as room location and configuration, window operability, and carpeting? What savings might accrue from the elimination of some special education environments?

Question 9: How can compliance with acoustical design criteria be assessed prior to facility occupancy and use? How can time and physical variations in equipment manufacture, construction, and outside noise conditions be accommodated in a guideline? What testing and compliance practices have been used where standards are already in place?

Question 10: Many teachers and administrators have had experience with open classrooms, in which several teaching groups may work concurrently in a single large space, and with enclosed classrooms of smaller size. (a) The Board is particularly interested in comments offering a comparison of the effects on students and teachers, in particular those with disabilities, of classroom acoustics in such situations. (b) Do noisy classrooms exacerbate teacher stress? Are there data available on the effects of classroom noise on teacher health, comfort, or performance? (c) Do schools and systems have information on student behavior and performance after acoustical improvements, including the partitioning of open classrooms into more discrete units, have been made?

Question 11: What approaches other than regulation under the ADA might be successful in achieving good acoustical design? What organizations and interests should be consulted in the Board's consideration of acoustical issues?

Dated: May 26, 1998.

Thurman M. Davis, Sr.,

Chair, Architectural and Transportation Barriers Compliance Board.

Table 1 on recommended/required acoustical criteria for classrooms follows:

BILLING CODE 8150–01–P

Table 1: RECOMMENDED/REQUIRED ACOUSTICAL CRITERIA FOR CLASSROOMS

[Shaded cells contain values recommended for students with hearing loss]

	Reverberation	Background Noise Level				Other
	(R-60)	Room		Equipment		
		NC	dBA	RC	dBA	
ASHA/Consortium Recommendations*	.4 seconds	20	30			Signal-to-noise ratio >15 dB
ASA Recommendations	.6 - .8 seconds		30-35	25		Signal-to-noise ratio +15 dB
ANSI S12.2-1995		25-30		25-30		
Acoustic Guidelines, Swedish Board of Housing, Building and Planning (1994)	equivalent to .6 seconds	30			30	90% ceiling area absorbent; walls provide 44 dB sound reduction
School Standard, Portugal (DIN 254/87)						New schools not permitted where sound level (exterior) >65 dBA
--classrooms generally	1 - 1.3 seconds	30				Walls permit <50 dB sound transmission
--classrooms for students with hearing loss	.4 - .6 seconds	25				Walls permit <45 dB sound transmission
Equipment Standard, Los Angeles County Unified School District				25-30	35	
Washington State Health Department WAC 248-64-320			35			
Architectural Acoustics, Egan**						
--classrooms generally	.6 - .8 seconds	30-35	38-42	25	34	Walls permit <50 dB sound transmission
--classrooms for students with hearing loss	< .5 seconds	25-30		20		Walls permit <35 dB sound transmission
Soundfield Amplification, Crandell et al.	< .4 seconds	25	35			
Range of classroom recommendations from 18 acoustics textbooks***			30-47			

KEY

Sound is a complex product of frequency and intensity. Nevertheless, it is common to express sound energy as a single-number rating measured in decibels (dB). A-weighted sound levels (**dBA**) approximate human hearing by suppressing the contribution of low frequency sound. Noise limits are usually specified in dBA.

Noise criteria curves (**NC**) plot sound levels across the frequencies between 63 and 8000 Hz (the speech perception range). The NC curve of a room is the lowest curve that is not exceeded by sound levels measured at each frequency. NC criteria are often expressed as a range in specifying acceptable background noise levels. Equivalent dBA values typically exceed NC values by 8-10 units.

Room criteria (**RC**) curves were developed for background noise from heating, ventilating, and air conditioning systems. NC criteria curves are adjusted at very low and very high frequencies to avoid annoying mechanical sound.

The signal-to-noise ratio (**SNR**) is the difference between source loudness and background sound. Child listeners need an SNR of approximately +15 dB for good hearing conditions.

Noise reduction (**NR**) is the difference in background sound level between a source on one side of a wall and a receiver on the other. Transmission loss (**TL**) is a wall rating (both are expressed in decibels) for noise reduction.

Sound transmission class (**STC**) is a wall or other assembly rating for sound isolation.

NOTES

* Egan classifies a Noise Criteria range of less than 20 as necessary for excellent listening conditions, as in concert halls, broadcast and recording studios, recital halls, large auditoriums, and churches. An NC range between 20-30 produces 'very good' listening conditions, appropriate for theaters, small auditoriums, large meeting rooms, teleconferencing facilities, executive offices, courtrooms, chapels, and large meeting rooms. An NC range of 25-35 is recommended for sleeping rooms. NC 30-35 will produce 'good' listening conditions for offices, small meeting rooms, libraries, and classrooms.

** A consortium of organizations representing persons with hearing, speech, and language impairments (Alexander Graham Bell Association for the Deaf, Inc., the American Speech-Language-Hearing Association (ASHA), Auditory-Verbal International, Inc., the National Center for Law and Deafness, the National Cued Speech Association, and Self Help for Hard of Hearing People (SHHH)) organized to submit consensus recommendations on classroom acoustics in comment to the Board's proposed rule on access to State and local government facilities.

*** Taken from Rettinger, Michael, ***A Handbook of Architectural Acoustics and Noise Control: A Manual for Architects and Engineers***, TAB, Blue Ridge Summit, PA, 1988 (pps. 232-233).

[FR Doc. 98–14442 Filed 5–29–98; 8:45 am]

BILLING CODE 8150–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WY–001–0001b; FRL–6104–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Wyoming; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Wyoming plan and associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan, which was submitted to EPA on February 13, 1998, establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards.

In the final rules section of this **Federal Register**, the EPA is approving the State's submittal in a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before July 1, 1998.

ADDRESSES: Written comments on this action should be mailed to Vicki Stamper, 8P2–A, at the EPA Regional VIII Office listed. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this proposed rule are available for public inspection at the Air Quality Division, Wyoming Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Dated: May 21, 1998.

Carol Rushin,

Acting Regional Administrator, Region VIII.

[FR Doc. 98–14436 Filed 5–29–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 97–247; DA 98–962]

Fees for Ancillary or Supplementary Use of Digital Television Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: On December 18, 1997, the Commission adopted a *Notice of Proposed Rule Making* in this proceeding, FCC 97–414, regarding the assessment of fees for the use of digital television bitstream for the provision of ancillary or supplementary services. Comments in this proceeding were initially due March 3, 1998, and reply comments were due April 2, 1998. By Order Granting Extension of Time for Filing Comments of February 23, 1998 (''February 23 Order''), the Mass Media Bureau extended the deadline for filing comments to May 4, 1998 and for filing reply comments to June 2, 1998. On May 13, 1998, The Office of Communication of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum, and the Media Access Project (''Petitioners'') submitted a Request for Extension of Time to file reply comments. The Commission hereby grants petitioners request and extends the reply comment deadline to August 3, 1998.

DATES: Reply Comments are due on or before August 3, 1998.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M St., NW, room 222, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Duvall, Chief Economist, Mass Media Bureau (202) 418–2600, Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418–2140, or Jonathan Levy, Office of Plans and Policy (202) 418–2030.

SUPPLEMENTARY INFORMATION: This is a summary of the Mass Media Bureau's Order Granting Extension of Time for Filing Reply Comments, DA 98–962 adopted May 20, 1998 and released May 20, 1998. The full text of this Mass Media Bureau Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW, Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800 2100 M Street, NW, Suite 140, Washington, DC 20037.

Synopsis of Order

On December 18, 1997, the Commission adopted a *Notice of Proposed Rule Making* 63 FR 460, January 6, 1998, in this proceeding, regarding the assessment of fees for the use of digital television bitstream for the provision of ancillary or supplementary services. Comments in this proceeding were initially due March 3, 1998, and reply comments were due April 2, 1998. By Order Granting Extension of Time for Filing Comments of February 23, 1998 (''February 23 Order''), the Mass Media Bureau extended the deadline for filing comments to May 4, 1998 and for filing reply comments to June 2, 1998. On May 13, 1998, The Office of Communication of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum, and the Media Access Project (''Petitioners'') submitted a Request for Extension of Time to file reply comments. Petitioners contend that additional time is necessary to examine, analyze and respond to the economic studies filed as comments in this proceeding. Petitioners request that the Commission extend the reply comment deadline to August 3, 1998.

The Commission's Rules state that it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. 47 CFR 1.46. However, as we stated in the February 23 Order, the complexity of the instant proceeding and the potential benefits of the commenters' economic studies warranted the original extension of the comment period. The economic studies submitted by commenters are consistent with the Commission's request in paragraph 27 of the NPRM, that commenters ''make specific recommendations as to the level of the fee and type of fee assessment program

to which the fee is to be tied and to provide evidence to build a record supporting those recommendations.'' Petitioners request an extension of time so that they can seek to an economist to examine, analyze and respond to the various economic studies that have been submitted. In order to achieve the full benefits of the economic studies filed in this proceeding, and to permit a comprehensive analysis of these studies, we will grant petitioners additional time to analyze the commenters' studies and to file reply comments. This extension can provide the Commission a more complete record in this proceeding.

Accordingly, *It is ordered* that the time for filing reply comments *Is extended* to August 3, 1998.

This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and sections 0.204(b), 0.283, and 1.45 of the Commission's Rules.

List of Subjects in 47 CFR Part 1

Television, Television broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 98–14377 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

0 CFR Part 622

[I.D. 051898C]

Caribbean Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will convene public hearings on draft Amendment Number 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the United States Virgin Islands for Establishing a Marine Conservation District.

DATES: Written comments will be accepted until June 30, 1998. The public hearings will be held June 9–11, 1998, from 7:00 p.m. to 10:00 p.m.

ADDRESSES: Written comments should be sent to Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918. Copies of draft Amendment Number 1 are available from the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918; telephone: (787) 766–5926; fax: (787) 766–6239.

The hearings will be held as follows:

June 9, 1998, at the Conference Room of the Legislature Building, Cruz Bay, St. John, U.S. Virgin Islands (USVI).

June 10, 1998, at the Legislature Chambers, Old Varren Building, St. Thomas, USVI.

June 11, 1998, at the Caravelle Hotel, 44A Queens Cross, Christiansted, St. Croix, USVI.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, telephone: (787) 766–5926; fax: (787) 766–6239.

SUPPLEMENTARY INFORMATION: The Council will be holding public hearings on the draft Amendment Number 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the United States Virgin Islands for Establishing a Marine Conservation District. The Council will consider establishing a ''no-take'' marine conservation district (MCD) in the exclusive economic zone (EEZ) of the USVI. A ''no-take'' MCD is an MCD in which fishing is prohibited. The proposed options are the following.

Option A: Establish a no-take MCD in the EEZ, in the area known as the ''Hind Bank'' southwest of St. Thomas, USVI, within the coordinates specified below:

Point	Latitude	Longitude
A	18°13.2′ N	65°06.0′ W.
B	18°13.2′ N	64°59.0′ W.
C	18°11.8′ N	64°59.0′ W.
D	18°10.7′ N	65°06.0′ W.

Option B: Establish a no-take MCD in the EEZ, including the area known as the ''Hind Bank'' southwest of St. Thomas, USVI, but with a modified northern boundary that extends one nautical mile north of the present demarcation line of the Hind Bank. This option would establish a no-take MCD within the coordinates specified below:

Point	Latitude	Longitude
A	18°14.2′ N	65°06.0′ W.
B	18°14.2′ N	64°59.0′ W.
C	18°11.8′ N	64°59.0′ W.
D	18°10.7′ N	65°06.0′ W.

Option C: Establish a no-take MCD in the EEZ, due south of St. John, USVI, within the coordinates specified below:

Point	Description	Latitude	Longitude
A	South of Bovocoap Point at Boundary with Territorial Sea	18°15.3′ N	64°46.9′ W.
B	South of Ram Head at Boundary with Territorial Sea	18°15.0′ N	64°42.2′ W.
C	SE corner	18°12.1′ N	64°42.2′ W.
D	SW corner	18°11.0′ N	64°46.9′ W.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council staff (see **ADDRESSES**) at least 5 days prior to the meeting.

Dated: May 27, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–14432 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 052098A]

Fisheries off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Public Meeting

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

ACTION: Announcement of Advisory Subpanel meeting and status of the northern anchovy fishery.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagics Advisory Subpanel will meet with representatives of the Coastal Pelagics Planning Team to discuss the biomass estimate for northern anchovy, which was last completed in 1995.

DATES: The meeting will be held on June 11, 1998, at 10 a.m.

ADDRESSES: The meeting will be held at the Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4313.

FOR FURTHER INFORMATION CONTACT: James J. Morgan at (562) 980–4036.

SUPPLEMENTARY INFORMATION: At the meeting, data showing trends in the estimated spawning biomass will be presented with an overview of historical abundance; the quotas available for harvest will be announced; and public comments will be received. All materials relating to the annual quotas will be forwarded to the Council and its Scientific and Statistical Committee and will be available for public inspection at the Office of the Regional Administrator. The interim final quotas will be published in the **Federal Register** on or about August 1, 1998, with an opportunity for public comment.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to James J. Morgan at NMFS Regional Office (see **ADDRESSES**) by June 2, 1998.

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

Dated: May 26, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–14429 Filed 5–27–98; 4:22 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 104
Monday, June 1, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board) established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 1998. This notice describes the Advisory Committee and invites applications from those interested in service on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Purposes

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

4. Membership

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travel, meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service (C:AP:P), 1111 Constitution Avenue, NW, Washington, DC 20224.

Any questions may be directed to the Joint Board's Executive Director at 202–401–5845.

The deadline for accepting applications is September 3, 1998.

Dated: May 19, 1998.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 98–14308 Filed 5–29–98; 8:45 am]
BILLING CODE 4830–01–U

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room 118 of the Aerospace Building, L'Enfant Plaza, 901 D Street, SW, Washington, DC, on Monday and Tuesday, June 29 and 30, 1998, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1998 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint

Board's examination program for the November 1998 pension actuarial examination and the May 1999 basic actuarial examinations will be discussed. In addition, establishing examination guidelines and credit for unanswered questions on the examinations will be addressed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1998 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 9:00 a.m. on June 30 and will continue for as long as necessary to complete the discussion, but not beyond 10:30 a.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 18, 1998, to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service (C:AP:P), 901 D Street, SW, Washington, DC 20024 or by facsimile transmission to 202–401–6657.

Dated: May 19, 1998.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 98–14306 Filed 5–29–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Notice of Solicitation for Membership to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for Membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is June 15, 1998.

SUPPLEMENTARY INFORMATION: Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 as amended by section 802 of the Federal Agricultural Improvement and Reform Act of 1996 authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996 and one-third of the 30 members were appointed for a l, 2, and 3 year term, respectively. As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories will expire September 30, 1998. Nominations for a 3-year appointment for all 10 of the vacant categories are sought. Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a category. As a result of a resignation, another member's slot representing the category of ''Scientific Community not closely associated with Agriculture'' is also vacant. The replacement Board member for this category will serve the remainder of the term or l year, terminating September 30, 1999. The 11 vacancies are:

Category E: National Animal Commodity Organizations
Category H: National Food Animal Science Societies
Category I: National Crop, Soil, Agronomy, Horticulture or Weed Science Societies
Category N: 1890 Land-Grant Colleges and Universities
Category O: 1994 Equity in Education Land Grant Institutions
Category R: Scientific Community not closely associated with Agriculture (1-year term)
Category T: Food Retailing and Marketing Interests
Category V: Rural Economic Development
Category W: National Consumer Interest Groups
Category X: National Forestry Groups
Category Y: National Conservation or Natural Resource Groups

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, ''Advisory Committee Membership Background Information'' and will be vetted before selection. Send nominations to the Office of the Advisory Board, Research, Education, and Economics, Room 3918 South Building, Department of Agriculture, Washington, D.C. 20250–2255 no later than June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 26th day of May 1998.

I. Miley Gonzalez.

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–14342 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Western Regional Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of listening session.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5

U.S.C. App., the United States Department of Agriculture announces a Western Regional Listening Session of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 as amended by section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), will send representatives of its membership (5 members, the Executive Director, and a USDA administrative support person) to the Western Region Joint Summer Meeting to hold a Western Regional Listening Session, 8:00 a.m. until noon on July 8, 1998.

The Western Regional Listening Session will engage western regional stakeholders (small farmers, producers/ranchers, academia including 1890 and 1994 institutions, the private sector, and other stakeholder groups) in panel sessions to present statements to Advisory Board members on agricultural research and education priorities and other issues of significant concern to the Western Region. Findings of this Listening Session will be presented to the full Advisory Board for consideration in its ongoing effort to advise USDA on future agricultural research and education priorities. Time will be allowed at the end of Listening Session panels for open discussion and audience participation.

DATES: Western Regional Listening Session, July 8, 1998, 8:00 a.m. until noon.

PLACE: Yarrow Hotel, Park City, Utah.

TYPE OF MEETING: Open to the public.

COMMENTS: The public may file written comments before or within 2 weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, D.C. 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 26th day of May 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–14343 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–97–17]

Tobacco Inspection; Growers' Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum results.

SUMMARY: This document announces the results of the referendum on the merger of Tabor City-Whiteville, North Carolina, and Loris, South Carolina, flue-cured tobacco markets. A mail referendum was conducted during the period of April 27–May 1, 1998, among tobacco growers who sold tobacco on these markets in 1997. A required two-thirds majority of voters did not favor merging these markets into a single consolidated market.

EFFECTIVE DATE: June 2, 1998.

FOR FURTHER INFORMATION CONTACT: William O. Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, PO Box 96456, Washington, DC 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: A notice was published in the April 20, 1998, issue of the **Federal Register** (63 FR 19414) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Tabor City-Whiteville or Loris during the 1997 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Tabor City-Whiteville, North Carolina, and Loris, South Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1998 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Tabor City, North Carolina, on November 5, 1997, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the April 27–May 1, 1998, referendum were mailed to 1,470 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 375 responses: 89 eligible producers voted in favor of the consolidation; 189 eligible producers voted against the consolidation; and 97 ballots were determined to be invalid.

Dated: May 26, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–14424 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas, and West Oklahoma

Amendment of Land and Resource Management Plans in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Southwestern Region of the Forest Service is planning to prepare an environmental impact statement on a proposal to amend National Forest land and resource management plans to incorporate standards and guidelines for management of habitat for American peregrine falcon, Little Colorado River spinedace, loach minnow, spikedace, Apache trout, Chihuahua chub, Gila trout, Gila top minnow, razorback sucker, southwest willow flycatcher, cactus ferruginous pygmy owl, Sonora tiger salamander, New Mexico ridgenose rattlesnake, and Pima pineapple cactus. The amendment would add new standards and guidelines which strengthen and clarify existing direction for the protection of federally listed threatened and endangered species. The amendment would apply to all subsequent project-level resource management decisions which will

involve site-specific environmental analysis and appropriate public involvement.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing by July 10, 1998.

ADDRESSES: Send written comments to USDA Forest Service, 517 Gold Ave. SW, Albuquerque, New Mexico 87102, ATTN: Director Ecosystem Analysis and Planning.

RESPONSIBLE OFFICIAL: The Regional Forester, Southwestern Region, will be the responsible official and will decide on amendments to land and resource management plans to incorporate standards and guidelines for the above mentioned threatened and endangered species.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Analysis and Planning, 517 Gold Ave. SW, Albuquerque, New Mexico 87102, (505) 842–3251.

SUPPLEMENTARY INFORMATION: The Land and Resource Management Plans for the eleven national forests and national grasslands in the Forest Service's Southwestern Region were the subject of consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to Section 7 of the Endangered Species Act prior to their approval from 1985 through 1988. The FWS was consulted more recently concerning a 1996 region-wide amendment to land and resource management plans. This latest consultation considered species listed as threatened or endangered since the plans were first approved. During the course of consultation, additional direction for protection of certain listed species was identified.

The following describes the proposed amendment, by species and by forest:

All Species

All Forests

Activities that affect threatened or endangered species and their habitat should be designed and implemented to minimize impacts on individuals of the affected species. Base timing of implementation on the biology of the species and its vulnerability to the activity.

American Peregrine Falcon

Apache-Sitgreaves National Forests

Survey potential peregrine falcon nesting habitat that may be impacted by Forest activities. Surveys should take place as early as possible during project development so that projects can be designed to minimize any disturbance to peregrine falcons.

Conduct no activities that might disturb peregrine falcons during their breeding and nesting period within one-half mile of suitable nesting habitat, unless the area has been surveyed and found to be unoccupied. Exceptions may be made through consultation with the U.S. Fish & Wildlife Service.

Little Colorado River Spinedace, Loach Minnow, and Spikedace

Apache, Sitgreaves, Coconino, Gila, Prescott, and Tonto National Forests

Apache Trout

Apache-Sitgreaves, Coronado, and Kaibab National Forests

Chihuahua Chub and Gila Trout

Gila National Forest

Gila Top Minnow

Coronado and Tonto National Forests

Razorback Sucker

Apache-Sitgreaves, Coconino, Prescott, and Tonto National Forests

The term ''species habitat'' encompasses all stream courses (bank to bank) which are occupied, unoccupied suitable, potential, or designated or proposed critical habitat for the listed fish species. Potential habitat is that which is expected to become suitable within 10 years. Suitable habitat is defined in the final rule for listing the species of concern and approved recovery plans.

Manage dispersed and developed recreation sites or recreation improvements within species habitat to avoid adverse effects (as determined by a site specific biological assessment) on the species.

Exclude off-road vehicle use from within species habitat and adjacent riparian areas, in the absence of a site-specific analysis which determines appropriate levels of use.

Exclude livestock from species habitat.

Exclude livestock from riparian areas adjacent to species habitat until satisfactory riparian condition, as described in the forest plan, is achieved. Manage livestock grazing to maintain desired condition once it is achieved.

Allow no new water diversion for Forest Service uses from within or immediately above species habitat in order to avoid stream flow depletion. Exceptions can be made in situations benefiting threatened and endangered species or their habitats.

Leave large woody debris in species habitat to provide diversity where there are no threats to culverts and bridges.

As opportunities arise, obtain water rights or diversion scheduling agreements to protect stream flows within species habitats.

Do not allow motorized mining, dredging, or material excavation for non-locatable, common variety minerals within, adjacent to, or immediately upstream of species habitat.

Only use chemical fire retardant adjacent to species habitat when no other fire suppression means is available to protect the habitat.

Treat fuel accumulations to abate fire risk adjacent to species habitat.

Southwest Willow Flycatcher

All Forests (Except the Kaibab and the Lincoln)

Allow no activities that slow or prevent progression of potential habitat (habitat within 10 years of becoming suitable) toward suitable conditions, or that reduce the suitability of occupied or unoccupied suitable habitat.

Identify potential habitat with the greatest potential for occupancy as highest priority for management, with the objective to move it toward suitable conditions.

Exclude livestock grazing throughout the year in occupied flycatcher habitat. Allow grazing in occupied southwestern willow flycatcher habitat outside of its breeding season only where southwestern willow flycatcher research is occurring under an approved research plan.

Implement actions such as area closures, road closures, interpretation, fencing, and special use permits, to minimize recreational impacts, when it is determined recreation is a problem to the flycatcher.

Implement measures such as provision of trash receptacles, regular trash pick-ups, area closures during the breeding season, and public information, where it is determined cowbirds and predator are a problem to the flycatcher.

Protect occupied, suitable, and potential habitat from high intensity wildfires and wildfire suppression activities.

Cactus Ferruginous Pygmy Owl

Coronado and Tonto National Forests

Projects in areas where it is determined that cactus ferruginous pygmy owls are occupying a site during the breeding period shall: (a) retain all nest trees and nest cacti; (b) avoid harassment of individual owls; and (c) restore and maintain habitat, as determined by a project-level biological assessment.

Sonora Tiger Salamander

Coronado National Forest

Inform all livestock permittees within the range of the Sonora tiger salamander that they are required to notify the Forest at least 30 days prior to initiating maintenance, dredging, or cleaning out of stock tanks.

Prior to any surface-disturbing activities at stock tanks within the range of the Sonora tiger salamander, the presence/absence of the salamander shall be determined by a qualified biologist (approved by the Forest Biologist). If salamanders are not encountered during seining of the pond, the salamander will be considered absent. If salamanders are observed in the water or can be captured with a dip net, seining is not necessary.

Individuals authorized by the Forest to maintain, dredge, or clean out stock tanks occupied by Sonora tiger salamanders shall be informed of the legal and sensitive status of the Sonora tiger salamander and shall have a copy of these standards and guidelines.

New surface disturbance and clearing of vegetation during work at stock tanks shall be minimized to the extent practicable.

Maintenance, dredging, and cleaning of occupied stock tanks shall not occur from January 1 through May 31.

Oil, fuel, and other equipment fluid shall be stored away from occupied stock tanks in secure containers. Any leaks shall be cleaned up and properly disposed of as soon as they occur.

If salamanders or larvae are present prior to dredging or cleaning out of stock tanks and a qualified biologist believes seining of salamanders and larvae out of the tank would reduce mortality and injury, then the tank shall be seined and animals held in suitable tanks, aquaria, or holding ponds and returned to the tank after maintenance is complete and, in the judgement of the qualified biologist, the tank contains enough water to support the salamanders.

During maintenance activities, the amount of underwater objects (logs, rocks, etc.) for salamander cover and egg deposition shall be maintained or increased.

Vegetation cover at tanks occupied by salamanders shall be retained or increased through (but not limited to) the use of partial fencing, construction of water lots, double tanks, or alternative waters such as wells and pipelines. Continue current management if cover is satisfactory for the habitat needs.

Except as needed in emergency situations to abate immediate fire threat of loss of life or property, no water shall be drafted from stock tanks known to be occupied by Sonora tiger salamanders. Other water sources, such as Parker Lake, wells, and water tenders shall be considered before drafting water from occupied stock tanks.

In non-emergency situations, water shall be drafted from stock tanks within the range of the salamander only if other sources of water are not available or reasonably accessible, and only if the tanks are not occupied by salamanders.

An objective of fire suppression activities shall be protection of occupied Sonora tiger salamander habitat, including the watersheds of those habitats.

All occupied tanks and apparently suitable tanks (free of nonnative predators) within the range of the Sonora tiger salamander shall be retained in public ownership.

If water is drafted from a stock tank within the range of the salamander, it shall not be refilled with water from another tank, Parker Lake, or other sources of water that may support fish, salamanders, or bullfrogs.

As opportunities arise, work with Arizona Game and Fish Department and the U.S. Fish & Wildlife Service in the development of interpretive materials for users of the Forest that includes information about legal protection of the salamander and prohibitions on use of live baitfish, crayfish, and waterdogs, and transport of live bullfrogs in the San Rafael Valley.

New Mexico Ridgenose Rattlesnake

Coronado National Forest

Inform permittees and all field personnel who implement any portion of activities under the LRMP in New Mexico ridgenose rattlesnake habitat of regulations and protective measures for the New Mexico ridgenose rattlesnake. Inform all field personnel that intentional killing, disturbance, or harassment of threatened or endangered species is a violation of the Endangered Species Act and could result in prosecution. Inform all personnel that care should be exercised when operating vehicles in the project area to avoid killing or injuring snakes on roads.

Remove livestock from burned areas in New Mexico ridgenose rattlesnake habitat during at least two monsoon seasons (July 1–Oct. 15) following prescribed fire, to facilitate vegetation recovery.

Pima Pineapple Cactus

Coronado National Forest

Confine vehicle use to existing roadways in occupied habitat.

Manage fuel loads and vegetation density to protect occupied sites from the effects of high intensity wildfires.

Pre-plan suppression strategies in occupied habitat to minimize suppression impacts on the species.

Comments concerning the proposed action were solicited from approximately 2,200 potentially affected and interested people, agencies, and organizations in March and April 1998. Preliminary issues include effects on habitat and population viability, effects on vegetation structure and composition, effects on goods and services to be produced under land and resource management plans, and effects on jobs, income and rural community economics, and effects on statutory rights. These issues will be refined and developed in detail as the analysis proceeds. Comments on the issues and suggestions for additional issues are welcome in response to this Notice of Intent.

A draft environmental impact statement is expected to be available for public review and comment in August 1998, and a final environmental impact statement available in December 1998.

The comment period on the draft environmental impact statement will run for 45 days following the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (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 that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the

Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

Dated: May 26, 1998.

Paul Johnson,

Acting Regional Forester.

[FR Doc. 98–14373 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Amarillo (TX), Fostoria (OH), Schaal (IA), and Wisconsin Areas, and Request for Comments on the Amarillo, Fostoria, Schaal, and Wisconsin Agencies

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Amarillo Grain Exchange, Inc. (Amarillo), Fostoria Grain Inspection, Inc. (Fostoria), D.R. Schaal Agency, Inc. (Schaal), and the Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin), will end November 30, 1998, according to the Act. GIPSA is asking persons interested in providing official services in the Amarillo, Fostoria, Schaal, and Wisconsin areas to submit an application for designation. GIPSA is also asking for comments on the services provided by Amarillo, Fostoria, Schaal, and Wisconsin.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before June 30, 1998. Comments are due by July 31, 1998.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Amarillo, main office located in Amarillo, Texas, Schaal, main office located in Belmond, Iowa, and Wisconsin, main office located in Madison, Wisconsin, to provide official inspection services under the Act on December 1, 1995. GIPSA designated Fostoria, main office located in Fostoria, Ohio, to provide official inspection services under the Act on December 1, 1997.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Amarillo, Fostoria, Schaal, and Wisconsin end on November 30, 1998, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Oklahoma and Texas, is assigned to Amarillo.

In Texas:

Bounded on the North by the Texas-Oklahoma State line to the eastern Clay County line;

Bounded on the East by the eastern Clay, Archer, Throckmorton, Shackelford, and Callahan County lines;

Bounded on the South by the southern Callahan, Taylor, and Nolan County lines;

Bounded on the West by the western Nolan, Fisher, Stonewall, King, and Cottle County lines; the western Childress County line north to U.S. Route 287; U.S. Route 287 northwest to Donley County; the southern Donley and Armstrong County lines west to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River northwest to State Route 217; State Route 217 west to FM 1062; FM 1062 west to U.S. Route 385; U.S. Route 385 north to Oldham County; the southern Oldham County line; the western Oldham, Hartley, and Dallam County lines.

Beaver, Beckham, Cimarron, Ellis, Harper, Roger Mills, and Texas Counties, Oklahoma.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Ohio, is assigned to Fostoria.

Bounded on the North by the northern and eastern Fulton County lines; the eastern Henry County line; the northern and eastern Wood County lines; the northern Sandusky County line east to State Route 590;

Bounded on the East by State Route 590 south to Seneca County; the northern Seneca County line east to State Route 53; State Route 53 south to

Wyandot County; the northern Wyandot County line; the northern Crawford County line east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to the western Hancock County line; and

Bounded on the West by the western Hancock County line; the southern Henry County line west to State Route 108; State Route 108 north to U.S. Route 24; U.S. Route 24 southwest to the Henry County line; the western Henry and Fulton County lines.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to Schaal.

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and

Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; U.S. Route 169 north to the northern Kossuth County line.

Schaal's assigned geographic area does not include the following grain elevators inside Schaal's area which have been and will continue to be serviced by the following official agencies:

1. Central Iowa Grain Inspection Service, Inc.: Farmers Co-op Elevator Company, Chapin, Franklin County; and Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

2. A. V. Tischer and Son, Inc.: West Bend Elevator Co., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Wisconsin, except those export port locations within the State, is assigned to Wisconsin.

Interested persons, including Amarillo, Fostoria, Schaal, and Wisconsin are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Amarillo, Schaal, and Wisconsin areas is for the period beginning November 1, 1998, and ending November 30, 2001. Designation in the Fostoria area, is for the period beginning November 1, 1998, and ending August 31, 2001. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Amarillo, Fostoria, Schaal, and Wisconsin official agencies. Commentors are encouraged to submit pertinent data concerning the Amarillo, Fostoria, Schaal, and Wisconsin official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: May 21, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–14042 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–EN–P

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases and Corrections

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on May 13, 1998, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Peter Voth, Assassination Records Review Board, Second Floor, Washington, DC 20530, (202) 724–0088, fax (202) 724–0457. The public may obtain an electronic copy of the complete document-by-document determinations by contacting <Eileen__Sullivan@jfk-arrb.gov>.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On May 13, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act.

Notice of Formal Determinations

1 Church Committee Document: Postponed in Part until 05/2001
20 Church Committee Documents: Postponed in Part until 10/2017
2 CIA Documents: Postponed in Part until 05/2001
4 CIA Documents: Postponed in Part until 08/2008
1 CIA Document: Postponed in Part until 10/2003
308 CIA Documents: Postponed in Part until 10/2017
4 FBI Documents: Open in Full
595 FBI Documents: Postponed in Part until 10/2017
3 Ford Library Documents: Open in Full
30 Ford Library Documents: Postponed in Part until 10/2017
1 HSCA Document: Open in Full
16 HSCA Documents: Postponed in Part until 10/2017
3 JFK Library Documents: Postponed in Part until 10/2017
1 LBJ Library Document: Postponed in Part until 10/2017
7 NARA Documents: Open in Full
6 NARA Documents: Postponed in Part until 10/2017
6 State Department Documents: Postponed in Part until 10/2017
3 US ARMY Documents: Open in Full
181 US ARMY Documents: Postponed in Part until 10/2017

Notice of Other Releases

After consultation with appropriate Federal agencies, the Review Board announces that documents from the following agencies are now being opened in full: 3 DIA documents; 879 FBI documents; 149 Ford Library documents; 6 HSCA documents; 30 JFK Library documents; 5 LBJ Library documents; 8 NARA–WC documents; 4 State Department documents; 124 U.S. Army documents; 1 Justice Department document.

Notice of Corrections

On April 13, 1998 the Review Board made formal determinations that were published in the April 30, 1998 **Federal Register** (FR 98–23717, 63 FR 12345).

The following documents were inadvertently omitted from the list of formal determinations:

US ARMY Document: Open in Full 198–10005–10016; 0; None

US ARMY Document: Postponed in Part 198–10005–10105; 3; 10/2017

Dated: May 22, 1998.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 98–14428 Filed 5–29–98; 8:45 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Employment Data of Recipient or Other Party Connected With Economic Development Assistance; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed 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)).

DATES: Written comments must be submitted on or before July 31, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia A. Flynn, Director, Operations Review and Analysis Division, Economic Development Administration, Room 7015, Washington, DC 20230, and (202) 482–5353.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed for post-approval compliance activity which is an important part of the civil rights responsibility of EDA. Obtaining and analyzing employment and personnel data is necessary to determine compliance status of recipients or other parties connected with EDA projects. The information is required under the Title VI of Civil Rights Act of 1964, Section 112 of Pub. L. 92–65, and Section 504 of the Rehabilitation Act of 1973.

II. Method of Collection

The information collection, ''Employment Data of Recipient or Other Party Connected with EDA Assistance'' is used by EDA for State, local, or Tribal governments, not-for-profit organizations, and businesses and for profit organizations to ensure nondiscrimination in the various job categories and used to evaluate hiring and personnel practices.

III. Data

OMB Number(s): 0610–0021.

Form Number: ED–525.

Burden: 400 hours.

Type of Review: Extension of a currently approved collection.

Affected Public: Recipients or other parties connected with EDA projects.

Estimated Number of Respondents: 100.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost: $27,100.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14416 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Petition by a Firm for Certification of Eligibility To Apply for Trade Adjustment Assistance; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed 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)).

DATES: Written comments must be submitted on or before July 31, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia A. Flynn, Director, Operations Review and Analysis, Economic Development Administration, Room 7814B, Washington, DC 20230, and (202) 482–5353.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to ascertain whether a firm is eligible to apply for trade adjustment assistance. To be certified eligible, a firm must demonstrate that increased imports of articles directly competitive with its products contributed importantly to declines in sales or production and to actual or threatened job loss. Impact of increased imports. The information is required under Chapter 3 of Title II of the Trade Act of 1974, as amended.

II. Method of Collection

The form is used by firms affected by import competition to petition EDA for certification of impact. Information submitted in the petition form is a major phase in obtaining a firm's history, including sales, production and employment data (the firm provides quarterly unemployment security forms submitted to the state, a description of the products produced by such firm, tax returns and/or financial statements, a firm's decline in sales accounts, and brochures of such firm's production).

III. Data

OMB Number(s): 0610–0091.
Agency Form Number: ED–840P.
Type of Review: Extension of a currently approved collection.
Burden: 1,576 hours.
Affected Public: Business firms which vary in size, including small firms.
Estimated Number of Respondents: 197.
Estimated Time per Response: 8 hours.
Estimated Total Annual Burden Hours: 1,576.
Estimated Total Annual Cost: $230,274.

IV. Request for Comments

Comments are invited on: (a)Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b)the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14417 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

Product Characteristics—Design Check-Off Lists; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 31, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Klingelhut, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–4403, and fax number: (202) 482–0872.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration (ITA) sponsors up to 120 overseas trade fair events each fiscal year. In addition, there is a Matchmaker Program of approximately 20 events annually, which is a combination of multi-stop trade missions and small equipment presentations. Trade fairs involve U.S. firms exhibiting their goods and services at American pavilions at internationally recognized events worldwide. In the case of Matchmakers, ITA organizes U.S. company missions, traveling to 2 or 3 foreign locations. Matchmakers combine an exhibit booth/product presentation orientation and by-appointment-only meetings in facilities capable of accommodating 20–40 U.S. Firms. The Product Characteristics-Design Check Off List seeks from participating U.S. firms information on the physical nature, power (utility) and graphic requirements of the products and services to be displayed, and to ensure the availability of utilities active product demonstrations. This form also allows U.S. firms to identify special installation instructions that can be critical to the proper placement and hookup of their equipment and/or graphics. Without the timely and accurate submission of the Form ITA–426P, Product Characteristics—Design Check-Off Lists, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of the U.S. participants. The anticipated result: diminished program productivity, declining participation by U.S. firms, reduced private sector funds, and possibly the discontinuation of this type of U.S. international trade event program.

II. Method of Data Collection

Form ITA–426P is sent by request to U.S. firms. Applicant firms complete the form and forward it to the Department of Commerce exhibition manager at the close of the event upon request.

III. Data

OMB Number: 0625–0035.
Form Number: ITA–426P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit companies applying to participate in Commerce Department trade promotion events.
Estimated Number of Respondents: 2,000.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 1,000 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $31,480.00 ($18,900.00 for respondents and $12,580.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) 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 forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14418 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Marketing Data Form; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction

Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 31, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Klingelhut, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–4403, and fax number: (202) 482–0872.

SUPPLEMENTARY INFORMATION:

I. Abstract

There is a necessity to have proper information about companies participating in U.S. Exhibitions, Trade Missions and Matchmakers and their products to publicize and promote their participation in these export promotion events. The Marketing Data Form (MDF) provides information necessary to produce export promotion brochures and directories to arrange appointments and prospect calls on behalf of the participants with key prospective buyer, agents, distributors, or government officials. Specific information is also requested in terms of the participants' objectives regarding agents, distributors, joint venture or licensing partners and any special requirements for prospective agents, e.g. physical facilities, technical capabilities, financial strength, staff, representation of complementary lines, etc.

II. Method of Data Collection

Form ITA–466P is sent by request to U.S. firms. Applicant firms complete the form and forward it to the Department of Commerce exhibition manager at the close of the event upon request.

III. Data

OMB Number: 0625–0047.

Form Number: ITA–466P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,000.

Estimated Time Per Response: 45 minutes.

Estimated Total Annual Burden Hours: 3,000 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $180,000.00 ($105,000.00 for respondents and $75,000.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) 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 forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14419 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–98]

Foreign-Trade Zone 147—Reading, PA Application for Subzone Status Hanover Direct, Inc. (Distribution of Consumer Goods) Hanover, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, requesting special-purpose subzone status for the consumer goods distribution facility of Hanover Direct, Inc., located in Hanover, Pennsylvania. 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 May 26,1998.

The Hanover facility (270,000 sq. ft. on 20 acres) is located at 101 Kindig Lane, Hanover, Pennsylvania. The facility (300 employees) is used for storage, inspection, packaging and distribution of a wide variety of consumer products such as home furnishings, housewares, home improvement accessories, garden products, safety products, men's and women's apparel and accessories, golf equipment and accessories, athletic wear, and jewelry and gifts. The facility supports Hanover's mail order business. About 20 percent of the products are sourced from abroad and over 5 percent are exported.

Zone procedures would exempt Hanover from Customs duty payments on foreign products that are reexported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant. The application indicates that the savings from zone procedures would help improve the plant'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 July 31, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 17, 1998.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Department of Commerce Export Assistance Center, One Commerce Square, 417 Walnut St., 3rd Floor, Harrisburg, PA 17101.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: May 26, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–14444 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–98]

Foreign-Trade Zone 204—Blountville, TN, Application for Subzone Status, Hanover Direct, Inc. (Distribution of Consumer Goods) Roanoke, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-Cities Airport Commission, grantee of FTZ 204, requesting special-purpose subzone status for the consumer goods

distribution facility of Hanover Direct, Inc., located in Roanoke, Virginia. 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 May 26, 1998.

The Roanoke facility (545,000 sq. ft. on 52 acres) is located at 5022 Hollins Road, Roanoke, VA. The facility (300 employees) is used for storage, inspection, packaging and distribution of a wide variety of consumer products such as home furnishings, housewares, home improvement accessories, garden products, safety products, men's and women's apparel and accessories, golf equipment and accessories, athletic wear, and jewelry and gifts. The facility supports Hanover's mail order business. About 20 percent of the products are sourced from abroad and over five percent are exported.

Zone procedures would exempt Hanover from Customs duty payments on foreign products that are reexported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant. The application indicates that the savings from zone procedures would help improve the plant'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 July 31, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 17, 1998.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Tri-Cities Regional Airport, P.O. Box 1058, Air Cargo Building, Blountville, Tennessee 37617.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, D.C. 20230.

Dated: May 26, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–14445 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom: Notice of 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 duty administrative review.

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–3020, 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 has received a request to conduct an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom. On August 28, 1997, the Department initiated this administrative review covering the period July 1, 1996 through June 30, 1997. On February 4, 1998 the Department extended the time limits for the preliminary results to June 1, 1998.

Because of the complexity of certain issues concerning the Department's policy with respect to selling activities in the United States, 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 Spetrini to Robert LaRussa, Re: Extension of Time Limit for Administrative Review of Industrial Nitrocellulose from the United Kingdom, May 21, 1998). Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to July 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: May 26, 1998.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–14447 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Amended notice of an open meeting.

The schedule for the June 2, 1998, President's Export Council meeting has been changed. The new schedule is as follows:

DATES: June 2, 1998.

TIME: 9:30 a.m. to 3:15 p.m.

ADDRESSES: The J.W. Marriott Hotel, Salon G, 1331 Pennsylvania Avenue, N.W., Washington, D.C., 20004. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted by May 15, 1998, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, D.C., 20230. Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, D.C., 20230 (Phone: 202–482–1124).

Dated: May 27, 1998.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 98–14455 Filed 5–28–98; 9:41 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration

between January 1, 1998 and March 31, 1998. In conjunction with this list, the Department of Commerce is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. We intend to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793.

Background

The regulations of the Department of Commerce (the Department) (19 CFR 351.225 (o)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between January 1, 1998, and March 31, 1998, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in July 1998 a notice of scope rulings and anticircumvention inquiries completed between April 1, 1998, and June 30, 1998, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), a brief description of either the ruling or product subject to the request, and the date of rulings made.

Country	
I. Scope Rulings Completed Between January 1, 1998 and March 31, 1998	
Canada	A–122–823 *Certain Cut-to-Length Carbon Steel Plate* Petitioners—certain carbon steel plate with boron added is outside the scope of the order. 01/16/98.
People's Republic of China	A–570–504 *Petroleum Wax Candles* American Drug Stores—spherical candles with a ''wax veneer'' are outside the scope of the order. 03/16/98. A–570–827 *Certain Cased Pencils* Creative Designs International, Ltd.—''Naturally Pretty,'' a young girl's 10 piece dress-up vanity set, including two 3-inch pencils, is outside the scope of the order. 02/09/98.
Republic of Korea	A–580–803 *Small Business Telephone Systems* TT Systems Corporation (TT Systems)—the Model 4300 telephone system imported by TT Systems is within the scope of the order. 03/16/98.
Taiwan	A–583–009 *Color Television Receivers, Monchrome and Color* Coach Master International Corporation (CMI)—the Kitchen Coach Unit 8100 manufactured by Action Electronics and imported by CMI is within the scope of the order. 01/07/98.
Japan	A–588–028 *Roller Chain, Other Than Bicycle* Kaga Industries Co., Ltd. (Kaga)—Kaga's automotive timing chain (silent timing chain) which does not have rollers is outside the scope of the finding. 03/24/98. A–588–405 *Cellular Mobile Telephones and Subassemblies* Matsushita Communication Industrial Corporation of America—subscriber unit, model number HS600, is outside the scope of the order. 3/20/98. NEC Corporation and NEC America Inc., (collectively, NEC)—NEC's NEPACS portable subscriber unit is outside the scope of the order. 3/5/98. A–588–824 *Corrosion-Resistant Carbon Steel Flat Products* Drive Automotive Industries of America, Inc.—steel coils, imported by Drive Automotive, having a thickness of 0.8 mm and width of 2000 mm, electrolytically coated with zinc are within the scope of the order. 02/24/98.
Russian Federation	A–821–803 *Titanium Sponge* Specialty Metallurgical Products Co., Inc.—Titanium scrap fines are within the scope of the order. 03/20/98.
II. Anticircumvention Rulings Completed Between January 1, 1998 and March 31, 1998	
None.	
III. Scope Inquiries Terminated Between January 1, 1998 and March 31, 1998	
None.	
IV. Anticircumvention Inquiries Terminated Between January 1, 1998 and March 31, 1998	
None.	
V. Pending Scope Clarification Requests as of March 31, 1998	
Mexico	A–201–805 *Circular Welded Non-Alloy Steel Pipe* Cierra Pipe, Inc.,—Clarification to determine whether line pipe ''shorts,'' or ''old line pipe'' which has rusted and pitted after sitting in storage, constitute line pipe of a kind used for oil and gas pipelines or is pipe and tube covered by the order.
Sweden	A–401–040 *Stainless Steel Plate* Avesta Sheffield AB and Avesta Sheffield NAD, Inc.—Clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the order.
Finland	A–405–071 *Viscose Rayon Fiber* Kemira Fibres Oy—Clarification to determine whether short-cut (LK) fiber and fire retardant (VISIL) fiber are within the scope of the order.
Germany	A–428–801 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof* FAG Aerospace & Superprecision Bearings GmbH—Clarification to determine whether certain aerospace bearings which have entered the United States but have been returned to Germany for repair or refurbishing, and which then reenter the United States, are within the scope of the order. A–428–821 *Large Newspaper Printing Presses from Germany* —Clarification to determine whether parts for reel tension pasters are within the scope of the order.

Country	
Italy	C–475–819 *Certain Pasta* A–475–818 Joseph A. Sidari Company, Inc.—Clarification to determine whether a shrink wrapped package containing six one-pound packages, each of which would first be individually packaged in a cellophane wrapper (cello) with ''Not Labeled for Retail Sale'' written across the entire length of each of the individual packages on both sides, is within the scope of the antidumping and countervailing duty orders.
People's Republic of China	A–570–504 *Petroleum Wax Candles* Sun-It Corporation—Clarification to determine whether taper candles containing oil of citronella are within the scope of the order. Ocean State Jobbers—Clarification to determine whether taper candles consisting of a blend of petroleum wax and beeswax are within the scope of the order. Polardreams Inc.—Clarification to determine whether granular petroleum wax candle kits are within the scope of the order. A–570–808 *Chrome-Plated Lug Nuts* Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order.
Republic of Korea	A–580–601 *Certain Stainless Steel Cooking Ware* C–580–802 Samuel Shapiro & Company—Clarification to determine whether certain stainless steel pasta and steamer inserts are within the scope of the order.
Japan	A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof* Koyo Seiko Co., Ltd.—Clarification to determine whether a cylindrical roller bearing, allegedly without a precision rating, for use as an axle bearing in cars and trucks is within the scope of the order. A–588–813 *Light-Scattering Instruments and Parts Thereof* Thermo Capillary Electrophoresis, Inc.—Clarification to determine whether diode array detectors and cell flow units are within the scope of the order.
VI. Pending Anticircumvention Inquiries as of March 31, 1998	
Mexico	A–201–805 *Certain Welded Non-Alloy Steel Pipe* Allied Tube & Conduit Corp., Sawhill Tubular Division of Tex-Tube Co., Century Tube Corp., Laclede Steel Co., LTV Tubular Products Co., Sharon Tube Co., Western Tube & Conduit Co., Wheatland Tube Co., and CSI Tubular Products, Inc. (Petitioners)—Anticircumvention inquiry to determine whether imports of (i) pipe certified to the American Petroleum Institute (API) 5L line pipe specifications (API 5L or line pipe) and (ii) pipe certified to both the API 5L line pipe specifications and the less stringent American Society for Testing and Materials (ASTM) A–53 standard pipe specifications (dual certified pipe), falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order.
United Kingdom	A–412–810 *Lead and Bismuth Carbon Steel Products* C–412–811 Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether British Steel PLC is circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.
Germany	A–428–811 *Lead and Bismuth Carbon Steel Products* C–429–812 Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether Saarstahl A.G. and Thyssen Stahl A.G. are circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.
Italy	A–475–818 *Certain Pasta* Borden, Inc., Hershey Foods Corp., Gooch Foods, Inc., (Petitioners)—Anticircumvention inquiry to determine whether Barilla S.r.L. (Barilla) is importing pasta in the United States in bulk (defined as packages of greater than five pounds) and repackaging the pasta into packages of five pounds or less for sale in the retail market; and whether such repackaging constitutes circumvention of the antidumping duty order.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 26, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–14446 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Meeting on the Fastener Quality Act (FQA)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: NIST will hold an open meeting on June 16, 1998, to provide details and interpretations on the regulations related to the Quality Assurance System (QAS) of fastener manufacturing contained in the April 14, 1998, final regulation under the Fastener Quality Act (FQA) (Public Law 101–592, as amended by Public Law 104–113). The purpose of this meeting is to provide information on requirements relevant to the registration of manufacturing facilities practicing QAS, accreditation of registrars, and recognition of registrar accreditation bodies. Fastener manufacturers, major end users of fasteners (automobile, aerospace, heavy machinery, and others), registrar accreditation bodies, quality system registrars, consensus standards bodies, and academics with interest in this subject may want to participate in this meeting.

DATES: The meeting will be held on June 16, 1998, from 9:00 am to 5:00 pm. Individuals wishing to participate must register with NIST not later than June 10, 1998. Questions on the QAS

regulations to be addressed at the meeting should be sent to Dr. Subhas G. Malghan, by June 5, 1998.

ADDRESSES: The meeting will be held in the Red Auditorium, Administration Building (Building 101), at NIST, in Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: All questions related to this meeting should be directed to Dr. Subhas G. Malghan, FQA Program Manager, Building 820, Room 306, NIST, Gaithersburg, MD 20899; telephone (301) 975–5120, fax (310) 975–5414, E-mail: malghan@nist.gov.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

1. Welcome and opening remarks
2. Overview of QAS regulations
3. Overview of requirements of the registrar accreditation bodies and registrars
4. Overview of the requirements of the QAS manufacturing facilities requiring registration
5. Discussion/answers to questions sent to NIST by participants by June 5, 1998
6. Closing

Following issuance of the final regulations on September 26, 1996, the automobile industry expressed concern to the Department of Commerce (Department) that the Act and the implementing regulations did not recognize modern manufacturing methods using prevention-based QAS employing statistical process controls (SPC). On February 4, 1997, a public workshop was held at NIST to solicit information from all interested parties. The Department published a notice of proposed rule making in the **Federal Register** on September 8, 1997, seeking public comments on proposed amendments to the regulations that recognize the use of prevention-based QAS under the FQA. The final rule published on April 14, 1998, is based on comments received in response to the notice of proposed rulemaking published in the **Federal Register** on September 8, 1997, (62 FR 47240–47260)(1997) amending regulations found at 15 CFR Part 280 implementing the FQA. This final rule established the procedures for registration of in-process inspection activities of qualifying manufacturing facilities that use QAS, revised definitions and related sections for clarity, and corrected editorial errors. These changes will facilitate the implementation of the Act and will better accommodate modern industry practices by incorporating these practices into the certification process of fasteners covered by the Act.

The purpose of the meeting is to address issues relevant to the implementation of the final regulations specific to QAS and provide a forum for discussion of questions on QAS. To facilitate coverage of issues raised by the participants, NIST is requesting that all questions be sent to NIST by June 5, 1998. Every attempt will be made to address these questions at the meeting. Other questions not related to QAS may be sent, and if time permits, these questions will also be addressed.

Registration Form

Open meeting at NIST on June 16, 1998, to provide details and interpretations on the regulations related to the Quality Assurance System (QAS) of fastener manufacturing contained in the April 14, 1998, final regulation under the Fastener Quality Act.

Names and addresses of proposed participants:

Name: _____

Address: _____

Telephone and fax numbers: _____

Please fax this form to FQA program Office, (301) 975–5414 by June 10, 1998.

Dated: May 26, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–14340 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.050798A]

Marine Fisheries Advisory Committee; Charter Renewal

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

ACTION: Notice of renewal.

SUMMARY: Notice is hereby given of the renewal of the charter of the Marine Fisheries Advisory Committee (MAFAC) for 2 years.

DATES: The term of the existing charter is from March 27, 1998, to March 27, 2000.

ADDRESSES: A copy of the Charter is available from MAFAC, Office of Operations, Management, and Information, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lu Cano, Executive Secretary; telephone: (301)713–2252.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App.2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, and after consultation with GSA, the Secretary of Commerce (Secretary) has determined that the renewal of the MAFAC Charter is in the public interest in connection with the performance of duties imposed on the Department by law.

History

MAFAC was first established in February 1971 to advise the Secretary on all living marine resource matters to ensure that the Nation's living marine resource policies and programs meet the needs of commercial and recreational fishermen and environmental, state, consumer, academic, and other national interests. The Secretary continues to rely on the expertise of MAFAC for the development of national fisheries policy and program initiatives. This advice is essential to meet the needs of the fisheries and of those concerned with the fisheries.

Membership

MAFAC will consist of at least 15, but not more that 21, members to be appointed by the Secretary to assure a balanced representation among commercial and recreational fishermen and environmental, state, consumer, academic, and other national interests.

Function

MAFAC will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act. Copies of MAFAC's revised charter have been filed with the appropriate committees of the Congress and with the Library of Congress.

Dated: May 20, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–14433 Filed 5–29–98; 8:45 am]

BILLING CODE: 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

May 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward, and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on June 3, 1998, you are directed to adjust the current limits for the following categories, as provided for in the agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997:

Category	Adjusted twelve-month limit [1]
433	19,139 dozen.
434	9,909 dozen.
435	28,913 dozen.
443	178,183 numbers.
448	56,272 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–14401 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

May 27, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 638/639 is being increased for swing, reducing the limit for Categories 341/641 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67834, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period January 1, 1998 through December 31, 1998.

Effective on June 2, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341/641	1,779,228 dozen of which not more than 648,100 dozen shall be in Category 341.
638/639	506,867 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–14400 Filed 5–29–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the ''Corporation'') , has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ava Castanuela,

(202) 606–5000, Extension 462. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503. (202) 395–7316, by July 1, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Renewal.

AGENCY: Corporation for National and Community Service.

Title: AmeriCorps*VISTA Project Progress Report.

OMB Number: 3045–0043.

Frequency: 4 times per year.

Affected Public: AmeriCorps*VISTA project sponsors, site supervisors and members.

Number of Respondents: 900.

Estimated Time Per Respondent: 3 hrs.

Total Burden Hours: 10800 hrs.

Total Annualized capital/startup costs: 0.

Total Annual Cost (operating/maintaining systems or purchasing services): 0.

Description: The Corporation seeks to renew the revised AmeriCorps*VISTA Project Progress Report. The need to update the form is necessary to gather information on the impact and quality of the change a project makes within a community. Currently, with the form gathering quantitative information, quality and impact are frequently not mentioned by the reporting project.

Dated: May 26, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–14374 Filed 5–29–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–26]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–26, with attached transmittal, policy justification, sensitivity of technology, and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: May 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

14 MAY 1998
In reply refer to:
I-61413/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-26, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $24 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 23 million
Other	$ 1 million
TOTAL	$ 24 million

(iii) Description of Articles or Services Offered: One hundred sixty AGM-114KBF HELLFIRE II missiles including lot acceptance missiles, 88 AGM-114K1 HELLFIRE II missiles including lot acceptance missiles, publications, and related elements of logistics support.

(iv) Military Department: Army (XIE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 14 MAY 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - AGM-114 HELLFIRE II Missiles

The Government of Greece has requested a possible sale of 160 AGM-114KBF HELLFIRE II missiles including lot acceptance missiles, 88 AGM-114K1 HELLFIRE II missiles including lot acceptance missiles, publications, and related elements of logistics support. The estimated cost is $24 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and furthering NATO rationalization, standardization and interoperability.

The proposed sale of HELLFIRE missiles will greatly improve Greece's defense posture. The missiles will be provided in accordance with, and subject to, the limitation on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Greece, which already has HELLFIRE missiles in its inventory, will have no difficulty absorbing these missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Limited Liability Company, Orlando, Florida. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AGM-114 HELLFIRE II missile hardware and documentation are unclassified. Missile performance parameters and characteristics, including susceptibility to countermeasures, are classified up to Secret and considered very sensitive. Missile hardware is considered sensitive and knowledge of the warhead timing mechanism would be useful in development of countermeasures. Technology contained within the missile is sensitive and Unclassified. The sensitivity of the system is primarily in the software programs which enable the missile to operate in a countermeasures environment. Training, maintenance, operations and related documentation are unclassified and not considered sensitive.

2. Missile design features minimize the possibility of reverse engineering U.S. capabilities.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. A determination has been made that Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

May 14, 1998

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Greece of 160 AGM-114KBF HELLFIRE II missiles, 88 AGM-114K1 HELLFIRE II missiles and related elements of logistics and program support at an estimated cost of $24 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Acting Under Secretary
for Arms Control and
International Security
Affairs / Director, U.S. Arms
Control and Disarmament Agency

[FR Doc. 98–14381 Filed 5–29–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–33]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–33, with attached transmittal, policy justification, sensitivity of technology, and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: May 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaision Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

18 MAY 1998
In reply refer to:
I-63206/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-33, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $43 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 42 million
Other	$ 1 million
TOTAL	$ 43 million

(iii) Description of Articles or Services Offered: Thirty HARPOON missiles, spare and repair parts, publications, and other related elements of program support.

(iv) Military Department: Navy (AHG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See annex attached

(vii) Date Report Delivered to Congress: 18 MAY 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - HARPOON Missiles

The Government of Turkey has requested a possible sale of 30 HARPOON missiles, spare and repair parts, publications, and other related elements of program support. The estimated cost is $43 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey, while enhancing weapon system standardization and interoperability.

Turkey will use these missiles to augment its present HARPOON missile inventory and enhance its anti-ship warfare capability. The missiles will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Turkey, which already has HARPOONs in its inventory, will have no difficulty absorbing these additional missiles.

The prime contractor will be McDonnell Douglas Aerospace, St. Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Turkey.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-33

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Guidance Section Components
b. Missile Characteristics and Performance Data

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

May 18, 1998

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Turkey of thirty RGM-84D-3 HARPOON anti-ship missiles and related elements of program at an estimated cost of $43 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Acting Under Secretary
for Arms Control and
International Security
Affairs / Director, U.S. Arms
Control and Disarmament Agency

[FR Doc. 98–14382 Filed 5–29–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

American Heritage Rivers Advisory Committee

AGENCY: Assistant Secretary of the Army (Civil Works), Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), this notice sets forth the schedule and proposed agenda for the second meeting of the American Heritage Rivers Initiative Advisory Committee (''Committee''), a Presidential Commission. At the first meeting of the Committee, held in Washington, D.C., on May 11 and 12, 1998, the Committee was very impressed by the hard work and dedication communities demonstrated in their nominations. Rather than remove any nominations from consideration at the May 11 and 12 meeting, the Committee decided to take additional time to reflect and individually to review the proposals in greater detail. A second meeting will be held on June 16, during which up to 20 rivers will be recommended to the Chairman, who will then prepare a report making final recommendations for the President. This meeting will be open to the public in its entirety. Because the seating capacity of the meeting room may be limited, an advance notice of intent to attend, although not required, is requested. This will help in making adequate seating arrangements for those wishing to attend. Members of the public will not be permitted to make oral statements at the meeting due to equity considerations and time constraints. Written comments may be submitted for the record to Mr. Charles R. Smith, Executive Secretary, at the address listed below. Comments must be received by 5:00 p.m., EST, on June 15.

Name of Committee: American Heritage Rivers Initiative Advisory Committee.

Date of Meeting: Tuesday, June 16, 1998, from 9:00 a.m. to 1:00 p.m., or until business is concluded.

Place: The meeting will be at the Hyatt Hotel @ Union Station (Grand Ballroom), 1820 Market Street, St. Louis, Missouri 63103.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. (Chip) Smith, Office of the Assistant Secretary of the Army (Civil Works), 108 Army, Pentagon (2E569), Washington, D.C. 20310–0108. Mr. Smith also can be reached by telephone at (703) 693–3655, or FAX (703) 697–3366.

SUPPLEMENTARY INFORMATION: This Committee shall consist of up to 20 members appointed by the President from the public and private sectors, whose charge shall be to appraise the quality of nominations for selection of rivers as ''American Heritage Rivers.'' The Committee shall recommend up to 20 rivers for designation as American Heritage Rivers.

In its review of nominations submitted by communities, the Committee shall provide its assessment of:

1. The scope of each nomination's application and the adequacy of its design to achieved the community's goals;

2. Whether the natural, economic (including agricultural), scenic, historic, cultural, and/or recreational resources featured in the application are distinctive or unique;

3. The extent to which the community's plan of action is clearly defined and the extent to which the plan addresses all three American Heritage Rivers objectives—natural resource and environmental protection, economic revitalization, and historic and cultural preservation—either through planned actions or past accomplishments, as well as any other characteristics of the proposals that distinguish a nomination, such as:

(A) Community vision and partnership;

(B) Sustainability of products and projects, including project maintenance;

(C) Resources, both committed and anticipated, including means of generating additional support from both private and public sources;

(D) Anticipated Federal role as defined by the applicants;

(E) Schedule of timeline;

(F) Citizen involvement;

(G) Public education relating to the designation of the river;

(H) Logistical support, operating procedures, and policies;

(I) Prior accomplishments, if relevant, and relationship to existing plans and projects in the area; and

(J) Measures of performance.

4. The strength and diversity of support for the nomination and plan of action as evidenced by letters from local and state governments, Indian tribes, elected officials, any and all parties who participate in the life and health of the area nominated, or who have an interest in the economic life and cultural and environmental vigor of the involved community.

The Committee also should seek to recommended the selection of rivers that as a group:

1. Represent the natural, historic, cultural, social, economic, and agricultural diversity of American rivers;

2. Showcase a variety of stream sizes and an assortment of urban, rural, and mixed settings from around the country, including both relatively pristine and degraded rivers;

3. Highlight a variety of innovative programs in such areas as historic preservation, sustainable development through tourism, wildlife management, fisheries restoration, recreation, community revitalization, agricultural practices, and flood plain and watershed management.

4. Include community efforts in early stages of development as well those that are more well-established; and

5. Stand to benefit from targeted Federal assistance.

Submitted by Office of the Assistant Secretary of the Army (Civil Works).

Charles R. Smith,

Executive Secretary, American Heritage Rivers Advisory Committee.

[FR Doc. 98–14574 Filed 5–29–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Garbage Discharges for Navy Ships in MARPOL Annex V Special Areas

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Secretary of Defense must report annually on the amount and nature of garbage discharges from Navy ships operating in special areas, when such discharges are not otherwise authorized under the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901, *et seq.* This notice is the fourth annual report.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Maiuri, Office of the Chief of Naval Operations Environmental Protection, Safety and Occupational Health Division, Crystal Plaza #5, Room 654, 2211 South Clark Place, Arlington, Virginia, 22244–5108, telephone 703–602–2602.

SUPPLEMENTARY INFORMATION: The International Convention on the Prevention of Pollution from ships (MARPOL) as amended by the MARPOL Protocol of 1978, protects the ocean environment by prohibiting some discharges altogether, restricting other

discharges to particular distances from land, and establishing 'special areas' within which additional discharge limitations apply. Special areas are particular bodies of water which, because of their oceanographic characteristics and ecological significance, require protective measures more strict than other areas of the ocean. Within special areas that are in effect internationally, except under emergency circumstances the only authorized garbage discharge from vessels is food waste. At present, three special areas are in effect: the North Sea, the Baltic Sea, and the Antarctic Region.

The Act to Prevent Pollution from Ships established deadlines for compliance by U.S. Navy ships with the Annex V special area requirements. Surface ships must comply with the special area requirements by December 31st of the year 2000. Submarines must comply with the special area requirements by December 31st of the year 2008. APPS further requires the Secretary of Defense to report in the **Federal Register** the amount and nature of Navy ship discharges in special areas, not otherwise authorized under MARPOL ANNEX V.

This **Federal Register** notice is the fourth of the required annual reports. This report covers the period between 1 August 1996 and 31 July 1997. The end date of July 31st is necessary to allow time for data collection and report preparation. During the period 1 August 1996 through 31 July 1997 there were no garbage discharges from Navy ships into MARPOL Annex V special areas that were not authorized under MARPOL Annex V.

Dated: May 18, 1998.

Lou Rae Langevin,

LT, JAGC, USN, Alternate Federal Register, Liaison Officer.

[FR Doc. 98–14287 Filed 5–29–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Plastic Processor Installation on Navy Ships

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Under 33 U.S.C. 1902(e)(4)(B), the Secretary of Defense must report annually in years 1996 through 1998 a list of ships equipped with plastic processors. This notice is the second annual report.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Maiuri, Office of the Chief of Naval Operations Environmental Protection, Safety and Occupational Health Division, Crystal City Plaza #5, Room 654, 2211 South Clark Place, Arlington, Virginia, 22244–5108, telephone 703–602–2602.

SUPPLEMENTARY INFORMATION: The International Convention on the Prevention of Pollution from ships (MARPOL) as amended by the MARPOL Protocol of 1978, protects the ocean environment by prohibiting some discharges altogether, restricting other discharges to particular distances from land, and establishing ''special areas'' within which additional discharge limitations apply. One of the discharges specified for restriction under MARPOL Annex V is plastics.

U.S. law, 33 U.S.C. 1902(e)(2), requires ships equipped with plastics processors to comply with MARPOL Annex V provisions for the disposal of plastics. The law also establishes an installation schedule for plastics processor equipment aboard ships. The first production unit shall be installed by July 1, 1996 on board a Navy ship. At least 25 percent of ships requiring processors shall be equipped by March 1, 1997. At least 50 percent of ships requiring processors shall be equipped by July 1, 1997. No less than 75 percent of ships requiring processors shall be equipped by July 1, 1998, and all vessels requiring plastics processors shall be equipped by December 31, 1998. The statute further requires the Secretary of Defense to report in the **Federal Register** a list of the names of ships equipped with plastics processors.

This **Federal Register** notice is the second of the required annual reports. A list of the 138 Navy ships equipped with plastics processors by February 1, 1998 follows:

AGF 0011 CORONADO
AO 0178 MONONGAHELA
AO 0180 WILLAMETTE
AOE 0002 CAMDEN
AOE 0004 DETROIT
AOE 0006 SUPPLY
AOE 0007 RAINIER
ARS 0051 GRASP
ARS 0052 SALVOR
AS 0039 EMORY S LAND
CG 0049 VINCENNES
CG 0050 VALLEY FORGE
CG 0052 BUNKER HILL
CG 0055 LEYTE GULF
CG 0056 SAN JACINTO
CG 0057 LAKE CHAMPLAIN
CG 0058 PHILIPPINE SEA
CG 0059 PRINCETON
CG 0060 NORMANDY
CG 0061 MONTEREY
CG 0062 CHANCELLORSVILLE
CG 0064 GETTYSBURG
CG 0067 SHILOH
CG 0068 ANZIO
CG 0071 CAPE ST GEORGE
CG 0073 PORT ROYAL
CGN 0037 SOUTH CAROLINA
CV 0063 KITTY HAWK
CV 0064 CONSTELLATION
CVN 0065 ENTERPRISE
CVN 0069 DWIGHT D EISENHOWER
CVN 0070 CARL VINSON
CVN 0072 ABRAHAM LINCOLN
CVN 0074 JOHN C STENNIS
DD 0964 PAUL F FOSTER
DD 0966 HEWITT
DD 0967 ELLIOT
DD 0968 ARTHUR W RADFORD
DD 0970 CARON
DD 0972 OLDENDORF
DD 0973 JOHN YOUNG
DD 0975 O'BRIEN
DD 0977 BRISCOE
DD 0978 STUMP
DD 0979 CONOLLY
DD 0980 MOOSEBRUGGER
DD 0981 JOHN HANCOCK
DD 0982 NICHOLSON
DD 0983 JOHN RODGERS
DD 0988 THORN
DD 0989 DEYO
DD 0990 INGERSOLL
DD 0997 HAYLER
DDG 0051 ARLEIGH BURKE
DDG 0052 JOHN BARRY
DDG 0054 CURTIS WILBUR
DDG 0055 STOUT
DDG 0056 JOHN S MCCAIN
DDG 0057 MITSCHER
DDG 0058 LABOON
DDG 0059 RUSSELL
DDG 0060 PAUL HAMILTON
DDG 0061 RAMAGE
DDG 0062 FITZGERALD
DDG 0063 STETHEM
DDG 0064 CARNEY
DDG 0065 BENFOLD
DDG 0066 GONZALEZ
DDG 0067 COLE
DDG 0068 THE SULLIVANS
DDG 0069 MILIUS
DDG 0070 HOPPER
DDG 0071 ROSS
DDG 0072 MAHAN
DDG 0094 CALLAGHAN
DDG 0095 SCOTT
DDG 0096 CHANDLER
FFG 0009 WADSWORTH
FFG 0014 SIDES
FFG 0029 STEPHEN W GROVES
FFG 0032 JOHN L HALL
FFG 0033 JARRETT
FFG 0036 UNDERWOOD
FFG 0037 CROMMELIN
FFG 0038 CURTS
FFG 0039 DOYLE
FFG 0040 HALYBURTON
FFG 0041 MCCLUSKY
FFG 0042 KLAKRING
FFG 0043 THACH
FFG 0045 DEWERT

FFG 0047 NICHOLAS
FFG 0048 VADEGRIFT
FFG 0049 ROBERT G BRADLEY
FFG 0051 GARY
FFG 0052 CARR
FFG 0053 HAWES
FFG 0054 FORD
FFG 0055 ELROD
FFG 0056 SIMPSON
FFG 0057 REUBEN JAMES
FFG 0058 SAMUEL B ROBERTS
FFG 0059 KAUFFMAN
FFG 0060 RODNEY M DAVIS
FFG 0061 INGRAHAM
LCC 0019 BLUE RIDGE
LCC 0020 MOUNT WHITNEY
LHA 0001 TARAWA
LHA 0002 SAIPAN
LHA 0003 BELLEAU WOOD
LHA 0004 NASSAU
LHA 0005 PELELIU
LHD 0001 WASP
LHD 0002 ESSEX
LHD 0004 BOXER
LHD 0005 BATAAN
LPD 0004 AUSTIN
LPD 0006 DULUTH
LPD 0007 CLEVELAND
LPD 0008 DUBUQUE
LPD 0009 DENVER
LPD 0010 JUNEAU
LPD 0012 SHREVEPORT
LPD 0013 NASHVILLE
LPD 0014 TRENTON
LSD 0036 ANCHORAGE
LSD 0037 PORTLAND
LSD 0039 MOUNT VERNON
LSD 0041 WHIDBEY ISLAND
LSD 0042 GERMANTOWN
LSD 0043 FORT MCHENRY
LSD 0044 GUNSTON HALL
LSD 0046 TORTUGA
LSD 0047 RUSHMORE
LSD 0048 ASHLAND
LSD 0049 HARPERS FERRY
LSD 0051 OAK HILL
MCS 0012 INCHON

Dated: May 18, 1998.

Lou Rae Langevin,

LT, JAGC, USN, Alternate Federal Register, Liaison Officer.

[FR Doc. 98–14288 Filed 5–29–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 1, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 26, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Application for Grants, Public Charter Schools Program.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; Federal Government; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 720.

Abstract: State educational agencies, and partnerships between authorized public chartering agencies and charter schools developers must submit an application to receive funds. Applications are analyzed to ensure that funds are distributed fairly and projects are cost effective.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–14369 Filed 5–29–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.033]

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the requirement that an institution shall use at least five percent of the total amount of its Federal Work-Study (FWS) Federal funds granted for the 1998–99 award year to compensate students employed in community service jobs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the statutory requirement that an institution shall use at least five percent of its total FWS Federal funds granted for the 1998–99 award year (July 1, 1998 through June 30, 1999) to compensate students employed in community service jobs.

DATES: *Closing Date for submitting a Waiver Request and any Supporting Information or Documents.* To request a waiver of the requirement that an institution use at least five percent of the total amount of its FWS Federal funds granted for the 1998–99 award year to compensate students employed in community service jobs, an institution must mail or hand-deliver its waiver request and any supporting information or documents to the Department on or before June 19, 1998. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Institutional Financial Management Division at one of the addresses indicated below.

ADDRESSES: *Waiver Request and any Supporting Information or Documents Delivered by Mail.* The waiver request and any supporting information or documents delivered by mail must be addressed to Ms. Sandra Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781 Washington, D.C. 20026–0781.

An applicant must show proof of mailing its waiver request by June 19, 1998. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail. Institutions that submit waiver requests and any supporting information or documents after the closing date will not be considered for a waiver.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. A waiver request and any supporting information or documents delivered by hand must be taken to Ms. Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

Hand-delivered waiver requests will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. A waiver request for the 1998–99 award year that is hand-delivered will not be accepted after 4:30 p.m. on June 19, 1998.

SUPPLEMENTARY INFORMATION: Under section 443(b)(2)(A) of the Higher Education Act of 1965, as amended (HEA), an institution must use at least five percent of the total amount of its FWS Federal funds granted for an award year to compensate students employed in community service, except that the Secretary may waive this requirement if the Secretary determines that enforcing it would cause hardship for students at the institution. The institution must submit a written waiver request and any supporting information or documents by the established June 19, 1998 closing date.

The waiver request must be signed by an appropriate institutional official and above the signature the official must include the statement: ''I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education.'' If the institution submits a waiver request and any supporting information or documents after June 19, 1998, the request will not be considered.

To receive a waiver, an institution must demonstrate that complying with the five percent requirement would cause hardship for students at the institution. To allow flexibility to consider factors that may be valid reasons for a waiver, the Secretary is not specifying the particular circumstances that would support granting a waiver. However, the Secretary does not foresee many instances in which a waiver will be granted. The fact that it may be difficult for the institution to comply with this provision of the HEA is not a basis for granting a waiver.

Applicable Regulations

The following regulations apply to the Federal Work-Study program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.

(3) Federal Work-Study Programs, 34 CFR Part 675.

(4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(5) New Restrictions on Lobbying, 34 CFR Part 82.

(6) Government Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(7) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: To receive information, contact Ms. Sandra Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781 Washington, D.C. 20026–0781. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(Authority: 42 U.S.C. 2753)

Dated: May 11, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–14427 Filed 5–29–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a Public Meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATES: Thursday, June 25, 1998 from 1:00 p.m. to 4:30 p.m.

ADDRESSES: Clark Room of the Holiday Inn Capitol, 550 C Street, SW, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8428 or (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC will consider and possibly take action on the following: selection of priorities for the next few years, a vision and mission statement, a set of operating policies and procedures, and a strategic plan that will guide the FICC work for the next three years, ways to resolve conflicts between Medicaid and private insurance in the provision of early intervention services, and implementation of changes in payment by Champus/Tricare for early intervention services. Reports from the FICC committees (Finance, Legislative, Integrated Services, Communication, Family Empowerment and Executive) will be heard and acted upon as necessary.

The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–8428 ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–14415 Filed 5–29–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Solicitation for Applications, Building a Sustainable Future Program Grants for Empowerment Zones and Enterprise Communities

AGENCY: Department of Energy, Denver Regional Support Office.

ACTION: Notice of solicitation DE–PS48–98R800658.

SUMMARY: The Department of Energy's (DOE's) Building a Sustainable Future grant program is designed to promote sustainable development projects in the 72 urban and 33 rural communities designated as Federal Empowerment Zones or Enterprise Communities (EZ/EC's). On December 21, 1994, the Clinton Administration announced the EZ/EC program to assist distressed communities. In applying for EZ/EC designation, communities had to address four key principles: (1) economic opportunity, (2) sustainable community development, (3) community-based partnerships, and (4) strategic vision for change. The Building a Sustainable Future grants have been set up to help EZ/EC's more effectively incorporate sustainable development into their activities.

DOE's Office of Energy Efficiency and Renewable Energy will consider proposals from interested EZ/EC's to help fund capacity building projects and sustainable community development activities. Funding can be used for activities that encourage the use of energy efficient technologies such as design charrettes, industrial ecology training, visioning exercises, energy efficient land-use planning techniques, and economic studies of the benefits of energy efficiency on jobs and the environment. This grant program will be administered by the Denver Regional Support Office and its Center of Excellence for Sustainable Development.

DATES: DOE expects to issue the solicitation on May 25, 1998.

ADDRESSES: To obtain a copy of the solicitation (DE–PS48–98R800658), eligible parties may (1) see the DOE Golden Field Office website http://www.eren.doe.gov/golden/solicitations.html, (2) write to the U.S. Department of Energy, Denver Regional Support Office, 1617 Cole Boulevard, MS 1721, Golden, CO 80401 or (3) fax a request to Ken Snyder at (303) 275–4830. Telephone requests for the solicitation will not be granted.

SUPPLEMENTARY INFORMATION: The project or activity must be conducted in one of the 105 currently designated Federal Empowerment Zones or Enterprise Communities. Any non-profit or non-federal public organization (501(c)(3) non-profit or State, City, County or Town office) can apply. Organizations/offices can sub-contract with non-profit or for-profit organizations for specific services. If the applicant does not represent the main authorized Empowerment Zone or Enterprise Community implementing office, a letter of support from that office is needed as part of the application process. Cost-sharing is not required. Applications will be considered for projects and/or activities up to $50,000 per project. Subject to the availability of funds, DOE anticipates that approximately $250,000 will be made available this fiscal year to provide between 7 to 10 small grants ($10,000 to $50,000 in size). Additional requirements will be described in the

solicitation. Applications must be received by 5:00 pm on Tuesday, June 30, 1998. Applications should be mailed to the Department of Energy; Denver Regional Support Office; 1617 Cole Boulevard—Building MS 1721; Golden, CO; 80401. Please submit 4 copies of your proposal, bound by staple without any special binders or covers. Project selections should be announced by August 1, 1998.

Issued in Golden, Colorado on May 22, 1998.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 98–14402 Filed 5–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–32–000]

Anadarko Petroleum Corporation; Notice of Complaint and Motion for Remand

May 26, 1998.

Take notice that, on May 4, 1998, Anadarko Petroleum Corporation (Anadarko) filed: (1) a complaint against PanEnergy Pipe Line Company (PanEnergy), Panhandle Eastern Pipe Line Company (Panhandle), PanEnergy Corporation (PanEnergy Corp), and Panhandle Eastern Corporation (Panhandle Corp) [collectively: Panhandle Parties], pursuant to an Order of the United States District Court for the Southern District of Texas (U.S. District Court) staying *Anadarko Petroleum Corp.* v. *PanEnergy Pipe Line Company,* Civil Action No. H–97–1705 (March 19, 1998), that referred the issues in that proceeding to the Commission for the exercise of its regulatory jurisdiction; and (2) a motion that the Commission either determine the issues or remand the issues back to the U.S. District Court for resolution. Anadarko's complaint and motion for remand is on file with the Commission and open to public inspection.

Anadarko explains that, at one time, Panhandle owned certain natural gas leases that included producing properties, that Panhandle created a producer affiliate who acquired certain leases from Panhandle and made sales from Kansas production to Panhandle, and that Panhandle's producer affiliate recovered Kansas ad valorem taxes from Panhandle. Anadarko further explains that it was created by Panhandle's producer affiliate, on or about August 1, 1985, as a new pipeline affiliated producer, that properties (including Kansas gas leases) were transferred to Anadarko, and that Anadarko was spun-off and became an independent producing company on October 1, 1986.

Anadarko contends that Panhandle and its producer affiliate were Anadarko's predecessors-in-interest and, as such, are liable for any Kansas ad valorem tax refunds, and interest, required by the Commission's September 10, 1997 order, in Docket No. RP97–369–000 *et al,*[1] on remand from the D.C. Circuit Court of Appeals.[2] That order required First Sellers to refund Kansas ad valorem tax reimbursements to the appropriate pipelines, with interest, for the period from 1983 to 1988. Anadarko contends that the Panhandle Parties agreed to indemnify Anadarko from any liability associated with the possible refund of Kansas ad valorem taxes, both before and after the transfer to Anadarko, as part of the consideration for the transfer price. Thus, Anadarko contends that all Kansas ad valorem tax refund liabilities arising from production after October 4, 1983, and associated with the working interests of Anadarko, should be paid by Panhandle or one of its affiliates, not by Anadarko. Anadarko further contends that (a) the Commission may either adjudicate Anadarko's complaint, or decide not to exercise its primary regulatory jurisdiction, and (b) if the Commission decides not to exercise its regulatory jurisdiction, it may (after making the necessary findings that Anadarko's allegations are cognizable in court, remand this matter back to the court, by final order.

Anadarko states that it filed its complaint in the above-referenced proceeding before the U.S. District Court, seeking (a) judgment (against the Panhandle Parties) that the Panhandle Parties assumed all of the obligations of Anadarko and the Panhandle Parties for refunds, plus interest, claimed on natural gas sold in Kansas, and (b) recovery of the refunds that Anadarko has already paid to Panhandle Parties as a result of the Commission's September 10 order, based on tax bills rendered after June 22, 1988. Anadarko states that the U.S. District Court, in its Order staying the Anadarko case, stated that it shall retain jurisdiction pending resolution of the issues by the FERC and the exhaustion of any appeals from the FERC's decision.

[1] See 80 FERC ¶ 61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC,* 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

Any person desiring to comment on or make any protest with respect to Anadarko's complaint should on or before June 25, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint should also be filed on or before June 25, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14353 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–001, Project No. 1835–013]

Central Nebraska Public Power and Irrigation District; Nebraska Public Power District; Notice of Settlement Offer

May 26, 1998.

On May 15, 1998, the Central Nebraska Public Power and Irrigation District, Nebraska Public Power District, U.S. Department of the Interior, State of Wyoming, State of Colorado, Sierra Club, Nebraska Wildlife Federation, American Rivers, National Audubon Society, and Platte River Whooping Crane Critical Habitat Maintenance Trust filed an offer of settlement for the Kingsley Dam Project (FERC No. 1417) and the North Platte/Keystone Diversion Project (FERC No. 1835) per Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

Comments on the proposed settlement may be filed with Commission no later than June 4, 1998, and replies no later than June 15, 1998. Copies of comments and replies by parties and intervenors must be served on all other parties and intervenors. Under Rule 602(f)(3), a failure to file comments constitutes a

waiver of all objections to the offer of settlement.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14349 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–44–000]

Garden Banks Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1998.

Take notice that on May 21, 1998, Garden Banks Gas Pipeline, L.L.C. (GBSP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Revised Title Sheet and Tariff Sheet Nos. 14, 24, 33, 216, 227, 238, 278, 288, 297 and 302 proposed to become effective June 20, 1998.

GBGP states that the purpose of this filing is to reflect an address and telephone change for the corporate office of GBGP.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14351 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–106–001]

K N Interstate Gas Transmission Co.; Notice of Filing of Revised Reconciliation Report

May 26, 1998.

Take notice that on May 20, 1998, K N Interstate Gas Transmission Co. (KNI), tendered for filing its revised reconciliation report in the above captioned docket with respect to Section 35 (Crediting of Imbalance Revenue) of its FERC Gas Tariff, Third Revised Volume No. 1–B.

KNI states that the reconciliation report presents the revised results of KNI's imbalance revenue crediting requirement and displays the proposed disposition of revised amounts to be refunded for the reporting period of October 1, 1996, through September 30, 1997, in accordance with the Commission's April 21, 1998 order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 2, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14347 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–013]

Koch Gateway Pipeline Company; Notice of Compliance Filing

May 26, 1998.

Take notice that on May 20, 1998, 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 May 1, 1998:

Twenty-third Revised Sheet No. 24
Second Revised Sheet No. 1500
Fourth Revised Sheet No. 1501

Koch states that this filing is in compliance with the Commission's May 5, 1998, Order on Request for Clarification, 83 FERC ¶ 61,135 (1998), issued in the above captioned docket.

Koch also states that it has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14348 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–538–000]

Midwestern Gas Transmission; Notice of Request Under Blanket Authorization

May 26, 1998.

Take notice that on May 12, 1998, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP98–538–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new sales tap to serve a new industrial customer, Grain Processing Corporation (GPC) in Daviess County, Indiana, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Midwesten proposes to: (1) Install an 8-inch hot tap on its 30-inch diameter in Knox County, Indiana; (2) install a 2.84-inch diameter lateral line that will extend from Knox County to a new grain processing plant in Daviess County, Indiana; and (3) install a meter station

on a site provided by GPC. Midwestern states that it will own, operate and maintain the hot tap, interconnecting pipeline, meter station and the electronic gas measurement equipment. The cost of this project is estimated at $2,760,000 for which Midwestern will be reimbursed by GPC.

Midwestern states that the addition of the proposed sales tap is not expected to have any significant impact on its peak day and annual deliveries. Midwestern continues that there is sufficient capacity to accomplish deliveries at the sales tap without detriment or disadvantage to Midwestern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14356 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–43–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1998.

Take notice that on May 21, 1998, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Revised Title Sheet and Tariff Sheet Nos. 117, 250, 261, 272, 284, 327, 339, and 346 proposed to become effective June 20, 1998.

Nautilus states that the purpose of this filing is to reflect an address and telephone change for the corporate office of Nautilus.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14352 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–224–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1998.

Take notice that on May 20, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1998:

Thirteenth Revised Sheet Number 156
Twelfth Revised Sheet Number 157

Northern Border proposed to decrease the Maximum Rate from 3.735 cents per 100 Dekatherm-Miles to 3.683 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 1.616 cents per 100 Dekatherm-Miles to 1.535 cents per 100 Dekatherm-Miles. This filing also includes one minor housekeeping change to reinsert tariff language in Section 3.2, Minimum Rate, which was inadvertently left out of a previous tariff revision. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

The herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14344 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–552–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

May 26, 1998.

Take notice that on May 14, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–552–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery point located in O'Brien County, Iowa to provide transportation service to AG Processing, Inc. (AGP) near Sheldon, Iowa, under Northern's blanket certificate issued in Docket No. CP82–401–000 [1] pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it is currently providing service to the MidAmerican Energy Company (MIDAM) for retail service to AGP at its Sheldon, Iowa plant. AGP has requested the new delivery point and transportation service. Upon approval of the requested authorization herein, Northern will be providing service directly to AGP under

[1] *See,* 20 FERC ¶ 62,410 (1982).

Northern's currently effective firm and interruptible throughput service agreements or by access to released capacity of other shippers.

Northern states that the proposed deliveries to AGP at the AGP #1 TBS are 1,800 MMBtu on a peak day and 525,600 MMBtu on an annual basis. These volumes represent no incremental change to Northern's current volumes. Northern estimates a cost of installing the delivery point of $162,000. AGP will construct and maintain a downstream line and appurtenant facilities.

Northern further states that MIDAM and the Iowa State Commission have been notified of this proposal and application.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14355 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–343–003]

Sea Robin Pipeline Company; Notice of Proposed Changes To FERC Gas Tariff

May 26, 1998.

Take notice that on May 19, 1998, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets pursuant to Section 4 of the Natural Gas Act and in compliance with the Commission's May 4, 1998 Order in Docket No. RP97–343–002 to become effective November 1, 1997:

Second Substitute Original Sheet No. 35a
Second Substitute Original Sheet No. 35b

On March 3, 1997, the Commission issued an order in, Docket No. RP97–224 requiring Sea Robin to file to implement a pooling service on its system. Sea Robin filed tariff sheets on April 29, 1997, setting forth the terms and conditions under which Sea Robin proposed to implement a pooling service on its system. The Commission's October 17, 1997, Order in Docket No. RP97–343 approved implementation of a pooling service on Sea Robin's system on or before July 1, 1998, and required Sea Robin to allow for pool to pool transfers.

By compliance filing dated November 17, 1997, Sea Robin filed tariff sheets establishing Tier I and Tier II pools on its system consistent with the Tier I and Tier II mechanism in Southern Natural Gas Company's Tariff to facilitate pool to pool transfers. By order dated May 4, 1998, the Commission accepted Sea Robin's tariff filing adding the Tier I and Tier II mechanism to facilitate pool to pool transfers, but required Sea Robin to clarify that any third party may be a pool operator. Sea Robin has made such clarifications to Section 5.10 of the General Terms and Conditions of its tariff in the tariff filing submitted herewith. Sea Robin has requested to place the tariff sheets into effect November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14346 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–223–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1998.

Take notice that on May 20, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets listed on Appendix A to the filing. For Sheet No. 24, Viking requests an effective date of April 1, 1997 consistent with the Commission's ''Order Accepting Tariff Sheets Subject to Conditions'' issued in Docket No. RP97–249–000 on March 26, 1997, 78 FERC ¶ 61,331 (''March 26, 1997 Order''). For all other tariff sheets listed on Appendix A, Viking requests an effective date of June 20, 1998.

Viking states that the purpose of this filing is to clean-up Viking's tariff by (1) removing Rate Schedule FT–GS; (2) correcting Viking's Rate Schedule IT, Sheet No. 24, to reflect properly the incorporation of negotiated rate language accepted by the Commission in its March 26, 1997 Order; and (3) making miscellaneous corrections.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14345 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–561–000]

Williams Gas Pipelines Central; Notice of Request Under Blanket Authorization

May 26, 1998.

Take notice that on May 19, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–561–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place by sale to Missouri Public Service, a division of Utilicorp United, Inc. (MPS), approximately 5.8 miles of the 12-inch Sedalia lateral pipeline located in Pettis County, Missouri, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Williams seeks authorization to abandon in place by sale to MPS approximately 5.8 miles of the Sedalia 12-inch lateral pipeline (Line XT) located in Pettis County, Missouri, including without limitation, all gas lines, meters, records and other equipment, personal property, and fixtures located thereon and/or used in conjunction with the operation of the pipeline. Williams states that the 12-inch Sedalia line was originally installed in 1931 and certificated in Docket No. G–298. Williams states that MPS will incorporate the 12-inch pipeline segment into its existing distribution system after it has received authorization from the Missouri Public Service Commission to own and operate the line.

Williams states that it filed in Docket No. CP96–762–000 for authorization to replace the MPS Sedalia town border setting and relocate it to the site of Williams' main line gate in Pettis County, Missouri. Williams states that the relocation of Sedalia town border setting from the end of the subject pipeline to Williams' main line makes it possible for it to sell this lateral pipeline.

Williams states that Missouri Gas Energy (MGE) currently serves eleven domestic customers through the Sedalia 12-inch pipeline and that Williams has one right-of-way obligation. Williams states that there has been no gas delivery to its customer in eleven months, but if, and when, gas delivery resumes, MPS will provide the service. Williams states that in addition to the Williams obligation, MPS will provide service to those domestic customers set out in the Assignment and Bill of Sale between Williams and MPS after abandonment approval is received. Williams states the sales price of the pipeline facilities to be $144,681.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14354 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–75–000, et al.]

American Ref-Fuel Company of Essex County, et al. Electric Rate and Corporate Regulation Filings

May 26, 1998.

Take notice that the following filings have been made with the Commission:

1. American Ref-Fuel Company of Essex County

[Docket No. EG98–75–000]

Take notice that on May 14, 1998, American Ref-Fuel Company of Essex County (ARC), a New Jersey general partnership, with its principal place of business at c/o American Ref-Fuel Company, 15990 Barker's Landing, Suite 200, Houston, Texas 77079, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ARC is engaged directly and exclusively in the business of owning or operating, or both owning and operating, a municipal solid waste-fired small power production facility with a maximum net power production capacity of approximately 69.6 MW which is an eligible facility and selling electric energy solely at wholesale. All of the facility's electric power net of the facility's operating electric power is and will be purchased at wholesale by Public Service Electric and Gas Company.

Comment date: June 12, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. American Ref-Fuel Company of Hempstead

[Docket No. EG98–76–000]

Take notice that on May 14, 1998, American Ref-Fuel Company of Hempstead (ARC), a New York general partnership, with its principal place of business at c/o American Ref-Fuel Company, 15990 Barker's Landing, Suite 200, Houston, Texas 77079, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ARC is engaged directly and exclusively in the business of owning or operating, or both owning and operating, a municipal solid waste-fired small power production facility with a maximum net power production capacity of approximately 72.6 MW which is an eligible facility and selling electric energy solely at wholesale. All of the facility's electric power net of the facility's operating electric power is and will be purchased at wholesale by Long Island Lighting Company.

Comment date: June 12, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. SEMASS Partnership

[Docket No. EG98–77–000]

Take notice that on May 14, 1998, SEMASS Partnership (SEMASS), a Massachusetts limited partnership, with its principal place of business at c/o American Ref-Fuel Company, 15990 Barker's Landing, Suite 200, Houston, Texas 77079, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

SEMASS is engaged directly and exclusively in the business of owning or

operating, or both owning and operating, a municipal solid waste-fired small power production facility with a maximum net power production capacity of 80 MW which is an eligible facility and selling electric energy solely at wholesale. All of the facility's electric power net of the facility's operating electric power is and will be purchased at wholesale by Commonwealth Electric Company.

Comment date: June 12, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Turlock Irrigation District v. Pacific Gas and Electric Co.

[Docket No. EL98–48–000]

Take notice that on May 14, 1998, Turlock Irrigation District tendered for filing against Pacific Gas and Electric Company a complaint and request for investigation and reduction of obligation service and contract firm service rates.

Comment date: June 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket Nos. ER95–457–005 and ER95–469–003]

Take notice that on May 5, 1998, Florida Power Corporation tendered for filing a refund report for calender year 1997 related to the recovery of Qualifying Facility Energy Payments from Florida Power Corporation's wholesale full and partial requirements customers in accordance with the Settlement Agreements approved in Docket Nos. ER95–465–000 and ER95–469–000.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER98–1900–000]

Take notice that on May 20, 1998, Commonwealth Edison Company (ComEd), submitted for filing a revised service agreement between ComEd and Commonwealth Edison Company in its wholesale merchant function (ComEd WMD).

ComEd continues to seek an effective date of March 1, 1998.

Copies of the amended filing were served on ComEd WMD and the Illinois Commerce Commission.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. LG&E Energy Marketing Inc.

[Docket No. ER98–1981–001]

Take notice that on May 20, 1998, LG&E Energy Marketing Inc. (LEM), submitted a filing in compliance with LG&E Energy Marketing Inc., 83 FERC ¶ 61,130 (1998). As directed by the Order, LEM submitted a revised Code of Conduct governing LEM's relationship with Louisville Gas and Electric Company and Kentucky Utilities Company.

Comment date: June 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Washington Water Power

[Docket No. ER98–2721–000]

Take notice that on May 21, 1998, Washington Water Power, tendered with the Federal Energy Regulatory Commission, pursuant to 18 CFR Section 35.13, an amended filing of unexecuted Certificates of Concurrence with California Independent System Operator and The California Power Exchange that were not included with the previous unexecuted Service Agreements filed under Docket No. ER98–2721–000.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER98–2727–000]

Take notice that on April 28, 1998, Arizona Public Service Company (APS), tendered for filing a transaction report for the first quarter of 1998 under APS's FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served on the Arizona Corporation Commission.

Comment date: June 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER98–2758–000]

Take notice that on May 20, 1998, Florida Power Corporation (FPC), tendered for filing an amendment to the revisions to the capacity charges, reservation fees and energy adders for various interchange services initially filed by FPC on April 30, 1998 in the above-captioned docket.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2809–000]

Take notice that on April 29, 1998, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2 for the quarter ending March 31, 1998.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Inc.

[Docket No. ER98–2845–000]

Take notice that on April 30, 1998, New Century Services Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of January 1, 1998 through March 31, 1998.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Old Dominion Electric Cooperative

[Docket No. ER97–4314–003]

Take notice that on May 1, 1998, Old Dominion Electric Cooperative tendered for filing its report of transactions for the first quarter ending March 31, 1998.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Detroit Edison Company

[Docket No. ER98–2868–000]

Take notice that on May 1, 1998, the Detroit Edison Company tendered for filing its report of transactions for the first quarter of 1998.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. State Line Energy, L.L.C.

[Docket No. ER98–2876–000]

Take notice that on April 30, 1998, State Line Energy, L.L.C., tendered for filing a summary of transaction activity for the quarter ended March 31, 1998.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources Inc.

[Docket No. ER98–2877–000]

Take notice that on May 1, 1998, Western Resources Inc., tendered for filing a summary of activity for the quarter ending March 31, 1998.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Atlantic City Electric Company

[Docket No. ER98–2941–000]

Take notice that on May 5, 1998, Atlantic City Electric Company (AE),

tendered for filing its 1st quarter 1998 Summary Report of all AE transactions made pursuant to the market-based rate power service tariff, made effective by the Commission on April 29, 1996 in Docket No. ER96–1361–000.

Comment date: June 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Carolina Power & Light Company

[Docket No. ER98–2942–000]

Take notice that on May 6, 1998, Carolina Power & Light Company tendered for filing its Summary of Transactions during the first quarter of 1998.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Light Company

[Docket No. ER98–3057–000]

Take notice that on May 20, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Entergy Power Marketing Corp. (EPMC).

CILCO requested an effective date of April 22, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Enron Power Marketing, Inc.

[Docket No. ER98–3058–000]

Take notice that on May 20, 1998, Enron Power Marketing, Inc. (EPMI), filed an amendment to its Long-Term Power Sale Agreement with the Western Area Power Administration (Western Agreement). On December 23, 1997, the Commission authorized the transfer of the Western Agreement from Portland General Electric Company to EPMI (81 FERC ¶ 61,374 (1997)). The proposed amendment would implement a rate decrease and modify certain non-rate terms and conditions of the Western Agreement.

EPMI requests that the amendment become effective on the last to occur of: (1) the first day of the month following the month in which the Western Area Power Administration's commitment for certain installment payments under the amendment has been satisfied or (2) January 1, 1999.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–3059–000]

Take notice that on May 20, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (each doing business and hereinafter collectively referred to as GPU Energy), filed amendments to the GPU Power Pooling Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The Dayton Power and Light Company

[Docket No. ER98–3060–000]

Take notice that on May 20, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing PP&L, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon PP&L, Inc., and the Public Utilities Commission of Ohio.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER98–3066–000]

Take notice that on May 20, 1998, Commonwealth Edison Company (ComEd), submitted for filing an unexecuted Service Agreement, establishing the City of Dowagiac, Michigan (Dowagiac) as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (the PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of March 1, 1998, and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Dowagiac and the Illinois Commerce Commission.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–3067–000]

Take notice that on May 20, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Northern/AES Energy, L.L.C.

NSP requests that the Commission accept both the agreements effective April 28, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: June 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Wisconsin Public Service Corporation

[Docket No. ER98–3068–000]

Take notice that on May 21, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Upper Peninsula Power Co., under its Market-Based Rate Tariff.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Public Service Corporation

[Docket No. ER98–3069–000]

Take notice that on May 21, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Cargill—Alliant, LLC under its Market-Based Rate Tariff.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Northern States Power Company and (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER98–3070–000]

Take notice that on May 21, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Granite Falls Municipal Light & Power.

NSP requests that the Commission accept both the agreements effective April 29, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–3071–000]

Take notice that on May 21, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Short-Term Firm Transmission Service Agreement between NSP and Blue Earth Light & Water Department.

NSP requests that the Commission accept the agreement effective April 21, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Orange and Rockland Utilities, Inc.

[Docket No. ER98–3072–000]

Take notice that on May 21, 1998, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and SCANA Energy Marketing, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of April 22, 1998, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. West Texas Utilities Company

[Docket No. ER98–3073–000]

Take notice that on May 21, 1998, West Texas Utilities Company (WTU), submitted for filing an executed Remote Control Area Load Agreement (the RCAL Agreement), dated December 19, 1997, between WTU, Texas Utilities Electric Company (TU) and Rayburn Country Electric Cooperative, Inc. (Rayburn), and Amendment Nos. 1 and 2 to the RCAL Agreement. The RCAL Agreement will permit WTU to provide control area services to Rayburn.

WTU seeks an effective date of May 22, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

WTU served copies of the filing on TU, Rayburn and the Public Utility Commission of Texas. A copy of the filing is also available for inspection at WTU's offices in Abilene, Texas.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Entergy Services, Inc.

[Docket No. ER98–3074–000]

Take notice that on May 21, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (Entergy Mississippi), tendered for filing an Interconnection and Operating Agreement between Entergy Mississippi and LSP Energy Limited Partnership.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Entergy Services, Inc.

[Docket No. ER98–3075–000]

Take notice that on May 21, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), submitted for filing the Fourth Amendment to the Power Agreement (PPA) between Entergy Arkansas, Inc., and the City of North Little Rock, Arkansas, dated May 1, 1998. Entergy Services states that the amendment establishes the in-service date for a new point of delivery under the PPA.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. West Texas Utilities Company

[Docket No. ER98–3076–000]

Take notice that on May 21, 1998, West Texas Utilities Company (WTU), submitted for filing Amendment No. 1 to the Denison Dam Pooling Agreement between Tex-La Electric Cooperative of Texas, Inc. and Rayburn Country Electric Cooperative, Inc. and West Texas Utilities Company. Under the Agreement, WTU dispatches, schedules, receives and backups power and energy from the Southwestern Power Administration's (SWPA's), Denison Dam for the account of Tex-La and Rayburn.

WTU seeks an effective date of May 22, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

WTU served copies of the filing on Tex-La, Rayburn, SWPA and the Public Utility Commission of Texas.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Northern Indiana Public Service Company

[Docket No. ER98–3077–000]

Take notice that on May 21, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to Point Transmission Service between Northern Indiana Public Service Company and Merchant Energy Group of the Americas, Inc., (MEGA).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to MEGA pursuant to the Open-Access Transmission Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to MEGA pursuant to the Wholesale Sales Tariff filed by Northern Indiana Public Service Company in Docket No. ER98–1222–000 as amended by the Commission's Order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of May 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Northern Indiana Public Service Company

[Docket No. ER98–3078–000]

Take notice that on May 21, 1998, Northern Indiana Public Service Company (Northern Indiana), filed a Service Agreement pursuant to its Power Sales Tariff with Avista Energy, Inc., (Avista). Northern Indiana has requested an effective date of May 30, 1998.

Copies of this filing have been sent to Avista, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Virginia Electric and Power Company

[Docket No. ER98–3079–000]

Take notice that on May 21, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Merchant Energy Group of the Americas, Inc. (MEGA), under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Merchant Energy Group of the Americas, Inc. (MEGA), the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Virginia Electric and Power Company

[Docket No. ER98–3080–000]

Take notice that on May 21, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Avista Energy, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Avista Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Central Illinois Light Company

[Docket No. ER98–3081–000]

Take notice that on May 21, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Amoco Energy Trading Corporation and AYP Energy, Inc., and name change and substitution filings for FirstEnergy Corp., FirstEnergy Trading and Power Marketing, Inc., and Southern Company Energy Marketing L.P.

CILCO requested an effective date of April 24, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. PJM Interconnection, L.L.C.

[Docket No. ER98–3082–000]

Take notice that on May 21, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an Amendment to the Service Agreement for Network Integration Transmission Service for Pennsylvania Retail Electric Competition Pilot, entered into, by and between the Office of the Interconnection of PJM and Pennsylvania Electric Company (Penelec), so as to include service to Allegheny Electric Cooperative, Inc. (Allegheny), with respect to the retail pilot programs of two of Allegheny's member cooperatives.

Copies of this filing were served upon Pennsylvania Electric Company, Allegheny Electric Cooperative, Inc., and the Pennsylvania Public Utility Commission.

PJM requests an effective date of May 8, 1998, for the amendment to the service agreement.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Wisconsin Electric Power Company

[Docket No. ER98–3083–000]

Take notice that on May 21, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date May 22, 1998. Wisconsin Electric is authorized to state that Merchant Energy Group of the Americas, Inc., joins in the requested effective date.

Copies of the filing have been served on Merchant Energy Group of the Americas, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Tennessee Power Company

[Docket No. TX97–5–000]

Take notice that on April 29, 1998, Tennessee Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: June 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14383 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

May 26, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: Amendment of License.

b. Project No: 67–082.

c. Date Filed: May 4, 1998.

d. Applicant: Southern California Edison Company.

e. Name of Project: Big Creek Nos. 2A, 8 and Eastwood Station Project.

f. Location: San Joaquin River, Eastern Fresno County, California. The project occupies in part, lands of the Sierra National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., Section 791(a)–825(r).

h. Applicant Contact: Mr. Bryant C. Danner, Executive Vice President and General Counsel, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–4459.

i. FERC Contact: Anum Purchiaroni, (202) 219–3297.

j. Comment Date: June 17, 1998.

Description of Project: Southern California Edison Company (SCE), licensee for the Big Creek Nos. 2A, 8

and Eastwood Station Project, filed an application to amend its license. SCE proposes to replace the existing deteriorating water conduit pipeline on Chinquapin and Camp 62 creeks with a system where both creeks enter Ward Tunnel directly via shafts bored from diversions on each creek. The SCE proposes to construct a new diversion on Chinquapin Creek, decommission the old diversion, and construct two access roads to facilitate the drilling of bore holes and removal of the abandoned facilities. SCE proposes to increase the project boundary by one acre to accommodate the new project works.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTEVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–14350 Filed 5–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of January 19 Through January 23, 1998

During the Week of January 19 through January 23, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: May 20, 1998.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS DEPARTMENT OF ENERGY

[Week of January 19 through January 23, 1998]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 20, 1998	Community Cooperative Oil Co., Marcus, Iowa.	VEE–0050	Exception to the Reporting Requirements. If granted: Community Cooperative Oil Co. would not be required to file Form EIA–782B Reseller's/Retailer's Monthly Petroleum Product Sales Report.
Do	FOIA Group, Inc., Alexandria, Virginia.	VFA–0369	Appeal of an Information Request Denial. If granted: The November 10, 1997 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and FOIA Group, Inc. would receive access to certain DOE information.
Jan. 23, 1998	Janice C. Curry, Gaithersburg, Maryland.	VFA–0370	Appeal of an Information Request Denial. If granted: The January 16, 1998 Freedom of Information Request Denial issued by the Office of Environmental Management would be rescinded, and Janice C. Curry would receive access to certain DOE information.
Do	Personnel Security Hearing.	VSO–0192	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR part 710.

[FR Doc. 98–14411 Filed 5–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of January 26 Through January 30, 1998

During the Week of January 26 through January 30, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: May 20, 1998.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS DEPARTMENT OF ENERGY

[Week of January 26 Through January 30, 1998]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 26, 1998	Ruth Towle Murphy, Knoxville, TN.	VFA–0371	Appeal of an Information Request Denial. If Granted: The January 9, 1998 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Ruth Towle Murphy would receive access to certain DOE information.
Jan. 28, 1998	Advance Publications, Inc., New York, New York.	RR272–00305	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: The December 12, 1997 Decision and Order, Case No. RF272–15364, issued to Advance Publications, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding
Jan. 28, 1998	Sandra M. Hart, Idaho Falls, Idaho.	VFA–0372	Appeal of an Information Request Denial. If Granted: The January 13, 1998 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and Sandra M. Hart would receive access to certain DOE information.

[FR Doc. 98–14413 Filed 5–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of March 2 Through March 6, 1998

During the Week of March 2 through March 6, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: May 20, 1998.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS DEPARTMENT OF ENERGY

[Week of March 2 through March 6, 1998]

Date	Name and location of applicant	Case No.	Type of Submission
Mar. 4, 1998	Personnel Security Hearing.	VSO–0196	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
Do	William H. Payne, Albuquerque, New Mexico.	VFA–0391	Appeal of an Information Request Denial. If granted: The January 23, 1998 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and William H. Payne would receive access to certain DOE information.
Mar. 5, 1998	Dr. Nicolas Dominguez, Oak Ridge, Tennessee.	VFA–0386	Appeal of an Information Request Denial. If granted: The February 23, 1998 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Dr. Nicolas Dominguez would receive access to certain DOE information.
Do	Dr. Nicolas Dominguez, Oak Ridge, Tennessee.	VFA–0387	Appeal of an Information Request Denial. If granted: The February 19, 1998 Freedom of Information request Denial issued by the Oak Ridge Operations Office would be rescinded, and Dr. Nicolas Dominguez would receive access to certain DOE information.
Do	Dr. Nicolas Dominguez, Oak Ridge, Tennessee.	VFA–0388	Appeal of an Information Request Denial. If granted: The February 19, 1998 Freedom of Information request Denial issued by the Oak Ridge Operations Office would be rescinded, and Dr. Nicolas Dominguez would receive access to certain DOE information.
Do	Dr. Nicolas Dominguez, Oak Ridge, Tennessee.	VFA–0389	Appeal of an Information Request Denial. If granted: The February 19, 1998 Freedom of Information request Denial issued by the Oak Ridge Operations Office would be rescinded, and Dr. Nicolas Dominguez would receive access to certain DOE information.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS DEPARTMENT OF ENERGY—Continued

[Week of March 2 through March 6, 1998]

Date	Name and location of applicant	Case No.	Type of Submission
Do	Michael D. Ares, Santa Fe, New Mexico.	VWA–0022	Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 CFR Part 708 would be held on the complaint of Michael D. Ares that reprisals were taken against him by management officials of Los Alamos National Laboratories/University of California as a consequence of his having disclosed safety/health concerns.

[FR Doc. 98–14414 Filed 5–29–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of April 20 Through April 24, 1998

During the week of April 20 through April 24, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: May 20, 1998.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 82

Week of April 20 through April 24, 1998

Refund Application

American National Can Company, 04/24/98 RK272–04803

The DOE granted a supplemental crude oil refund to the American National Can Company based on its rejection of a competing claim in *Primerica Corp.*, 26 DOE ¶ 85,050 (1997), *reconsideration denied*, 27 DOE ¶ 85,001 (1998).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

City of River Rouge, et al	RF272–96438	4/24/98
Enron Corporation/Anchor Gas & Fuel	RF340–54	4/24/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Greenpeace	VFA–0308
Greenpeace Int. Nuclear Campaign	VFA–0399
Paso Del Norte Oil Company	RF340–00126

[FR Doc. 98–14412 Filed 5–29–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6104–6]

Proposed CERCLA Prospective Purchaser Agreement for the Jomarc Property

AGENCY: Environmental Protection Agency.

ACTION: Proposal of CERCLA Prospective Purchaser Agreement for the Jomar Property of the Kysor Industrial Corporation superfund site and the Northernaire Plating Company superfund site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorizations Act of 1986 (SARA), Pub. L. 99–499, notification is hereby given that a proposed prospective purhchaser agreement (PPA) for the Jomarc Property which is within the boundaries of the Kysor Industrial Corporation Superfund Site and the Northernaire Plating Company Superfund Site located in Cadillac, Michigan, has been executed by R. Walker Construction Co. The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. Sections 9606, and 9607, against R. Walker Construction Co. The proposed PPA would require R. Walker Construction Co. to remove an underground storage tank and to remediate two areas of soil contamination with the oversight of the Michigan Department of Environmental Quality. The Jomarc Property is not on the National Priorities List (NPL), but is within the boundaries of the Kysor

Industrial Corporation Superfund Site and the Northernaire Plating Company Superfund Site both of which are listed on the NPL. The construction of the Remedial Action is complete at those Sites and no further response actions are contemplated at this time.

DATES: Comments on the proposed PPA must be received by EPA within June 22, 1998.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Cynthia A. King at (312) 886–6831, prior to visiting the Region 5 office.

Comments on the proposed PPA should be addressed to Cynthia A. King, Office of Regional Counsel, U.S. EPA Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION, CONTACT: Cynthia A. King at (312) 8886–6831, of the U.S. EPA Region 5, Office of Regional Counsel.

A 20-day period, commencing on the date of publication of this notice, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this document.

William E. Muno,

Director, Superfund Division.

[FR Doc. 98–14434 Filed 5–29–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6103–8]

Parramore Fertilizer Site/Tifton, Georgia; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Parramore Fertilizer Site (Site) located in Tifton, Georgia, with Atlantic Steel Industries, Inc., AmeriSteel Corporation, Georgetown Steel Corporation, SMI Steel-South Carolina, and U.S. Foundry & Manufacturing Corporation. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paual V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 19, 1998.

Richard D. Green,

Director, Waste Management Division.

[FR Doc. 98–14431 Filed 5–29–98; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1993, to advise Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Tuesday, June 16, 1998, at 9:30 am. The meeting will be held at the Export-Import Bank in room 1143, 811 Vermont Avenue, NW, Washington, D.C. 20571.

AGENDA: The meeting will include a discussion of Ex-Im Bank's annual Competitiveness Report to Congress. In addition there will be discussions regarding information collected from exporters of the net impact of Ex-Im Bank's foreign content policy on the U.S. economy and specifically on U.S. jobs; Medium term delegated authority based on interviews with banks to determine whether the banking community has the capacity to or interest in taking additional risk; and Project Finance: bringing private sector expertise to bear on how Ex-Im Bank can resolve the administrative issues associated with comprehensive pre-completion cover.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodation, please contact, prior to June 9, 1998, Megan Becher, Room 1284, Vermont Avenue, NW, Washington, DC 20571, (202) 565–3507. Voice: (202) 565–3955 or TDD (202) 565–3377.

FOR FURTHER INFORMATION: For further information, contact Megan Becher, Room 1284, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3507.

Kenneth Hansen,

General Counsel.

[FR Doc. 98–14521 Filed 5–29–98; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 95–155]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Notice; letter.

SUMMARY: The Common Carrier Bureau has issued a letter to Database Service Management, Inc., extending the time for subscribers holding toll free 800 numbers to exercise their right of first refusal to request corresponding toll free 888 numbers that were set aside for them. The letter also extends the time for RespOrgs to report subscriber requests to DSMI and for DSMI to process and verify RespOrg reports as they come in, and it directs DSMI to take several other actions to ensure: That all subscriber requests to retain their set-aside numbers are promptly assigned and activated as ''working''; that no subscriber requests get rejected for being submitted late; and that all set-aside numbers for which subscribers did not respond in writing are placed in ''unavailable'' status rather than ''spare'' status, while the Commission audits them to ensure that subscribers received adequate notice from the RespOrgs.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer 202–418–2334.

SUPPLEMENTARY INFORMATION: We are attaching this letter to this document for the readers' convenience.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division.

May 15, 1998.

Mr. Michael Wade,

President, Database Service Management, Inc., 6 Corporate Place, Room PYA–1F286, Piscataway, NJ 08854–4157.

Re: Processing of set-aside 888 numbers for subscribers holding corresponding 800 numbers

Dear Mr. Wade: The Bureau's letter to you dated April 2, 1998, established a 90-day schedule to transfer to RespOrg control or to

release into ''spare'' status 888 vanity numbers that were set aside for subscribers holding corresponding 800 numbers. Your letter dated April 10, 1998, indicates that the 90-day schedule does not allow sufficient time for DSMI to process and verify RespOrg reports of subscriber requests for these numbers. The Bureau in this letter now extends the time for subscribers to request numbers that were set aside for them, for RespOrgs to report subscriber requests to DSMI, and for DSMI to process and verify RespOrg reports as they come in. It also directs DSMI to take several other actions, which are intended to ensure: (1) That all subscriber requests to retain their set-aside numbers are promptly assigned and activated as ''working''; (2) that no subscriber requests get rejected for being submitted late; and (3) that all set-aside numbers for which subscribers did not respond in writing are placed in ''unavailable'' status rather than ''spare'' status, while the Commission audits them to ensure that subscribers received adequate notice from the RespOrgs.

Under the current 90-day schedule, RespOrgs were required in the first 20 days, which ended April 25, 1998, to notify their subscribers that they may choose to reserve their set-aside numbers. In the next 30 days, subscribers must submit written requests to the RespOrgs in order to retain their numbers, and they are permitted to submit written requests to release the numbers as ''spare.'' In the following 30 days, RespOrgs must report the subscribers'' requests to DSMI, with documentation of each subscriber's request or certification that the subscriber did not respond. In the last 10 days, DSMI must complete processing the requests.

The Bureau is concerned that erroneously releasing a number into ''spare'' status contrary to a subscriber's intent would not be a correctable error if the number then becomes ''reserved,'' ''assigned,'' or activated as ''working'' for the account of another subscriber. (Erroneously assigning and activating a subscriber's set-aside number as ''working'' would presumably be correctable, by placing it in the proper status and ensuring that the subscriber is not charged for it.) It is therefore imperative to verify, for each number that a RespOrg certifies the subscriber did not respond, that the subscriber received adequate notice of right of first refusal from the RespOrg before releasing the number into ''spare'' status.

Other potential problems, in addition to inadequate notice, could also necessitate additional time for processing or for correction and re-processing. Among these may be, for example, failure by subscribers to mail their requests to RespOrgs or to mail them by May 24, 1998, or mishandling of written subscriber requests by RespOrgs or their agents, or failure or inability of RespOrgs or their agents to report subscriber requests correctly to DSMI. Compounding or contributing to these possibilities, other events might transpire during or after the 90-day period—for example, a subscriber might change RespOrgs, an 800 number might be disconnected or suspended, or an 888 number that is returned to RespOrg control for activation as ''working'' might instead be placed in ''reserved'' status (and 45 days later automatically moved to ''spare'' status if the subscriber fails to submit a further request to activate).

In light of these concerns, the Bureau modifies the process for handling the 888 numbers that were set aside for subscribers holding corresponding 800 numbers, as follows.

1. *Written subscriber requests received from RespOrgs by August 21, 1998—Processed by DSMI by September 10, 1998—Activated by September 30, 1998.* The Bureau directs DSMI to instruct the RespOrgs that additional time is allotted, until August 21, 1998, for RespOrgs to complete notifying subscribers of their right of first refusal, for subscribers to respond to the RespOrgs' notification in writing, and for RespOrgs to report all results to DSMI (with documentation of written subscriber requests and certification of all other results). The Bureau also directs DSMI to instruct the RespOrgs that they may set target dates for subscriber responses, consistent with this time schedule. The Bureau further directs DSMI that, for all 888 number requests that are reported to DSMI and received from RespOrgs by August 21, 1998, and that are documented by written subscriber requests (rather than by RespOrg certification of other results), DSMI will have an additional 20 days for processing those written subscriber requests, until September 10, 1998. In that time, DSMI must complete all processing, place into ''spare'' status all numbers to be released, place into ''assigned'' status all numbers that subscribers wish to retain, transfer to the RespOrgs control of numbers that are to be activated as ''working,'' and instruct the RespOrgs to complete activation of those numbers as ''working'' within 20 days thereafter, no later than September 30, 1998.

2. *Late-filed written requests—Acceptance—Requests to reserve.* The Bureau directs DSMI to instruct the RespOrgs that they may not reject written requests from subscribers received after August 21, 1998, and that they must submit to DSMI, on an ongoing basis, all written requests with accompanying documentation as they come in from subscribers no later than 30 days after receiving them. The Bureau instructs DSMI to process all such requests within 20 days of receiving them, and, upon completion of processing, place into ''spare'' status all numbers requested to be released, place into ''assigned'' status all numbers that subscribers wish to retain, transfer to the RespOrgs control of numbers that are to be activated as ''working,'' and instruct the RespOrgs to complete activation of those numbers as ''working'' within 20 days thereafter. The Bureau permits DSMI to request more than 20 days to process late-filed requests, if DSMI's request is due to a reduction in DSMI's work force needed to comply with this letter.

3. *''No response'' numbers—''Unavailable'' status—Commission audit.* The Bureau directs DSMI to retain in ''unavailable'' status those set-aside 888 numbers for which subscribers did not respond, and not to release those numbers into the general pool as ''spare'' unless and until the Commission informs DSMI otherwise. The Bureau also directs DSMI to instruct the RespOrgs that, for DSMI to verify documentation, each certification of no subscriber response that a RespOrg submits to DSMI must include subscriber contact information, containing at least the name, address, and phone number of the subscriber and the date and means by which the RespOrg notified the subscriber of the right of first refusal. The Bureau further directs DSMI to inform the RespOrgs that, after September 10, 1998, the Commission will audit those numbers and the documentation with which the RespOrgs certify that subscribers did not respond in writing, to ensure that the subscribers received adequate notice from the RespOrgs of their right of first refusal.

Following completion of the process directed in this letter, the time for subscribers to exercise their rights of first refusal will come to an end when the Bureau directs DSMI to release the remaining ''unavailable'' set-aside 888 numbers into ''spare'' status.

Sincerely,

Geraldine A. Matise,

Chief, Network Services Division.

[FR Doc. 98–14378 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2279]

Petitions For Reconsideration and Clarification of Action in Rulemaking Proceeding

May 22, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed June 16, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Banks, Redmond, Sunriver and Corvallis, Oregon) (MM Docket No. 96–7, RM–8732, RM–8845).

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, The Dallas and Corvallis, Oregon) (MM Docket No. 96–12, RM–8741).

Madgekal Broadcasting, Inc. Station KFLY(FM), Corvallis, Oregon.

For Construction Permit to Modify Licensed Facilities (One-Step Upgrade).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14375 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–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 June 17, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Compass Bancshares, Inc., Birmingham, Alabama; Compass Banks of Texas, Inc., Birmingham, Alabama; and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Hill Country Bank, Austin, Texas.

Board of Governors of the Federal Reserve System, May 27, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14441 Filed 5–29–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 961–0005]

Institutional Pharmacy Network, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 31, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

William Baer or Willard Tom, FTC/H–374, Washington, DC 20580. (202) 326–2032 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 21, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Institutional Pharmacy Network (IPN) and its five members: Evergreen Pharmaceutical, Inc.; NCS Healthcare of Oregon, Inc.; NCS Healthcare of Washington, Inc.; United Professional Companies, Inc.; and White, Mack and Wart, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any proposed respondent that the law has been violated as alleged in the complaint.

Description of the Draft Complaint

A complaint that the Commission prepared for issuance along with the proposed order alleges the following:

Evergreen Pharmaceutical, Inc.; NCS Healthcare of Oregon, Inc.; NCS Healthcare of Washington, Inc.; United Professional Companies, Inc.; and White, Mack and Wart, Inc., are institutional pharmacies that compete to serve institutional care facilities, such as nursing homes. Institutional pharmacies provide specialized services, including providing medications in single dose packages, maintaining an ''emergency box'' at the client facility with drugs for use in emergency situations, and providing consulting and quality assurance services to institutional care facilities. The institutional pharmacy/respondents together provide pharmacy services for approximately 80 percent of the patients that receive institutional pharmacy services in Oregon.

The State of Oregon created the Oregon Health Plan (''OHP'') in 1994 to provide health care to Medicaid recipients and other needy Oregonians. Under OHP, the state contracts with Fully Capitated Health Plans (''Plans''), which are managed care organizations that receive a fixed payment to care for

OHP patients. The Plans in turn contract with providers, including nursing homes, hospitals, physicians, retail pharmacies, and institutional pharmacies. OHP covers about half of all institutional care patients in Oregon.

The institutional pharmacy respondents formed IPN to offer their services jointly. Their purpose to negotiate collectively has been to maximize their resulting leverage in bargaining over reimbursement rates with the Plans. Indeed, even before forming IPN, they saw ''an advantage to negotiate from strength for reimbursement'' because they recognized that competition among themselves would drive down reimbursement rates. IPN neither provides new or efficient services, nor enables its members to provide new or efficient services. Moreover, IPN members do not share risk.

IPN has contracted with three Plans. Pursuant to each of those contracts, each Plan pays IPN members a higher rate than it pays institutional pharmacies that are not IPN members and that did not negotiate collectively with that Plan. IPN also attempted to contract with at least four other Plans. Clinical, Evergreen, IPAC, ProPac, and UPC agreed that, before conducting individual negotiations, each member would give IPN time to attempt to negotiate a contract. Pursuant to this agreement, the pharmacies negotiated separately with three of the Plans only after IPN failed to reach an agreement on behalf of the group. IPN also negotiated with a fourth Plan that is by far the largest purchaser of institutional pharmacy services for OHP patients. Although this Plan sought to deal with the pharmacies individually, they largely refused to respond and instead approached the Plan as a group. After months of attempting to negotiate individually with the institutional pharmacy members of IPN, and under pressure to implement pharmacy arrangements for institutional care patients under OHP, the Plan began negotiating with IPN. As a result of these negotiations, the Plan agreed to pay higher rates to IPN members than it had agreed to pay other institutional pharmacies.

The institutional pharmacy members of IPN have agreed among themselves, and used IPN, to engage in collective negotiations over price and other terms with the Plans and thereby to fix the fees they charge the Plans. In so doing, IPN and its institutional pharmacy members have fixed, stabilized, or increased the price of institutional pharmacy services and otherwise restrained competition among institutional pharmacies in Oregon and thereby deprived the State of Oregon, the Plans, nursing homes and other long-term care facilities, and OHP beneficiaries of the benefits of competition among providers of institutional pharmacy services in Oregon.

Description of the Proposed Consent Order

The proposed order would prohibit IPN and the institutional pharmacy respondents from entering into, maintaining, or enforcing any agreement with any pharmacy concerning fees or fixing, raising, stabilizing, maintaining, or tampering with any fees. The proposed order contains a number of provisos.

Proviso (1) allows each respondent to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any ''qualified risk-sharing joint arrangement,'' or (b) upon prior notice to the Commission, any ''qualified clinically integrated joint arrangement.'' The proviso addresses the arrangements that the respondents may enter into, rather than the overall nature of the group, because a pharmacy network may enter into legitimate arrangements with some third-party payers but engage in illegal conduct with respect to others. For the purposes of the order, a ''qualified risk-sharing joint arrangement'' must satisfy two conditions: (a) participating pharmacies must share substantial financial risk and (b) the arrangement must be non-exclusive. The order lists ways in which pharmacies might share financial risk. These track the four types of financial risk sharing set forth in the Joint FTC-Department of Justice Statements of Antitrust Enforcement Policy in Health Care. 4 Trade Reg. Rep. (CCH) ¶ 13,153 (August 29, 1996). To be a ''qualified'' risk sharing arrangement, the arrangement must also be non-exclusive, both in name and in fact. An arrangement that either restricts the ability of participating pharmacies to contract outside the arrangement (individually or through other networks) with third-party payers, or facilitates refusals to deal outside the arrangement by participating pharmacies, does not fall within the proviso. Although exclusive joint arrangements are not necessarily anticompetitive, they can impair competition, particularly when they include a large portion of the pharmacies in a market. In light of the IPN members' large share of the Oregon institutional pharmacy market, this definition does not permit the respondents to form or participate in exclusive arrangements.

A *qualified clinically integrated joint arrangement* includes arrangements in which the pharmacies undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating pharmacies have a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of pharmacy services provided through the arrangement. As with risk-sharing arrangements, the definition of clinically integrated arrangements reflects the analysis in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care and the arrangement must be non-exclusive. Because the definition of a clinically integrated arrangement is by necessity less precise than that of a risk sharing arrangement, the order imposes prior notification requirements. Such prior notification will allow the Commission to evaluate the likely competitive impact of a specific proposed arrangement and thereby help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

The remaining provisos allow business arrangements typical to pharmacy markets. Proviso (2)(a) allows the proposed respondents to contract with pharmacy benefit managers that own or are affiliated with retail pharmacies. Provisos (2)(b) and (3) together permit price agreements between a pharmacy and a nursing home even if the nursing home is affiliated with a pharmacy. Provisio (2)(c) permits a pharmacy to enter into subcontracting agreements where it is not reasonable for a pharmacy with an agreement with a nursing home or third-party payer to provide services by itself. Such agreements are common among both retail and institutional pharmacies. Proviso (2)(c) also allows for such subcontracts where the respondent that operates a long-term care network (as UPC does) enters into an agreement with the incumbent pharmacy provider for an institutional facility within that network. Finally, Proviso (4) permits pharmacy agreements to operate or manage a pharmacy.

Parts III.A and III.B of the proposed order require the respondents to distribute the order to the Fully Capitated Health Plans and to certain officers, directors, and managers. Parts III.C, III.D, and III.E require each

respondent to file compliance reports, retain certain documents, and notify the Commission of certain changes in its corporate structure.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–14420 Filed 5–29–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meetings.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Health Data Needs, Standards, and Security.

Times and Dates: 10:00 a.m.-5:00 p.m., June 15, 1997.

Place: Room 505A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified transactions to enable health information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses, and health care providers who choose to conduct these transactions electronically must comply with these standards. The law also requires the Secretary to adopt a number of supporting standards including standards for code sets and classifications systems. The Secretary is required to rely upon the recommendations of the National Committee on Vital and Health Statistics (NCVHS) in complying with these provisions. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

On June 15, 1998, the NCVHS Subcommittee on Health Data Needs, Standards, and Security will hold a meeting to review the progress of its work and plan future activities. The Subcommittee will discuss plans for addressing 1) the HIPAA requirements relating to electronic data interchange standards for claims attachments and 2) NCVHS recommendations for standards for clinical data and its electronic interchange. The Subcommittee also will consider possible comments on the published Notices of Proposed Rulemaking relating to the adoption of EDI standards for health care administrative transactions. In addition, the Subcommittee will discuss approaches to the development of a framework for procedure classification systems, as well as plans for public hearings on unique individual identifiers for use in the health system. All topics and times are tentative and subject to change. Please check the NCVHS website, where a detailed agenda will be posted prior to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs/gov/ncvhs). You may also call James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance into the Hubert H. Humphrey Building by non-government employees. Thus, individuals without government identification cards may need to have the guard call for an escort to the meeting room.

Dated: May 26, 1998.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 98–14291 Filed 5–29–98; 8:56 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0373]

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 July 1, 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.

Request for Information From U.S. Processors that Export to the European Community (OMB Control Number 0910–0320—Reinstatement)

European Community (EC) is a group of 15 European countries that have agreed to harmonize their commodity requirements to facilitate commerce among member States. EC legislation for intra-EC trade has been extended to trade with non-EC countries, including the United States. For certain food products, including those listed below, EC legislation requires assurances from the responsible authority of the country of origin that the processor of the food is in compliance with applicable regulatory requirements.

With the assistance of trade associations and State authorities, FDA requests information from processors that export certain animal-derived products (e.g., shell eggs, dairy products, game meat, game meat products, and animal casings) to EC. FDA uses the information to maintain lists of processors that have demonstrated current compliance with U.S. requirements and provides the lists to EC quarterly. Inclusion on the list is voluntary. EC member countries refer to the lists at ports of entry to verify that products offered for importation to EC from the United States are from processors that meet U.S. regulatory requirements. Products processed by firms not on the list are subject to detention and possible refusal at the port. FDA requests the following information from each processor:

(1) Business name and address;

(2) Name and telephone number of person designated as business contact;

(3) Lists of products presently being shipped to EC and those intended to be shipped in the next 6 months;

(4) Name and address of manufacturing plants for each product;

(5) Names and affiliations of any Federal, State, or local governmental agencies that inspect the plant, government-assigned plant identifier, such as plant number, and last date of inspection; and

(6) Assurance that the firm or individual representing the firm and

submitting a certificate for signature to FDA is aware of and knows that they are subject to the provisions of section 1001 of Title 18, U.S. Code. This law provides that it is a criminal offense to knowingly and willfully make a false statement or alter or counterfeit documents in a matter within the jurisdiction of a U.S. agency.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Products	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Shell Eggs	20	1	20	0.25	5
Dairy	100	1	100	0.25	25
Game Meat and Meat Products	20	1	20	0.25	5
Animal Casings	15	1	15	0.25	3.75
Total					38.75

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

The estimated number of respondents is based on volume of exports and responses received to date. The estimated number of yearly responses has been decreased from the estimate in FDA's previous notice seeking comment on this collection of information (61 FR 66671, December 18, 1996) because the actual number of responses received has been decreasing. Companies do not need to reapply unless they have a compliance problem. An estimate for processors that export animal casings has also been added because these processors are now being included in the listing process. Finally, the operating and maintenance cost estimate included in the previous notice has been removed because, according to OMB's draft guidance on interpretation of the PRA, the costs listed were not operating and maintenance costs. The costs are now listed in FDA's supporting statement in the ''Other Non-Labor Costs'' category. A copy of the supporting statement may be obtained from the contact person listed above.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN (THIRD PARTY DISCLOSURE)[1]

Respondents	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Trade Association	14	1	14	8	112
State	50	1	50	8	400
Total					512

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

The burden estimated for the trade associations assumes the trade associations will disseminate FDA's information request through mass mailings to their membership or publish it in their trade magazine or newsletter. The burden estimated for State authorities assumes dissemination of information to the processors or dissemination of information about the processors to FDA.

Dated: May 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14297 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0317]

Draft ''Guidance for Industry: Electronic Submissions of Case Report Forms (CRF's), Case Report Tabulations (CRT's) and Data to the Center for Biologics Evaluation and Research;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Electronic Submissions of Case Report Forms (CRF's), Case Report Tabulations (CRT's) and Data to the Center for Biologics Evaluation and Research.'' This draft guidance document, when finalized, is intended to provide guidance to industry regarding the submission of electronic CRF's and CRT's as part of license applications to the Center for Biologics Evaluation and Research (CBER). This draft guidance document is part of CBER's effort to provide an efficient process for electronic submissions of regulatory information relating to the development and marketing of biological products. Submissions in electronic format are voluntary.

DATES: Written comments may be submitted at any time, however comments should be submitted by July 31, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Guidance for Industry: Electronic Submissions of Case Report Forms (CRF's), Case Report Tabulations (CRT's) and Data to the Center for Biologics Evaluation and Research'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike,

Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Electronic Submissions of Case Report Forms (CRF's), Case Report Tabulations (CRT's) and Data to the Center for Biologics Evaluation and Research.'' The draft guidance document is intended to describe those electronic formats that CBER is currently able to support for review and archive of CRF's and CRT's. This draft guidance document supersedes two previous draft guidance documents entitled ''Guidance for Industry: Electronic Submissions of Case Report Forms and Case Report Tabulations'' (November 1996), and ''Guidance for Industry: Submitting Application Archival Copies in Electronic Format'' (November 1996).

This draft guidance document represents the agency's current thinking on electronic submissions of case report forms, case report tabulations and data to CBER. 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 requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements. This draft guidance document applies only to submissions made to CBER and not to the Center for Drug Evaluation and Research.

II. Request for Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by July 31, 1998, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: May 22, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14310 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0314]

Draft Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Pilot Program for electronic Investigational New Drug (eIND) Applications for Biological Products.'' This draft document, when finalized, is intended to provide guidance to sponsors on the design, development, organization, and submission of an eIND application to the Center for Biologics Evaluation and Research (CBER) as part of a pilot eIND program. This draft document is part of CBER's effort to develop, in cooperation with sponsors, an efficient process for electronic submissions of regulatory information relating to the development and marketing of biological products. Submissions in electronic format are voluntary.

DATES: Written comments may be submitted at any time, however, comments should be submitted by July 31, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Guidance for Industry: Pilot Program for electronic Investigational New Drug (eIND) Applications for Biological Products'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

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

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Pilot Program for electronic Investigational New Drug (eIND) Applications for Biological Products.'' This draft guidance document, when finalized, is intended to provide sponsors guidance on the design, development, organization, and submission of eIND applications. This draft guidance document does not address the scientific, clinical, and regulatory requirements of preparing an IND submission. These requirements can be found in Title 21 of the Code of Federal Regulations, part 312 (21 CFR

part 312). Part 312 must be followed in the preparation of any IND or eIND application.

This draft guidance document represents the agency's current thinking with regard to the eIND applications for biological products. 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. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Request for Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by July 31, 1998, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: May 22, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14313 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0316]

Draft ''Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/ Establishment License Application (ELA) to the Center for Biologics Evaluation and Research;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/ Establishment License Application (ELA) to the Center for Biologics for Evaluation and Research.'' The draft guidance document, when finalized, is intended to provide information regarding the electronic submission of a Biologic License Application (BLA), or a Product License Application/ Establishment License Application (PLA/ELA) to the Center for Biologics Evaluation and Research (CBER). This draft guidance document is part of CBER's continuing effort to develop an efficient process for electronic submissions of regulatory information relating to the development and marketing of biological products. Submissions in electronic format are voluntary.

DATES: Written comments may be submitted at any time, however, comments should be submitted by July 31, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/ Establishment License Application (ELA) to the Center for Biologics Evaluation and Research'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/Establishment License Application (ELA) to the Center for Biologics Evaluation and Research.'' This draft guidance document, when finalized, is intended to provide a degree of uniformity to future electronically submitted license applications to assure timely review, archiving, and retrieval processes for agency reviewers and to describe those electronic formats that CBER is currently able to support for review and archive. This draft guidance document, when finalized, is intended to supersede the guidance manual entitled ''Computer Assisted Product License Application (CAPLA) Guidance Manual'' as announced in the **Federal Register** of March 21, 1996 (61 FR 11644).

This draft guidance document represents the agency's current thinking with regard to the electronic submissions of a Biologics License Application (BLA) or Product License Application (PLA)/Establishment License Application (ELA) to the Center for Biologics Evaluation and Research. 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. As with other guidance documents, FDA does not intend this draft guidance document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document

is intended to provide information and does not set forth requirements.

II. Request for Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by July 31, 1998, to ensure adequate consideration in preparation of the final guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: May 22, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14314 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0315]

Draft ''Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research.'' The draft guidance document, when finalized, is intended to provide instructions to manufacturers regarding the submission of the electronic protocols to the Center for Biologics Evaluation and Research (CBER). This draft guidance document is part of CBER's continuing effort to develop an efficient process for electronic submissions of regulatory information relating to the development and marketing of biological products. Submissions in electronic format are voluntary.

DATES: Written comments may be submitted at any time, however, comments should be submitted by July 31, 1998, to ensure their adequate consideration in preparation of the final guidance document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Instructions for Submitting Electronic Lot Release Protocols to the Center for Biologics Evaluation and Research.'' Under 21 CFR 610.2(a), samples of any lot of licensed product, together with the protocols showing results of applicable tests, may at any time be required to be submitted to CBER for review and confirmatory testing. This draft guidance document, when finalized, is intended to assist those manufacturers who choose to submit the required protocols electronically.

This draft guidance document represents the agency's current thinking with regard to the submission of electronic lot release protocols. 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 requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this draft guidance document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document is intended to provide information and does not set forth requirements.

II. Request for Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by July 31, 1998, to ensure adequate consideration in preparation of the final guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: May 22, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14312 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3782–NC]

RIN 0938–AG45

Medicare Program; Withdrawal of Proposed Notice and Request for Assessment on the Salitron System for the Treatment of Xerostomia (Dry Mouth) Secondary to Sjogren's Syndrome

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Withdrawal of Notice, and Request for Comments.

SUMMARY: This notice announces our withdrawal of a prior proposed notice. It also announces a request for the Agency for Health Care Policy and Research to conduct a new technology assessment on the salivary electrostimulation in Sjogren's Syndrome which includes the use of the Salitron System for the treatment of xerostomia (Dry Mouth) secondary to Sjogren's Syndrome.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 31, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to both the following addresses:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3782-NC, PO Box 26688, Baltimore, MD 21207, and

Agency for Health Care Policy and Research Attention: HCFA–3782–NC, Willco Building, Suite 309, 6000 Executive Boulevard, Rockville, Maryland 20852.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3782-NC. 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: Francina C. Spencer, (410) 786–4614.

SUPPLEMENTARY INFORMATION: On May 23, 1994, we published a notice in the **Federal Register** (59 FR 26653) entitled, ''Noncoverage of Electrostimulation of Salivary Glands for the Treatment of Xerostomia (Dry Mouth).'' That notice announced our intent not to cover electrostimulation of the salivary glands for the treatment of xerostomia secondary to Sjogren's Syndrome and electrostimulation devices, such as the Salitron System, under the Medicare program. The notice took into account and provided details of a technology assessment submitted to the Health Care Financing Administration in 1990 by the Office of Health Technology Assessment (OHTA).

However, due to the lapse of time from the date the original technology assessment was done (in 1990), we have decided to withdraw the notice that was issued in the **Federal Register** in 1994, (FR Doc. 94–12457) and take no further action pursuant to that notice. Instead, before we make a coverage determination, we believe it would be appropriate to obtain an updated assessment to take into account research and data made available since 1990. Therefore, we have requested the Agency for Health Care Policy and Research (AHCPR), the organization we now deal with for such issues, to do a technology assessment of the Salitron System. We will make a decision regarding the coverage of electrostimulation of the salivary glands for the treatment of xerostomia secondary to Sjogren's Syndrome once we have received and reviewed the new technology assessment from AHCPR.

Any comments or significant data regarding the study of electrostimulation of the salivary glands for the treatment of xerostomia secondary to Sjogren's Syndrome should be submitted to both the Agency for Health Care Policy and Research and HCFA at the addresses provided above.

Until a decision is made, Medicare coverage for electrostimulation of the salivary glands for the treatment of xerostomia secondary to Sjogren's Syndrome and the Salitron System will continue to be at the discretion of the Medicare program durable medical equipment regional carriers.

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 we receive 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.

Authority: Secs. 1861 and 1862 of the Social Security Act (42 U.S.C. 1395x and 1395y).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 28, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: May 13, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 98–14307 Filed 5–29–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and

will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Our office moved to a different building on May 18, 1998. The above address is now the correct one to use for all regular mail and correspondence. For all overnight mail service use the following: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines.

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (*Formerly:* Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051 (*Formerly:* Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (*Formerly:* Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (*Formerly:* Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (*Formerly:* Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900 / 800–833–3984 (*Formerly:* CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (*Formerly:* MedExpress/National Laboratory Center)

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (*Formerly:* Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (*Formerly:* Sierra Nevada Laboratories, Inc.,)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (*Formerly:* Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (*Formerly:* NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (*Formerly:* Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (*Formerly:* Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (*Formerly:* Drug Labs of Texas)

Presbyterian Laboratory Services, 5040 Airport Center Parkway, Charlotte, NC 28208, 800–473–6640 / 704–943–3437

Quest Diagnostics Incorporated, 4444 Giddings Road Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (*Formerly:* HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (*Formerly:* Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (*Formerly:* Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (*Formerly:* Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (*Formerly:* Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (*Formerly:* Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (*Formerly:* MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (*Formerly:* MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories, Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999-LABS

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (*Formerly:* SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (*Formerly:* SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (*Formerly:* Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (*Formerly:* SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (*Formerly:* International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (*Formerly:* St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211 (*Formerly:* Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (*Formerly:* MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–14514 Filed 5–29–98; 8:45 am]

BILLING CODE 4160–20–U

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* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–22]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for 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: July 1, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comment 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: May 26, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of proposal: Requisition for Partial Payment of Annual Contributions; Supporting Data for Annual Contributions Estimates; Estimate of Required Acs; Voucher for Payment of Acs and Operating Statement.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0149.

Description of the Need for the Information and its Proposed Use: Public Housing Agencies use the forms to estimate their annual contributions requirements, requisition funds, and to report actual receipt and expenditures to assure that project costs do not exceed the amount authorized in the Annual Contribution Contract.

Form Number: HUD–52663, 52672, 52673, and 52681.

Respondents: State, Local, or Tribal Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52672	6,200		1		1.5		9,300
HUD–52673	6,200		1		1.5		9,300
HUD–52663	6,200		4		1.0		24,800
HUD–52681	6,200		1		3.0		18,600

Total Estimated Burden Hours: 62,000.

Status: Reinstatement without changes.

Contact: Mary Conway, HUD, (202) 708–2934; Joseph F. lackey, Jr., OMB, (202) 395–7316.

Dated: May 26, 1998.

[FR Doc. 98–14410 Filed 5–29–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment V to the Tribal-State Compact for Regulation of Class III Gaming Between The Klamath Tribes and the State of Oregon, which was executed on March 19, 1998.

DATES: This action is effective June 1, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: May 20, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–14384 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–7123–00–6683]

Imperial Sand Dunes Recreation Area, Imperial County, CA; Planning Initiation

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, El Centro Field Office will initiate a planning effort for the Imperial Sand Dunes Recreation Area in Imperial County, CA as of [the date of this publication]. This plan will replace the outdated existing Imperial Sand Dunes Recreation Area Management Plan written in 1987. The first stage of the planning effort will be to conduct open houses to gather public comments and concerns. Open houses are tentatively scheduled for San Diego, CA., Orange County, CA., and Phoenix, AZ. Written comments will be accepted through June 30, 1998 at the address below.

DATES: Dates and times will be published in local newspapers.

ADDRESSES: Locations will be published in local newspapers.

FOR FURTHER INFORMATION CONTACT: Elayn Briggs, Operations Staff Chief, at the Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243, e-mail at ebriggs@ca.blm.gov, or call (760) 337–4400.

Terry A. Reed,

Field Manager.

[FR Doc. 98–14318 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–98–1430–01; AZA 29964–AZA 29989]

Arizona: Notice of Reality Action; Competitive Sale of Public Land in Quartzsite, La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of notice.

SUMMARY: The following land in La Paz County, Arizona, has been found suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713). The extension will allow additional time to complete the sale.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,

Sec. 22, NE¼SE¼, E½E½NW¼SE¼;

Sec. 23, N½SW¼, S½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼;

Sec. 29, N½NE¼NE¼, NW¼NE¼, N½NW¼.

Aggregating 315.00 acres, more or less.

SUPPLEMENTARY INFORMATION: On Page 67342 of Vol. 61, No. 246 of the **Federal Register** published December 20, 1996, the Yuma Field Office published a notice for this public land sale. This notice segregated the subject public land from appropriation under the public land laws, including the mining laws, pending disposition of the action or 270 days from the date of publication of the notice in the **Federal Register**. An Extension of the Notice for segregation was published in the **Federal Register** on September 23, 1997 (62 FR 49701).

Upon publication of this notice in the **Federal Register**, that segregation will be extended pending disposition of the action or for another 270 day period, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, Realty Specialist, Yuman Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365, (520) 317–3208.

Dated: May 21, 1998.

Gail Acheson,

Field Manager.

[FR Doc. 98–14317 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

[OR–080–081–0777–33; GP8–0179]

Prohibited Acts on Public Lands Within the Boundaries of National Wild and Scenic Rivers in the Salem District; Oregon

AGENCY: Bureau of Land Management, Interior, Salem District.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) is proposing to establish a set of special rules which apply to public use of land and water surfaces administered by the BLM within the boundaries of any National Wild and Scenic River in the Salem District. These special rules include acts which are prohibited. The five National Wild and Scenic Rivers in the Salem District include segments of the Sandy River, Salmon River, Clackamas River, Quartzville Creek, and Elkhorn Creek.

SUPPLEMENTARY INFORMATION: A copy of the prohibited acts and maps showing BLM-administered lands and the designated boundaries of each National Wild and Scenic River segment in the Salem District are available at the Salem District Office. Legal descriptions of the boundaries are also available at the Salem District Office.

COMMENT PERIOD: Interested parties many submit comments within 30 days of the publication of this notice. Please send comments to the Salem District Manager, Attention: Law Enforcement, 1717 Fabry Road SE, Salem, Oregon, 97306. Any adverse comments will be evaluated by the District Manager, who may vacate or modify these actions and issue a final determination.

EFFECTIVE DATE: In the absence of any further action by the District Manager, these special rules will become the final determination of the Department of the Interior, on or before July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Greg Tyler at (503) 375–5623.

Special Rules

Pursuant to 43 CFR 8351.2–1, the following acts are prohibited on the land and water surfaces administered by the BLM, Salem District, within the designated boundaries of a National Wild and Scenic River. The acts are prohibited to help protect natural resources and to provide for public safety and enjoyment. Authorization for exemption from a prohibited act must be obtained from a BLM authorized officer, as defined in 43 CFR 8360.0–5(a), prior to the use of BLM-administered land and water surfaces in the Salem District.

1. Overnight Camping

a. Unless otherwise authorized, camping in dispersed or developed recreation sites longer than 14 days, either through separate visits or continuous occupation, during any consecutive 28 day period is prohibited. Upon reaching the 14 day limit, occupants and all their possessions must leave BLM-administered lands in the Salem District for a minimum of 14 consecutive days.

b. Unless otherwise authorized, failing to have at least one person occupy a camping area at a designated or developed recreation site during each night after camping equipment has been set up for occupancy and use.

c. Unless otherwise authorized, failure to pay applicable fees within 30 minutes of occupying a designated fee site.

d. Unless otherwise authorized, leaving camping equipment or other personal property unattended for more than 48 hours.

e. Unless otherwise authorized, overnight occupancy of an administrative site or any area posted as closed to camping.

f. Installation of permanent camping facilities.

g. Unless otherwise authorized, leaving camping equipment, site alterations, refuse, or animal waste after departing any camping area.

h. Digging or leveling the ground at any campsite where such disturbance is prohibited.

2. Fires

a. Where prohibited, a campfire outside of a fire pan, metal fire ring, or similar metal container ring.

b. using or possessing fireworks, firecrackers, or other explosive devices in violation of State law.

c. Failure to observe any State fire orders or closure regulations.

d. Leaving fire unattended or without completely extinguishing.

e. Burning non-combustible items in a campfire.

f. Throwing or discarding lighted or smoldering material, or lighting, tending, or using a stove or lantern in such a manner, as to cause or threaten the burning of property or resources, or to create a public safety hazard.

3. Sanitation and Refuse

a. Disposal of human body waste except at designated locations in developed recreation sites.

b. Burying human body waste less than 6–8 inches deep and less than 100 feet from any natural water source.

c. Washing dishes or using soap in a natural water source or less than 100 feet from any natural water source.

d. Draining any waste water from recreational vehicles or trailers except at a designated location.

e. Possessing or leaving refuse, debris or litter in an exposed, unsightly or unsanitary condition.

f. Dumping household, commercial, or industrial refuse, or animal body parts.

4. Firearms

a. Possessing or discharging a firearm or other weapon in violation of State or Federal law.

b. Discharging a firearm or other weapon within ¼-mile of a residence, building, developed recreation site, environmental education site, or occupied area.

c. Discharging a firearm or other projectile weapons such as bows and arrows, crossbows, air rifles, or paint ball guns into or from within any area posted as a ''no shooting,'' or ''safety zone.''

5. Recreational Mining

a. Use of motorized mining equipment in violation of State law.

b. Use of a dredge equipped with a suction hose having an inside diameter greater than four inches, regardless of nozzle size, in a designated recreational mining area.

c. Digging in river banks or disturbing vegetation in river banks above the

ordinary high water mark in a designated recreational mining area.

6. Other Acts

a. Taking, attempting to take, or possession of any fish or wildlife in violation of State or Federal law.

b. Entering an area posted as closed to public entry.

c. Failure to restrain pets on a leash or in a cage at all times in developed recreation sites or other areas where required.

d. Using or riding horses in areas where prohibited.

e. Being nude where a person may be seen by the general public.

f. Firewood gathering (including driftwood, dead and down wood) in areas where prohibited.

g. Selling or offering for sale any services or merchandise, or conducting any kind of business enterprise without a BLM permit.

h. Aircraft landing without authorization.

i. Violations by permittee of any stipulations outlined in a Special Recreation Use Permit.

j. Defacing, disturbing, or removing any natural or cultural feature or property of the U.S. Government.

7. Disorderly Conduct

a. A person commits disorderly conduct when, with the intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly committing a risk thereof, such a person commits any of the following prohibited acts:

1. Engage in fighting, threatening or violent behavior.

2. Language, gesture, display or act that is obscene (as defined in State law), physically threatening, menacing, or likely to inflict injury or incite a breach of peace.

3. Making noise that is unreasonable (based on location, time of day, or other factors that would govern the conduct of a reasonably prudent person).

4. Display of a firearm or other weapon in a threatening or menacing manner.

b. Operating generator, amplified music and other excessive or loud noise from 10 p.m. to 7 a.m.

c. Threatening, resisting, intimidating or interfering with any BLM official, employee or volunteer in, or on account of, the performance of official duties.

8. Vehicles

a. Operating a vehicle in violation of State law.

b. Parking in a way that impedes or obstructs traffic or creates a traffic safety hazard.

c. Parking in an area posted as closed to parking.

d. Using a motorized or mechanical transportation device (i.e, bicycles) in areas where prohibited.

e. Exceeding posted speed limits.

f. Disregarding traffic control devices.

9. Boating

a. Violation of any State Marine Board regulation.

10. Alcoholic Beverages and Controlled Substances

a. Consuming, possessing, or furnishing alcohol or a controlled substance in violation of State law.

b. Operating a vehicle or watercraft when under the influence of alcohol or a controlled substance in violation of State law.

Penalties: Any person convicted of violating any prohibition established by this notice, may be subject to the penalties provided in 43 CFR 8351.2–1 (f), which include a fine not to exceed $500, and/or imprisonment not to exceed 6 months, and costs the proceedings, as well as, penalties provided under State Law.

Van Manning,

District Manager, Salem District Office.

[FR Doc. 98–14324 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

[OR–080–081–0777–33; GP8–0178]

Supplementary Rules for Public Lands; Salem District; Oregon

AGENCY: Bureau of Land Management, Interior, Salem District.

ACTION: Notice of supplementary rules for the Salem District.

SUMMARY: The Bureau of Land Management (BLM), Salem District proposes to consolidate and revise existing supplementary rules related to prohibited acts on BLM-administered land and water surfaces in Salem District.

SUPPLEMENTARY INFORMATION: A copy of these supplementary rules and maps showing BLM-administered lands are available at the Salem District Office.

COMMENT PERIOD: Interested parties may submit comments within 30 days of the publication of this notice. Please send comments to the Salem District Manager, Attention: Law Enforcement, 1717 Fabry Road SE, Salem, Oregon, 97306. Any adverse comments will be evaluated by the District Manager, who may vacate or modify these actions and issue a final determination.

EFFECTIVE DATE: In the absence of any further action by the District Manager, these supplementary rules will become the final determination of the Department of the Interior, 30 days after the publication of this notice, and will supersede all previous supplementary rules.

FOR FURTHER INFORMATION CONTACT: Greg Tyler at (503) 375–5623.

Supplementary Rules

Pursuant to 43 CFR 8365.1–6, the following acts are prohibited on the land and water surfaces administered by the BLM, Salem District to protect natural resources and to provide for public safety and enjoyment. Authorization for exemption from a supplementary rule must be obtained from a BLM authorized officer, as defined in 43 CFR 8360.0–5(a), prior to the use of BLM-administered land and water surfaces in the Salem District.

1. Overnight Camping

a. General—Unless otherwise authorized, camping in dispersed or developed recreation sites longer than 14 days, either through separate visits or continuous occupation, during any consecutive 28 day period is prohibited. Upon reaching the 14-day limit, occupants and all their possessions must leave BLM-administered lands in the Salem District for a minimum of 14 consecutive days.

b. Molalla River—Unless otherwise authorized, overnight camping is prohibited on all BLM-administered lands within ¼-mile of the Molalla River's ordinary high water mark, except in designated camping areas or developed recreation sites.

c. Nestucca River and Mt. Hood Special Recreation Management Areas—Unless otherwise authorized, overnight camping is prohibited on all BLM-administered lands in both the Nestucca River and Mt. Hood Special Recreation Management Areas, except in designated camping areas or developed recreation sites.

d. Unless otherwise authorized, failing to have at least one person occupy a camping area at a designated or developed recreation site during each night after camping equipment has been set up for occupancy and use.

e. Unless otherwise authorized, failure to pay applicable fees within 30 minutes of occupying a designated fee site.

f. Unless otherwise authorized, leaving camping equipment or other personal property unattended for more than 48 hours.

g. Unless otherwise authorized, overnight occupancy of an

administrative site or any area posted closed to camping.

2. Fires

a. Where prohibited, a campfire outside of a fire pan, metal fire ring, or similar metal container.

b. Using, or possessing fireworks, firecrackers, or other explosive devices in violation of State law.

c. Failure to observe any State fire orders or closure regulations.

3. Sanitation and Refuse

a. Disposal of human body waste except at designated locations in developed recreation sites.

b. Burying human body waste less than 6–8 inches deep and less than 100 feet from any natural water source in undeveloped areas.

c. Washing dishes or using soap in a natural water source or less than 100 feet from any natural water source.

d. Draining any waste water from recreational vehicles or trailers except at a designated location.

4. Firearms

a. Possessing or discharging a firearm or other weapon in violation of State of Federal law.

b. Discharging a firearm or other weapon with ¼-mile of a residence, building developed recreation site, environmental education site, or occupied area.

c. Discharging a firearm or other projectile weapons such as bows and arrows, crossbows, air rifles, or paint ball guns into or from within any area posted as a ''no shooting,'' or ''safety zone.''

5. Recreational Mining

a. Use of motorized mining equipment in violation of State law.

b. Use of a dredge equipped with a suction hose having an inside diameter greater than four inches, regardless of nozzle size, in a designated recreational mining area.

c. Digging in river banks or disturbing vegetation in river banks above the ordinary high water mark in a designated recreational mining area.

6. Other Acts

a. Taking, attempting to take, or possession of any fish or wildlife in violation of State or Federal law.

b. Entering an area posted as closed to public entry.

c. Failure to restrain pets on a leash or in a cage at all times in developed recreation sites or other areas where required.

d. Using or riding horses in areas where prohibited.

e. Being nude where a person may be seen by the general public.

f. Firewood gathering (including driftwood, dead and down wood) in areas where prohibited.

7. Disorderly Conduct

a. A person commits disorderly conduct when, with the intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly committing a risk thereof, such a person commits any of the following prohibited acts:

1. Engage in fighting, threatening or violent behavior.

2. Language, gesture, display or act in a way that is obscene (as described in State law), physically threatening, menacing, or likely to inflict injury or incite a breach of peace.

3. Making noise that is unreasonable (based on location, time of day, or other factors that would govern the conduct of a reasonably prudent person).

4. Display of a firearm or other weapon in a threatening or menacing manner.

b. Operating generators, amplified music and other excessive or loud noise from 10 p.m. to 7 a.m.

8. Vehicles

a. Operation of a vehicle in violation of State law.

b. Parking in a way that impedes or obstructs traffic or creates a traffic safety hazard.

c. Parking in an area posted as closed to parking.

d. Using a motorized or mechanical transportation device (i.e., bicycles) in areas where prohibited.

9. Boating

a. Violation of any State Marine Board regulation.

10. Alcoholic Beverages and Controlled Substances

a. Consuming, possessing, or furnishing alcohol or a controlled substance in violation of State law.

b. Operating a vehicle or watercraft when under the influence of alcohol or a controlled substance in violation of State law.

11. Yaquina Head Outstanding Natural Area

In addition to supplementary rules listed above:

a. Overnight camping and parking.

b. Pets west of the lighthouse parking area; Pets not under physical restraint at all times.

c. Engaging in commercial solicitation.

d. Hunting, discharging firearms, igniting fireworks or other explosive devices.

e. Damaging, removing plant and animal specimens or cultural resources.

f. Flying kites or radio-controlled model airplanes.

g. Hang gliding set up, launching, flying, and landing outside of the specified areas and dates posted on site.

h. Conducting research projects or scientific studies without a permit.

i. Parking on Lighthouse Drive, east of the entrance gate to the BLM boundary.

Penalties: Any person who fails to comply with the supplementary rules described in this notice may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as, penalties provided under State Law.

Van Manning,

District Manager, Salem District Office.

[FR Doc. 98–14325 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 950–5700–77; AZA 29773]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 290 acres of National Forest System land to protect the Goodding Research Natural Area Extension. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a meeting should be received on or before August 31, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701.

FOR FURTHER INFORMATION CONTACT: George McKay, Coronado National Forest, 520–670–4552.

SUPPLEMENTARY INFORMATION: The Forest Service has filed an application to withdraw the following described National Forest System lands from location and entry under the United

States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Coronado National Forest

T. 23 S., R. 11 E.,
Sec. 10, SE¼SE¼SE¼;
Sec. 11, S½SW¼SW¼;
Sec. 14, SE¼NE¼NW¼, W½NE¼NW¼, W½NW¼, W½SE¼NW¼, and NE¼SE¼NW¼ (excluding the portions within the Pajarita Wilderness Area);
Sec. 15, NE¼NE¼, N½SE¼NE¼, SE¼SE¼NE¼, N½SW¼SE¼NE¼, SE¼SW¼SE¼NE¼, and S½NW¼NE¼ (excluding the portions within the Pajarita Wilderness Area).

The area described contains 267.5 acres in Santa Cruz County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Coronado National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coronado National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: May 18, 1998.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 98–14319 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 29736]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 1,478.42 acres of National Forest System lands to protect the Butterfly Peak Research Natural Area. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a meeting should be received on or before August 31, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701.

FOR FURTHER INFORMATION CONTACT: George McKay, Coronado National Forest, 520–670–4552.

SUPPLEMENTARY INFORMATION: The Forest Service has filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Coronado National Forest

T. 11 S., R. 16 E.,
Sec. 27, SW¼NW¼SW¼, and W½SW¼SW¼;
Sec. 28, NW¼SW¼NE¼, S½SW¼NE¼, SE¼SE¼NW¼, NW¼NE¼SE¼, S½NE¼SE¼, S½SE¼, NW¼SE¼, S½NW¼SW¼, SW¼SW¼, and E½SW¼;
Sec. 29, E½SE¼SE¼, and SW¼SE¼SE¼;
Sec. 32, lot 2, SE¼NW¼, S½NE¼NW¼, S½NE¼, NE¼NE¼, E½NW¼NE¼, SW¼NW¼NE¼, N½NE¼SW¼, SE¼NE¼SW¼, NE¼SW¼SE¼, N½SE¼, and NW¼SE¼SE¼;
Sec. 33, N½, N½SW¼, SE¼SW¼, N½SW¼SW¼, SE¼SW¼SW¼, W½SE¼, W½NE¼SE¼, NE¼NE¼SE¼, and W½SE¼SE¼.
T. 12 S., R. 16 E., (unsurveyed)
Sec. 4, NW¼NW¼, W½NE¼NW¼, and NE¼SW¼NW¼;
Sec. 5, E½NE¼NE¼, NW¼NE¼NE¼, and NE¼NW¼NE¼.

The areas described, including both surveyed and unsurveyed lands, aggregate 1,478.42 acres in Pima County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Coronado National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coronado National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: May 19, 1998.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 98–14321 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 23, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 16, 1998.

Carol D. Shull,

Keeper of the National Register.

California

San Diego County, Fleming, Guy and Margaret, House, 12279 Torrey Pines Park Rd., San Diego, 98000700

Torrey Pines Lodge, 12201 Torrey Pines Park Rd., San Diego, 98000699

Georgia

McDuffie County, Wrightsboro Historic District, Wrightsboro Rd., E. of Ridge Rd., Wrightsboro, 98000701

Louisiana

Plaquemines Parish, Woodland Plantation, 21997 LA 23, West Pointe a la Hache, 98000702

New Jersey

Gloucester County, Richardson Avenue School, Richardson Ave., Swedesboro Borough, 98000703

Monmouth County Sandy Hook Archeological Site, Gateway National Recreation Area, Address Restricted, Highlands vicinity, 98000704

New York

Saratoga County, Clifton Park Hotel, Old NY 146 and US 9, Clifton Park and Halfmoon, 98000705

North Carolina

Mecklenburg County, Blakeney, James A., House (Mecklenburg County MPS), Address Restricted, Providence vicinity, 98000706

Watauga County, Cove Creek High School, 207 Dale Adams Rd., Sugar Grove, 98000707

Wisconsin

Dane County, Cambridge Public School and High School, 103 South St., Cambridge, 98000708

[FR Doc. 98–14440 Filed 5–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Armstrong Rubber, Co.*, Civil No. 88–419, and *United States* v. *Atlantic Richfield Co.*, Civil No. 3–91–CV–248, consolidated by the court under the heading *B.F. Goodrich* v. *Murtha et al.*, Civil No. N–87–52, was lodged on May 13, 1998, with the United States District Court for the District of Connecticut. The decree resolves claims against Armstrong Rubber Co., The Eastern Co., Gerald Metals, Inc. and Kerite Co. in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), for contamination at the Laurel Park Landfill Superfund Site in the Borough of Naugatuck, Connecticut (the ''Laurel Park Site'') and at the Beacon Heights Superfund Site in Beacon Falls, Connecticut (the ''Beacon Heights Site''). In the proposed consent decree, the settling defendants agree to reimburse the United States for $2.45 million in past response costs incurred by the United States, and to waive and dismiss their counterclaims against the United States. The Consent Decree includes a covenant not to sue by the United States under Sections 106, 107 and 113 of CERCLA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *B.F. Goodrich* v. *Murtha et al.* DOJ Ref. Numbers 90–11–2–703 and 90–11–3–132B.

The proposed consent decree may be examined at the Office of the United States Attorney, Connecticut Financial Center, 157 Church St., New Haven, CT 06510, the New England Region Office of the Environmental Protection Agency, JFK Federal Building, Boston, MA 02203–2211; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.25 for the Consent Decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14332 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *Chevron USA, Inc., et al.*, Civil Action No. F–98–5412 REC DLB, was lodged on April 21, 1998, with the United States District Court for the Eastern District of California.

In the complaint filed concurrently with the lodging of the consent decree, the United States sought injunctive relief for performance of response actions, and reimbursement for response costs incurred by the United States Environmental Protection Agency, in response to releases of hazardous substances at the Purity Oil Sales Superfund Site, located near Fresno, California pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The settling defendants have agreed to contribute towards performance of future response actions at the Purity Site; defendant Chevron USA Inc. has agreed to perform that work. Future work includes operation and maintenance of the groundwater extraction and treatment system for the groundwater operable unit (estimated to cost $10 million) and construction, operation, and maintenance of the components of the soils operable unit (estimated to cost between $10 and 12 million). The soils operable unit includes treatment of soils at a depth of 14 to 40 feet with a soil vapor extraction system, construction of a cap and retaining wall at the site, emplacement of a 25-foot deep soil/bentonite slurry wall around the site, and enclosure of an on-site canal in a reinforced concrete pipe.

The consent decree includes a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chevron USA, Inc., et al.*, DOJ Ref. #90–11–2–355. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of California, Room 3654 Federal Building, 1130 ''O'' Street, Fresno, California 93721; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 ''G'' Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent

Decree Library, 1120 ''G'' Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $116.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the decree, exclusive of signature pages and attachments, may be obtained for $21.50.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14333 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Decker Manufacturing Corporation*, Civil Action No. 1:98–CV–404, (W.D. Michigan) entered into by the United States and Decker Manufacturing Corporation, was lodged on May 14, 1998, with the United States District Court for the Western District of Michigan. The proposed Consent Decree will resolve claims of the United States against Decker Manufacturing Corporation for recovery of response costs incurred by the U.S. Environmental Protection Agency at the Albion-Sheridan Township Landfill Superfund Site in Albion, Calhoun County, Michigan pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA''). The settlement requires Decker Manufacturing Corporation to make payment of $250,000 to the United States following entry of the proposed Consent Decree.

The Consent Decree includes a covenant not to sue by the United States under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. 9606(a) and 9607(c)(3), for potential violations through November 12, 1997, of an administrative order issued to Decker, and others, by U.S. EPA at the Site. The Consent Decree also includes a covenant not to sue by the United States under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for recovery of past response costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Decker Manufacturing Corporation*, Civil Action No. 1:98–CV–404, and the Department of Justice Reference No. 90–11–2–1109/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 333 Ionia Avenue, NW, Suite 501, Grand Rapids, Michigan 49503; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please refer to DJ #90–11–2–1109/1, and enclose a check in the amount of $6.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14335 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Notice is hereby given that on May 18, 1998, a proposed Consent Decree was lodged with the United States District Court for the District of Nebraska in *United States* v. *City of Hastings, et al.*, Civ. No. 8:98 CV 265 (D. Neb.) The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (''EPA'') under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9606 and 9607(a), in a complaint filed concurrently with the lodging of the proposed Consent Decree. The complaint seeks reimbursement of response costs incurred and to be incurred by the United States, and the performance of work, in response to the release or threatened release of hazardous substances at the Hastings Groundwater Contamination Site, North Landfill Subsite (''Subsite'') in Hastings, Nebraska.

Under the proposed Consent Decree, settling defendants—the City of Hastings, Nebraska, Dravo Corporation, and Dutton-Lainson Company—will perform response actions specified by EPA and value at approximately $1.1 million. These settling defendants also will reimburse the EPA Hazardous Substance Superfund $1,034,670 for past costs incurred by the United States, and will pay a portion of future costs incurred by the United States. Bernice Edwards, another settling defendant, will reimburse the EPA Hazardous Substance Superfund $10,000 based upon her ability to pay.

In exchange, and conditioned upon the complete and satisfactory performance of their obligations under the proposed Consent Decree, the settling defendants shall receive a covenant not to sue pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. 6973, to undertake response actions or to recover response costs related to the response action selected and performed under the proposed Consent Decree at the Subsite. In addition, the settling defendants receive contribution protection under Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for matters addressed in the proposed Consent Decree. The United States reserves the right to pursue the settling defendants in certain circumstances if previously unknown conditions or information indicates that response actions performed at the Subsite are not protective of human health or the environment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Hastings et al.*, Civ. No. 8:98 CV 265 and DOJ Ref. #90–11–2–1112. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the U.S. EPA Region 7 Office at 726 Minnesota Ave., Kansas City, KS 66101, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent

Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy exclusive of exhibits and signatures, please enclose a check in the amount of $22.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14337 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on May 8, 1998, a consent decree was lodged in *United States* v. *Hudson Foods, Inc.*, Civil Action No. CCB–98–1468, with the United States District Court for the District of Maryland.

This consent decree resolves claims against Hudson Foods, Inc., brought pursuant to sections 309 (b) and (d) of the Clean Water Act (the ''Act''), 33 U.S.C. 1319 (b) and (d), alleging violations of effluent limits, monitoring and sampling requirements, and notification requirements contained in the National Pollution Discharge Elimination System (''NPDES'') permit issued for Hudson Foods' poultry processing facility in Berlin, Maryland. The proposed consent decree requires Hudson to pay a civil penalty of $4,000,000 and to perform five Supplemental Environmental Projects (''SEPs'') to reduce nutrient loading to receiving waters. These SEPs include the installation of denitrification equipment, the use of phytase enzymes and alum to reduce nutrient loading from chicken litter, the construction of litter storage sheds, and the funding of personnel and equipment to assist poultry growers in preparing and implementing written site specific nutrient management plans. The SEPs are estimated to cost a total of $2,000,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hudson Foods, Inc.*, DOJ Ref. No. 90–5–1–1–4416. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Maryland, 604 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $13.50 (twenty-five cents per page reproduction costs), payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14331 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on May 12, 1998 a proposed Consent Decree in *United States* v. *Illinois Tool Works, Inc. et. al.*, Civil Action No. 1:98CV389, was lodged with United States District Court for the Western District of Michigan, Southern Division. This consent decree represents a settlement of claims brought by the United States, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, against Illinois Tool Works, Inc. and Slezak Enterprises Inc., for reimbursement of response costs and injunctive relief in connection with the Roto-Finish Superfund Site (''Site'') located in Kalamazoo County, Michigan.

Under this settlement with the United States, Illinois Tool Works Inc. and Slezak Enterprises, Inc. will implement the remedy for the Site as set forth in the Record of Decision issued by the United States Environmental Protection Agency in March 1997, and pay $723,900 in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site. In addition, Illinois Tool Works Inc. and Slezak Enterprises, Inc. will pay all future costs for this response action, including U.S. EPA's oversight costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v, *Illinois Tool Works, Inc. et al.*, D.J. Ref. 90–11–2–1278.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, Southern Division, 330 Ionia Avenue, N.W., Suite 501, Grand Rapids, MI 49503, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $18.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14336 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(d), and the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on May 15, 1998, a proposed Second Consent Decree in *United States* v. *City of Jacksonville, Florida, et al.*, Civ. No. C–92–133–CIV–J–16, was lodged with the United States District Court for the Middle District of Florida. This Second Consent Decree concerns the Picketville Road Landfill Superfund Site in Jacksonville, Florida. The 52-acre Site is a former City landfill used for disposal of residential, industrial and commercial wastes, including solid and liquid hazardous wastes.

On April 22, 1992, the Court in this action entered a First Consent Decree under which sixteen potentially responsible parties agreed to partially reimburse the United States for its past

response costs and to implement the permanent remedy selected by EPA for remediation of contaminated groundwater, surface water and sediments, and soils.

Under the proposed Second Consent Decree, ten new defendants have agreed to pay the United States $150,000 in partial reimbursement of its outstanding past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Second Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* v. *City of Jacksonville, Florida, et al.*, D.J. Ref. 90–11–3–725.

The proposed Second Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Middle District of Florida, 200 W. Forsyth Street, Ste. 700, Jacksonville, Florida 32201; (2) the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (telephone (202) 624–0892).

A copy of the proposed Second Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 2005. Please refer to the referenced case. The cost for a copy of the Decree is $8.00 (based on a photocopying charge of $0.25 per page): All checks should be made payable to ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14322 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 1, 1998, a proposed Consent Decree in *United States* v. *Helen Kramer et al.*, Civil Action 89–4340 (JBS), was lodged with the United States District Court for the District of New Jersey.

In this action, brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA''), the United States sought reimbursement of costs incurred for actions taken at the Helen Kramer Site in Mantua, New Jersey in response to the release or threat of release of hazardous substances at this former landfill site from the following parties: American National Can Company, American Cyanamid Company, Incorporated, Atochem, Inc., Bridgestone/Firestone, Inc., the City of Philadelphia, Carpenter Steel Company, Inc., Cole Office Environments Division of Joyce International, Continental Can Company, E.I. DuPont De Nemours, & Company, Inc., G&S Company, Inc., General Metalcraft, Incorporated, The Gilbert Spruance Paint Company, Globe Disposal Company, Inc., Thomas Gola, ICI Americas, Incorporated, Marvin Jonas, Marvin Jonas, Incorporated, Helen Kramer, Lehigh Press, Inc., Rick A. Licciardello d/b/a Licciardello Sanitation Company, Albert J. Mitchell d/b/a Mitchell Waste Removal, Monsanto Company, Incorporated, Morton International, Inc., Nabisco, Inc., N.L. Industries, Incorporated, NVF Company, Incorporated, Olin Corporation, Portfolio One, Inc. (including its parent companies Manor Care, Inc. and Manorcare Health Services, Inc.), Rohm & Haas Company, Incorporated, Unisys Corporation, and W.R. Grace & Co.—Conn. All these defendents are signatories to the Consent Decree resolving this case, together with over two hundred additional parties who were joined in this case as third-party defendants (collectively ''Settling Defendants'').

The Helen Kramer Landfill is located approximately fifteen miles south of Philadelphia, Pennsylvania and Camden, New Jersey. From approximately 1963 until 1981, the Site was used for the disposal of millions of gallons of chemical, industrial, septic, hospital and municipal wastes. The State of New Jersey revoked the landfill's registration in early 1981, and on March 3, 1981, a New Jersey state court ordered the landfill to cease operations.

EPA conducted a Remedial Investigation and Feasibility Study (''RI/FS'') from July 1983 until September 1985 to investigate the nature and extent of contamination at the Site. A wide variety of hazardous chemicals were detected in the soil, surface waters and groundwaters at the Site, including dichloro- and trichloro-ethanes and ethenes, benzene, toluene, xylenes, ketones, and phenols, as well as high levels of inorganic chemicals. On September 8, 1983, EPA placed the Site on the National Priorities List, 40 CFR part 300, Appendix B. On September 27, 1985, EPA selected a remedy for the contamination at the Site which included a clay cap, upgradient and downgradient slurry walls, a groundwater/leachate collection and treatment system, a gas venting and treatment system, surface water controls, and monitoring. The remedy has been completed and in full operation since May 13, 1993.

The Consent Decree provides that the Settling Defendants will pay $95 million over a five year period to the United States, toward total costs incurred by the United States of approximately $123 million, including enforcement costs and pre-judgment interest. A subset of the Settling Defendants (Rohm & Haas Company, E.I. DuPont De Nemours & Co., Elf-Atochem North America, Inc., Cytec Industries (on behalf of American Cyanamid Company), Mobil Research and Development Corporation, Chemical Leaman Tank Lines, Continental Can, and Carpenter Technology) also will perform any studies needed by EPA to perform its five-year reviews of the effectiveness of the remedy selected and constructed for the Site. The Consent Decree also provides a full release by the Settling Defendants to the United States, including all its departments and agencies. Settling Defendants also agree to waive all claims arising out of the Site against all other settling parties.

Under two parallel Consent Decrees with the State of New Jersey, Settling Defendants have taken over the operation and maintenance of the Site and have agreed to purchase wetlands commensurate with those lost at the Kramer Site, to be conveyed to the town of West Deptford in satisfaction of the State's natural resource damages claims. The proposed federal Consent Decree is conditioned upon Settling Defendants' performance of their obligations under the State Consent Decrees, and resolves natural resource damages claims at the Site on behalf of the Department of the Interior and the National Oceanic and Atmospheric Administration, based upon the Settling Defendants' natural resource damages settlement with the State.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Helen Kramer et al.*, D.J. Ref. 90–11–2–433A.

The Consent Decree may be examined at the Office of the United States

Attorney, District of New Jersey, Mitchell H. Cohen Courthouse, Room 2070, 4th and Cooper Streets, Camden, New Jersey, at U.S. EPA Region II, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, NY, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail (without signature pages and exhibits) from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $86.50 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14330 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 to 9675

Notice is hereby given that a proposed consent decree in *United States* v. *Kysor Industrial Corporation, et al.,* Civil Action No. 1:97–CV–526, was lodged on May 13, 1998, with the United States District Court for the Western District of Michigan. The proposed consent decree resolves the United States' claims against defendants Kysor Industrial Corporation, Transpro Group, Inc. and Raymond Weigel for past costs incurred in connection with the Kysor Industrial Superfund Site and the contiguous Northernaire Superfund Site located in Cadillac, Wexford County, Michigan, in return for a total payment of $1,050,00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Kysor Industrial Corporation, et al.,* DOJ Ref. #90–11–2–837B.

The proposed consent decree may be examined at the office of the United States Attorney, 330 Ionia NW, Room 501, Grand Rapids, Michigan 49503; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–14334 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New Collection; Firearm Dealer Survey.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by June 5, 1998. If granted, this emergency approval is only valid for 180 days. Comments should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same period a regular review of this collection is also being undertaken. Public comments are encouraged and will be accepted until July 31, 1998. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Allen Nash, Management Analyst, Federal Bureau of Investigation, CJIS Division, Module C–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, (304) 625–2738.

Overview of this information collection:

(1) *Type of Information Collection:* New data collection.

(2) *Title of the Form/Collection:* Firearm Dealer Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: *Form:* None. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit (Federally licensed firearms dealers, manufacturers, or importers).

Brief Abstract: The Brady Handgun Violence Prevention Act of 1994, requires the Attorney General to establish a national instant criminal background check system that any Federal Firearm Licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate federal or state law. Information pertaining licensees who may contact the NICS is being collected to plan and manage the NICS, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,200 Federal Firearms

Licensees at an average of 15 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1001 G Street NW, Suite 850, Washington DC 20530.

Dated: May 27, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–14409 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–02–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on June 12, 1998. The meeting will begin at 9:30 a.m. and continue until the committee concludes its agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the committee's meeting of April 5, 1998.
3. Consider public comment on and act on proposed final rule setting out Procedures for Disclosure of Information under the Freedom of Information Act, 45 CFR Part 1602, to recommend to the Board of Directors for its consideration and adoption.
4. Consider and act on proposed rule 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify the Office of the General Counsel at (202) 336–8810.

Dated: May 28, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–14563 Filed 5–28–98; 2:30 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on June 12, 1998. The meeting will begin at 1:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the committee meeting of April 5, 1998.
3. Review projection of expenses for the remainder of FY ''98, including internal budgetary adjustments, and act on the President's recommendations for consolidated operating budget reallocations.
4. Testimony regarding budgetary needs for FY 2000.
5. Consider and act on other business.
6. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify the Office of the General Counsel at (202) 336–8810.

Dated: May 28, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–14564 Filed 5–28–98; 2:30 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on June 12, 1998. The meeting will begin at 2:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the April 6, 1998, committee meeting.
3. Presentation by two LSC grantees on the effective use of technology to provide services in remote areas and to provide helpful and timely information over the Internet.
4. Report by the Inspector General on IPA reports of grantees with fiscal years ending December 31, 1997.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify the Office of the General Counsel at (202) 336–8810.

Dated: May 28, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–14565 Filed 5–28–98; 2:30 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on June 13, 1998. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., Washington, DC 20002

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of April 6, 1998.
3. Approval of minutes of Board's executive session of April 6, 1998.

4. Chairman's and Members' Reports.

5. President's Report.

6. Consider and act on the report of the Board's Operations and Regulations Committee.

a. Consider and act on final rule, 45 CFR Part 1602, Procedures for Disclosure of Information under the Freedom of Information Act.

7. Consider and act on the report of the Board's Finance Committee.

8. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.

9. Approval of the minutes of the April 6, 1998, meeting of the 1997 Annual Performance Reviews Committee.

10. Inspector General's Report.

11. Appointment of Acting Vice President for Programs.

12. Adjustment of President's rate of compensation to conform to January 1, 1998, increase in Level V of the Executive Schedule.

13. Adjustment of Inspector General's rate of compensation.

Closed Session

14. Briefing [1] by the Inspector General on the activities of the OIG.

15. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

16. Public comment.

17. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify the Office of the General Counsel at (202) 336–8810.

Dated: May 28, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–14566 Filed 5–28–98; 2:30 pm]

BILLING CODE 7050–01–M

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session, 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR §§ 1622.2 & 1622.3.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–069]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee, Task Force on NASA's Aviation Environmental Compatibility Research; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Task Force on NASA's Aviation Environmental Compatibility Research.

DATE: Wednesday, July 22, 1998, 8:00 a.m. to 5:00 p.m..

ADDRESSES: National Aeronautics and Space Administration, Room 6H46, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Darlene Boykins, Office of Aeronautics and Space Transportation Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4743).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up the seating capacity of the room. The purpose of the meeting is to review actions related to the Task Force Charter listed below.

—Based on examining past application of NASA research, recommend ways to improve effectiveness of environmental technology transfer

—Evaluate process being used to assess and recommend NASA research plans in noise and emissions relative to the ''Three Pillars'' environmental goals

—Recommend ways to ensure the appropriate use of research in regulatory considerations

—Recommend ways of improving the relationship of NASA with the air carrier community, aircraft and engine manufacturers, other environmental research and technology organizations, and regulatory agencies with regard to environmental research and technology

—Identify critical interdependencies of environmental goals with the other related ''Three Pillars'' goals.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: May 21, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–14397 Filed 5–29–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–070]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Tuesday, June 30, 1998, 8:30 a.m. to 5:00 p.m.; and Wednesday, July 1, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Harvard-Smithsonian Center for Astrophysics, Phillips Auditorium, Building D, 60 Garden Street, Cambridge, MA 02138.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—State of Space Science

—Theme Updates

—Current Programs and Mission Updates

—Technology Programs and Reviews

—Strategic Planning

—Public Relations

—Other Issues Facing the Subcommittee

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 21, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–14398 Filed 5–29–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Space Planning for the National Archives and Records Administration; Public Meeting

The National Archives and Records Administration announces a meeting on Wednesday, June 10, 1998, from 7 p.m. to 9 p.m. at the David Tandy Lecture Hall at the Central Library, 300 Taylor Street, in Fort Worth, Texas. This meeting will be open to the public.

This is the second in a series of meetings at which NARA is seeking public input for a study of its space needs for the next 10 years. NARA representatives will explain the reasons for undertaking a space plan, its objectives, and the planning process, and will invite comments and answer questions. In addition to helping NARA with its planning, this meeting is part of a National Performance Review initiative called Conversations With America: My Government Listens. NARA urges everyone interested to attend.

For further information, contact Kent Carter on 817–334–5515 or send an e-mail to kent.carter@ftworth.nara.gov. Reservations are not required.

Dated: May 26, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–14380 Filed 5–29–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Committee of visitors meeting.

Name: Committee of visitors (COV) Review of the Comprehensive Partnerships for Mathematics and Science Achievement Program (1119).

Date and time: June 18–19, 1998; 8:30 am to 5:30 pm.

Type of meeting: Closed.

Contact Persons: Dr. Alexandra King and Dr. Victor Santiago, National Science Foundation, (703) 306–1632 or (703) 306–1633.

Purpose of meeting: To provide oversight review of the Comprehensive Partnerships for Mathematics and Science Achievement Program.

Agenda: To carry out Committee of visitors' review, including examination of decisions on applications, reviewer comments, and other privileged materials.

Reason for closing: These meetings are closed to the public because the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552(b)(c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: May 27, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–14406 Filed 5–29–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its July 25, 1997, application for proposed amendment to Facility Operating License Nos. DPR–71 and DPR–62 for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would have clarified Technical Specification 4.0.5.f regarding the use of NRC-approved alternatives to the recommendations of NRC Generic Letter 88–01, ''NRC Staff Position on IGSCC in BWR Austenitic Stainless Steel Piping.'' The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 12, 1997 (62 FR 43187). However, by letter dated January 30, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 25, 1997, and the licensee's letter dated January 30, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 26th day of May 1998.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14390 Filed 5–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its May 23, 1997, application for proposed amendment to Facility Operating License Nos. DPR–71 and DPR–62 for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, located in Brunswick County, North Carolina. .

The proposed amendment would have reduced the short-term limit for Dose Equivalent I–131 activity in the reactor coolant from 4.0 microcuries/gram to 3.0 microcuries/gram.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 30, 1997 (62 FR 40847). However, by letter dated April 17, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 23, 1997, and the licensee's letter dated April 17, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 26th day of May 1998.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14391 Filed 5–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Energy Corporation (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would revise Surveillance Requirement Section 4.4.3.3 of the Technical Specifications. Section 4.4.3.3 currently requires that the emergency power supply for the pressurizer heaters be demonstrated OPERABLE at least once per 18 months by manually transferring power from the normal to the emergency power supply. The licensee proposed to delete the ''manual'' requirement because the power supply transfer at the unit was designed to be automatic. The proposed requirement is to verify that required pressurizer heaters are capable of being powered from an emergency power supply once per 18 months.

The licensee requested approval on an exigent basis pursuant to its request for enforcement discretion. The staff verbally granted the enforcement discretion on May 22, 1998, and affirmed it by a subsequent notice of enforcement discretion (NOED) letter dated May 26, 1998. The NOED stated that the enforcement discretion is in effect until the issuance of amendments to revise Section 4.4.3.3. The staff intends to issue such an amendment within 4 weeks of the NOED letter. This issuance schedule would not be accommodated by the normal 30-day notice to the public.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Changing the requirements of SR [surveillance requirement] 4.4.3.3 as previously described will not have any impact on accident probabilities. It merely makes the TS [Technical Specification] requirement consistent with the design of the pressurizer heaters and the normal and emergency power supply arrangement. In addition, no impact on accident consequences will occur, since the design function of the pressurizer heaters will be maintained and the heaters will be tested according to the manner in which they were designed.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Changing the requirements of SR 4.4.3.3 will make the SR consistent with the actual design of the equipment it governs. No design changes are being made to the plant and no changes are being made to the manner in which the plant is operated or tested. Therefore, no new accident causal mechanisms are created.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fission product barriers will not be impacted by implementation of this proposed amendment. The design function of the affected pressurizer heaters and power supplies will not be affected. Therefore, no safety margin will be adversely impacted.

Based upon the preceding analysis, [Duke Energy Corporation] has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 1, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for

Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina, 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 22, 1998, which 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 located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 27th day of May 1998.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14386 Filed 5–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

In the Matter of Florida Power Corporation Crystal River Unit 3; Confirmatory Order Modifying License Effective Immediately

I

Florida Power Corporation, (FPC or the Licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of Crystal River Unit 3 located in Citrus County, Florida.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, ''Thermo-Lag 330–1 Fire Barriers'' and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For

example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For plants that have completion action scheduled beyond 1997, the NRC staff has met with these licensees to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

Crystal River Unit 3 was one of the plants that have completion action scheduled beyond 1997. Based on the information submitted by FPC in its April 10, 1998 submittal, the NRC staff has concluded that the schedule presented by FPC is reasonable. This conclusion is based on (1) the amount of installed Thermo-Lag, (2) the complexity of the plant-specific fire barrier configurations and issues, (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power, and (4) integration with other significant, but unrelated issues that FPC is addressing at its plant. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by FPC must be completed in accordance with the current FPC schedule. By letter dated April 23, 1998, the NRC staff notified FPC of its plan to incorporate FPC's schedule commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated May 6, 1998, the Licensee provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of May 6, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its May 6, 1998, letter be confirmed by this Order. The Licensee has agreed to this action. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, it is hereby ordered, effective immediately, that:

Florida Power Corporation shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Crystal River Unit 3 described in the Florida Power Corporation submittal to the NRC dated April 10, 1998, by June 30, 2000.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, GA 30303, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 21st day of May 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14389 Filed 5–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 223 to Facility Operating License No. DPR–49 issued to IES Utilities Inc.,(the licensee), which revised the operating license and the Technical Specifications for operation of the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa. The amendment is effective as of the date of issuance and shall be implemented prior to October 1, 1998.

The amendment modified the Technical Specifications by replacing the existing Technical Specifications in their entirety with a new set of Improved Technical Specifications based on NUREG–1433, ''Standard Technical Specifications, General Electric Plants BWR/4,'' Revision 1, dated 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 amendment also modified the license by adding a new license condition which established an Appendix B to the license for additional license conditions. For this amendment, a condition was added to Appendix B describing the relocation of certain Technical Specification requirements to licensee controlled documents. In addition to replacing the Technical Specifications with the Improved Technical Specifications, the amendment revised the combinations of emergency core cooling systems/subsystems that may be out of service and relaxed the required flowrates for the core spray, the low pressure coolant injection, and the high pressure coolant injection systems.

The application for the amendment complies with the standards and

requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License 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 July 22, 1997 (62 FR 39283). 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 amendment will not have a significant effect on the quality of the human environment (63 FR 13078, dated March 17, 1998).

Notices of Consideration of Issuance of Amendment to Facility Operation License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with this action as it applies to the revised combinations of emergency core cooling systems/subsystems that may be out of service and to the relaxed required flowrates for the core spray, the low pressure coolant injection, and the high pressure coolant injection systems were published in the **Federal Register** on December 31, 1997 (62 FR 68306) and February 11, 1998 (63 FR 6986), respectively. No request for a hearing or petition for leave to intervene was filed following these notices and no significant hazards consideration comments were received.

For further details with respect to the action see (1) the application for amendment dated October 30, 1996, as supplemented by letters dated June 10, September 5, 17, and 30, October 16, November 18 and 21, December 8 and 15, 1997, January 2, 5, 12, 22 and 23, February 10, 26, March 23, 31, and April 17, 1998, (2) Amendment No. 223 to License No. DPR–49, (3) the Commission's related Safety Evaluation, and (4) the Commission's 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 local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Dated at Rockville, Maryland, this 22nd day of May 1998.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Project Directorate III–3, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14392 Filed 5–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

In the Matter of: Nebraska Public Power District (Cooper Nuclear Station); Exemption

I

The Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DRP–46, which authorizes operation of the Cooper Nuclear Station. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of one boiling-water reactor at the licensee's site located in Nemaha County, Nebraska.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at Cooper Nuclear Station is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Cooper Nuclear Station, and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only three new assemblies are allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given

area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated February 23, 1998, the licensee requested an exemption from 10 CFR 70.24. In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittals and has determined that Cooper Nuclear Station meets the applicable criteria. Criteria 2 and 3 are not applicable to the Cooper Nuclear Station since the fresh fuel storage racks are not currently in use and administrative controls prevent their use. Therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at Cooper Nuclear Station.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitute good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Nebraska Public Power District an exemption from the requirements of 10 CFR 70.24.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (63 FR 28012).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of May 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14387 Filed 5–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259, 50–260 and 50–296]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Browns Ferry Nuclear Plant (Browns Ferry, BFN), Units 1, 2 and 3, located in Limestone County, Alabama.

Originally, in a letter dated September 6, 1996, the licensee proposed changes for a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1433, Revision 1, ''Standard Technical Specifications for General Electric Plants, BWR/4,'' dated April 1995. NUREG–1433 has been developed through working groups composed of both NRC staff members and the BWR/4 owners and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current Browns Ferry TS, and, using NUREG–1433 as a basis, developed a proposed set of improved TS for BFN. The criteria in the final policy statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change which was published in the **Federal Register** (FR) on July 19, 1996 (60 FR 36953) and became effective on August 18, 1995. In addition to the above changes related to conversion of the current TS to be similar to the Improved Standard Technical Specifications (ISTS) in NUREG 1433, the licensee proposed three less restrictive changes that are not considered within the scope of the normal ISTS conversion process. These proposed additional changes would (1) allow two Residual Heat Removal (RHR) Low Pressure Coolant Injection (LPCI) pumps (two in one loop or one in both loops) to be inoperable for 7 days provided other low pressure emergency core cooling system (ECCS) pumps are operable. Current TS requirements allow only one LPCI pump to be inoperable, and (2) require only two ECCS subsystems to be operable during shutdown. The current TS, which define subsystems in the same manner as the ISTS, require three subsystems to be operable, and (3) reduce the number of RHR Service Water pumps required to be operable under certain conditions.

The licensee's proposed changes in its application dated September 6, 1996, including the three additional changes, were originally noticed on October 23, 1996 (61 FR 55026).

By letters dated June 6, and December 11, 1996, April 11, May 1, August 14, October 15, November 5 and 14, December 3, 4, 15, 22, 23, 29, and 30, 1997, January 23, March 12 and 13, April 16, 20, and 28, May 7, 14, and 19, 1998, the licensee provided supplemental information, and proposed additional changes. Some of these additional changes were ''less restrictive and plant specific changes'' that were not included in the original notice. They are addressed in this notice. Other changes are related to conversion of the current TS to those similar to the ISTS in NUREG 1433 and are considered to be within the scope of original FR notice dated October 23, 1996, and therefore, are not addressed in this notice.

The additional ''less restrictive and plant specific changes'' involve: (1) plant-specific application of generically approved methodology supporting extended instrument surveillance intervals and allowed outage times, (2) BFN's operating practice to treat secondary containment as a single zone rather than three independent zones for containment isolation, (3) TS changes to support installation of a Power Range Neutron Monitoring System, Average Power Range Monitor and Rod Block Monitor TS improvements, and the Maximum Extended Load Line Limit analysis, (4) revising the current TS 2.02, consistent with ISTS, to specify that reactor vessel water level should be greater than the top of the active irradiated fuel, instead of specifying actual water level, (5) proposing an ISTS to reflect plant-specific design condition that excludes average U–235 enrichment of 4.5 weight percent, and (6) TS changes to allow spiral offload procedures and adopt a revision to surveillance requirement 3.3.1.2.4 Note

2 for count rate verification during spiral loading.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 1, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, 400 West Summit Drive, ET 10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. For further details with respect to this action, see the application for amendments dated September 6, 1996 as supplemented June 6, and December 11, 1996, April 11, May 1, August 14, October 15, November 5 and 14, December 3, 4, 15, 22, 23, 29, and 30, 1997, January 23, March 12 and 13, April 16, 20, and 28, May 7, 14, and 19, 1998, which 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 Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 26th day of May 1998.

For the Nuclear Regulatory Commission.

L. Raghavan,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14388 Filed 5–29–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23204; File No. 812–10964]

Monarch Life Insurance Company, et al.

May 22, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of units of certain series of Merrill Lynch Fund of Stripped (''Zero'') U.S. Treasury Securities, Series B through G (''ML Fund'') for units of certain series of the Oppenheimer Zero Coupon U.S. Treasury Trust, Series A through F (''Oppenheimer Trust'') held by Variable Account B to fund certain life insurance policies (''Policies'') issued by Monarch Life.

APPLICANTS: Monarch Life Insurance Company (''Monarch Life'') and Variable Account B of Monarch Life Insurance Company (''Variable Account B'').

FILING DATE: The Application was filed on January 13, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on June 16, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Raymond A. O'Hara III, Esq., Blazzard, Grodd & Hasenauer, P.C., P.O. Box 5108, Westport, Connecticut, 06881. Copies to John S. Coulton, Esq., Monarch Life Insurance Company, One Monarch Place, Springfield, Massachusetts 01133 and Katherine P. Feld, Esq., Oppenheimer Funds, Inc., Two World Trade Center, New York, New York 10048–0203.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC (tel. (202) 942–8090).

Applicants' Representations

Background

1. Monarch Life was incorporated in 1901 and is domiciled in Massachusetts. Monarch Life is a wholly-owned subsidiary of Regal Reinsurance Company (''Regal Re''), formerly Monarch Capital Corporation (''Monarch Capital''). On September 23, 1992, pursuant to a reorganization under Chapter 11 of the Federal Bankruptcy Code, Monarch Capital was reorganized and emerged from bankruptcy as a Massachusetts life insurer, Regal Re. Regal Re is owned by Monarch Capital's pre-bankruptcy secured and unsecured creditors.

2. On June 9, 1994, the Insurance Commissioner of the Commonwealth of Massachusetts (''Commissioner'') was appointed receiver (''Receiver'') of Monarch Life in a rehabilitation proceeding pending before the Supreme Judicial Court for Suffolk County, Massachusetts (''Court'').

3. A term sheet dated July 19, 1994 (''Term Sheet'') among the Commissioner (in her capacity as Commissioner and Receiver) and certain Regal Re shareholders and noteholders and holders of Monarch Life's surplus notes (representing approximately 85% of both the total outstanding Regal Re notes and common stock) (''Holders'') was approved by the Court on September 1, 1994. Pursuant to the Term Sheet, the Holders transferred their notes and stock into voting trusts for which the Commissioner is the sole trustee, which effectively vests control of Regal Re and Monarch Life in the Commissioner.

4. Insurance departments of various jurisdictions have either suspended the certificate of authority of Monarch Life, ordered Monarch Life to cease writing new business, or have requested a voluntary suspension of sales by Monarch Life. In addition, Monarch Life's certificate of authority has been revoked by the insurance departments of the states of Louisiana on May 13, 1994, Michigan on February 27, 1994, Missouri on November 10, 1994 and Wyoming on June 25, 1992.

5. Monarch Life currently limits its business to maintaining its existing blocks of disability income insurance, variable life insurance, and annuity businesses. Monarch Life ceased issuing new variable life policies and new annuity contracts effective May 1, 1992, and new disability income insurance policies effective June 15, 1993.

6. Variable Account B was established under Massachusetts law on August 9, 1984, for the purpose of funding the Policies which invest in the Oppenheimer Trust. Variable Account B is registered under the 1940 Act as a unit investment trust and security interests under the Policies have been registered under the Securities Act of 1933 (''1933 Act'') on Form N–4 (File Nos. 33–18759, 2–94659 and 33–464).

7. Units of the Oppenheimer Trust are currently offered solely to Variable Account B to fund the benefits under the Policies. Series A through F of the Oppenheimer Trust were created under New York Law by a trust indenture among Oppenheimer Funds Distributor, Inc. (''Oppenheimer''), The Chase Manhattan Bank, N.A. (''Chase'' or ''Trustee'') and Standard & Poor's Corporation (''Evaluator''). On each date of deposit for each of Series A through F, Oppenheimer deposited the underlying obligations with the Trustee at prices equal to the valuation of those obligations on the offering side of the market as determined by the Evaluator, and the Trustee delivered to Oppenheimer units of interest representing the entire ownership of each series of the Oppenheimer Trust. Variable Account B, as the holder of the units, has the right to have its units redeemed in cash or in kind.

8. The investment objective of the Oppenheimer Trust is to provide safety of capital and income by offering units in fixed portfolios consisting primarily of bearer debt obligations issued by the United States that have been stripped of their unmatured interest coupons, interest coupons that have been stripped from bearer debt obligations issued by the United States, and receipts and certificates for such stripped debt obligations and stripped coupons (collectively, ''Stripped Treasury Securities''). The Oppenheimer Trust consists of Series A, B, C, D and E (each of which has two separate series outstanding) and Series F (one separate series), each separate series containing Stripped Treasury Securities with a fixed maturity corresponding to the designation of the series. The portfolio of each series consists of one issue of Stripped Treasury Securities, with a fixed maturity date, that has been stripped of its interest coupons or underlying bond and as such was purchased at a deep discount, and an interest-bearing Treasury security generally with the same maturity date as the Stripped Treasury Security, deposited in order to provide income with which to pay the expenses of the Series.

9. Oppenheimer receives no fee from the series for its services as such. On units sold to Variable Account B, Monarch Life initially pays a transaction charge to Oppenheimer out of Monarch Life's general account assets. Monarch Life is reimbursed for its payment of the transaction charge by its assessment of a daily asset charge which is deducted form the assets of investment divisions of Variable Account B investing in the Oppenheimer Trust. The amount of this charge is currently equivalent to .34% annually. This amount may be increased in the future but in no event will it exceed an effective annual rate of .50%.

10. Each series of the ML Fund consists of a number of separate unit investment trust (''trust(s)'') created under New York law by one trust

indenture among Merrill Lynch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch''), Chase and Standard & Poor's J.J. Kenny (''Kenny''). On each date of deposit for each trust, Merrill Lynch, as the sponsor, deposited underlying securities with Chase, the trustee, at prices equal to the valuation of those securities on the offer side of the market as determined by Kenney, the evaluator, and Chase delivered to Merrill Lynch units of interest representing the entire ownership of that trust in the series. The holder of the units has the right to have its units redeemed in cash or in kind.

11. The investment objective of each series of the ML Fund is to provide safety of capital and a high yield to maturity through investment in fixed portfolios consisting primarily of Stripped Treasury Securities. Each series contains Stripped Treasury Securities with a fixed maturity corresponding to the designation of the series. Each series also contains one issue of interest bearing Treasury Securities with a similar maturity to provide income to pay the expenses of the series.

12. Merrill Lynch receives no fee from the series for its services as sponsor. On units that are proposed to be sold to Variable Account B, Monarch Life will pay transaction charges to Merrill Lynch out of Monarch Life's general account assets as follows:

Remaining years to maturity of stripped treasury security	Transaction charge as percentage of offering price	Transaction charge as percentage of net amount invested
Less than 2 years	0.25	0.251
At least 2 years but less than 3 years	0.50	0.503
At least 3 years but less than 5 years	0.75	0.756
At least 5 years but less than 8 years	1.00	1.010
At least 8 years but less than 13 years	1.50	1.523
At least 13 years but less than 81 years	1.75	1.781
18 years or more	2.00	2.041

This transaction charge is identical to the transaction charge which Monarch Life currently pays to Oppenheimer in connection with the Oppenheimer Trust. Monarch Life will be reimbursed for its payment of the transaction charge by its assessment of a daily asset charge which will be deducted from the assets of the investment divisions of Variable Account B investing in the ML Fund. The amount of this charge will be equivalent initially to .34% annually. This amount may be increased in the future but in no event will it exceed an effective annual rate of 0.50%.

The Proposed Substitution

13. Oppenheimer, as sponsor of the Oppenheimer Trust, has informed Monarch Life that it intends to terminate its sponsorship of the Oppenheimer Trust. Since the inception of the Oppenheimer Trust, Oppenheimer has maintained a secondary market in units of the Trust at the offering price which has generally resulted in a loss to Oppenheimer (apart from any gains realized from subsequent market improvements).

14. Applicants, faced with having to find a suitable replacement for the Oppenheimer Trust, determined that the ML Fund is a suitable and appropriate underlying investment vehicle for Policy owners currently invested in the Oppenheimer Trust for the following reasons. The ML Fund, like the Oppenheimer Trust, is comprised of series of unit investment trusts. The series of the ML Fund have the same investment objective as the series of the Oppenheimer Trust. Both the ML Fund and the Oppenheimer Trust invest primarily in Stripped Treasury Securities. The proposed transaction charge arrangement with respect to the ML Fund is identical to the arrangement that Monarch Life currently has with respect to the Oppenheimer Trust, namely, that Monarch Life pays the transaction charge to the Fund sponsor which it then recoups through an asset charge to Variable Account B. The Variable Account B asset charge with respect to the ML Fund investment will be identical to that with respect to the Oppenheimer Trust. Other fees and expenses of the ML Fund are either identical to or somewhat lower than those of the Oppenheimer Trust. Also, Monarch Life has an existing relationship with the Merrill Lynch organization. Certain separate accounts of Monarch Life currently are invested in the shares of investment companies advised by a subsidiary of Merrill Lynch and an affiliate of that subsidiary provides third party administrative services to Monarch Life in connection with Monarch Life's variable life insurance operations.

15. Applicants propose that Monarch Life substitute units of the series of the ML Fund (each a ''substitute series'') for units of the series of the Oppenheimer Trust (each a ''removed series'') as follows: (a) units of Series G-2000 Trust for units of Series A-2000 Series; (b) units of Series B-2005 Trust for units of Series A-2005 Series; (c) units of Series C-2006 Trust for units of Series B-2006 Series; (d) units of Series D-2007 Trust for units of Series C-2007 Series; (e) units of Series E-1998 Trust for units of Series D-1998 Series; (f) units of Series E-2008 Trust for units of Series D-2008 Series; (g) units of Series F-1999 Trust for units of Series E-1999 Series; (h) units of Series F-2009 Trust for units of Series E-2009 Series; and (i) units of Series G-2010 Trust for units of Series F-2010 Series.

16. Applicants propose that Monarch Life redeem units of each removed series in cash and purchase with the proceeds units of the substitute series identified above. The proposed substitution will not change the number of subaccounts in Variable Account B.

17. Applicants represent that the proposed substitutions will take place at relative net asset value with no change in the amount of any Policy owner's Policy value or in the dollar value of his or her investment in Variable Account B. Policy owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights under the Policies be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Monarch Life. In addition, the proposed substitutions will not impose any tax liability on Policy owners. The proposed substitutions will not cause the Policy fees and charges currently being paid by existing Policy owners to be greater after the proposed substitutions than before the proposed substitutions.

18. Applicants state that Monarch Life will supplement the prospectus for

Variable Account B to reflect the proposed substitution. And, in addition to the prospectus supplements distributed to owners of Policies, within 5 days after the proposed substitutions, all owners who were affected by a substitution will be sent a written notice informing them that the substitutions were carried out. Monarch Life will include in such mailing the supplement to the prospectus of Variable Account B, which describes the substitutions.

19. Monarch Life and certain of its separate accounts (including Variable Account B) (collectively, ''Accounts'') have previously received no-action assurances from the staff of the Commission that the staff would not recommend that the Commission take any enforcement action against Monarch Life or the Accounts if post-effective amendments to registration statements are not filed under the 1933 Act And the 1970 Act, and updated prospectuses for the Accounts are not distributed to owners of existing variable contracts issued through the Accounts provided that certain conditions are met (Monarch Life Insurance Company, pub. avail. June 9, 1992, the ''June 9th No-Action Letter''). The conditions of the June 9th No-Action Letter include providing various documents to the variable Policy owners including, but not limited to, periodic reports, prospectuses, proxy statements and related voting instructions pertaining to the relevant underlying mutual funds. In accordance with the terms of the June 9th No-Action Letter, Monarch Life does not update the Variable Account B prospectus on an annual basis as would otherwise be required by the 1933 Act and the 1940 Act. Therefore, Policy owners do not have the benefit of receiving an updated Variable Account B prospectus which would provide them with certain information concerning the ML fund. In light of this fact, Applicants undertake to provide the Policy owners of Variable Account B with the same disclosure concerning the ML Fund as such owners would receive if Monarch Life updated and mailed its Variable Account B prospectus to owners. Such information includes the fees and expenses of the ML Fund, and a description of the investment objectives of each of the series of the ML Fund.

20. Applicants state that following the substitutions, Policy owners will be afforded the same policy rights, including surrender and other transfer rights with regard to amounts invested under the Policies, as they currently have. (Monarch Life currently imposes no restrictions or fees on the ability of Policy owners to make transfers nor does it intend to impose any after the proposed substitutions are effected.)

Applicants' Legal Analysis

21. Section 26(b) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

22. Applicants maintain that the purposes, terms and conditions of the substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent.

23. Applicants state that the Policies provide to Monarch Life the right, subject to Commission approval, to effect a substitution of the kind Applicants propose. The prospectus for the Policies contains disclosure of this right.

24. Applicants anticipate that, after the proposed substitutions, the substitute series will provide Policy owners with comparable investment results to those achieved now by the Oppenheimer Trust. Applicants submit that the investment objective of each of the substitute series is identical to the investment objective of the removed series that it would replace. Each of the substitute series is substantially larger than the removed series that it would replace. Each of the substitute funds is a suitable and appropriate investment vehicle for Policy owners.

25. Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past in that:

a. The substitution will be at net asset value of the respective units, without the imposition of any transfer or similar charge;

b. Monarch Life will assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the substitution;

c. The substitution will not alter the insurance benefits to Policy owners or the contractual obligations of Monarch Life;

d. The substitution will not alter tax benefits to Policy owners;

e. Policy owners may choose simply to withdraw amounts credited to them following the substitution under the conditions that currently exist without incurring any charges; and

f. The substitution is expected to confer certain economic benefits to Policy owners by virtue of the enhanced asset size of the substitute series.

Conclusion

Applicants submit, for the reasons summarized above, that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14403 Filed 5–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23205; International Series Rel No. 1137; 812–10810]

Old Mutual South Africa Equity Trust, et al.; Notice of Application

May 26, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to permit Old Mutual South Africa Equity Trust (the ''Trust'') to purchase certain securities of DataTec Limited (''DataTec'') from Old Mutual Global Assets Fund Limited (the ''Global Fund''), an affiliated person of the Trust.

APPLICANTS: The Trust, the Global Fund, and Old Mutual Asset Managers (Bermuda) Limited (the ''Adviser'').

FILING DATES: The application was filed on October 6, 1997. Applicants have

agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 61 Front Street, Hamilton, Bermuda, Attention: Melanie Saunders.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a trust under Massachusetts law and registered under the Act. The investment objective of the Trust is long-term total return in excess of that of the Johannesburg Stock Exchange (the ''JSE''), Actuaries All Share Index through investment in equity securities of South African issuers. Beneficial interests in the Trust are sold solely in private placement transactions to investment companies, common or commingled trust funds, or similar entities that are ''accredited investors'' within the meaning of Regulation D under the Securities Act of 1993, as well as to certain investment funds organized outside the United States. Old Mutual Fund Holdings (Bermuda) Limited (''Old Mutual Fund Holdings''), a wholly-owned subsidiary of the South African Mutual Life Assurance Society (''Old Mutual''), owns approximately 88.24% of the voting securities of the Trust.[1]

2. The Global Fund is organized under the laws of Bermuda Old Mutual Fund Holdings is the sole shareholder of the Global Fund.

3. The Trust and the Global Fund are advised by the Adviser, a wholly-owned subsidiary of Old Mutual. The Adviser is registered under the Investment Advisers Act of 1940.

4. The Adviser's sole place of business is Hamilton, Bermuda. All purchase and sale decisions with respect to securities to be purchased or sold by the Trust are made by Bermuda-based personnel of the Adviser, who do not have any portfolio management responsibilities for any other accounts managed by Old Mutual or any of its affiliates or in which Old Mutual or any of its affiliates has any direct or indirect beneficial interest, other than the Trust, the Global Fund, and certain other accounts holding primarily securities of non-South African issuers. Old Mutual's principal place of business is Cape Town, South Africa.

5. Data Tec is a South African corporation. It is an Internet centric information technology group incorporating the leading Internet service provider in South Africa. DataTec's ordinary shares are listed on the JSE. Applicants state that, for the period beginning January 19, 1998 and ending April 24, 1998, the unweighted average weekly volume of ordinary shares of DataTec traded on the JSE, as a percentage of the total number of ordinary shares of DataTec outstanding and calculated on an annualized basis, was 52.75%.

6. Old Mutual, its wholly-owned subsidiaries and investment vehicles managed by Old Mutual and its wholly-owned subsidiaries, but excluding the Trust and the Global Fund (collectively, the ''Old Mutual Group''), own approximately 28.34% of the total outstanding ordinary shares of DataTec.[2]

7. Applicants state that it is common practice in the South African equity markets for placements to be offered to large institutional investors at a discount to the market price. Applicants also state that the Old Mutual Group is a major participant in the South African equity markets.

8. In June 1997, DataTec privately placed 1,774,318 of its ordinary shares in order to fund the acquisition of Logical Networks Plc, a UK based company (''Logical Networks''). On August 11, 1997, the Global Fund purchased 1,619,555 of these DataTec shares, representing approximately 2.78% of DataTec's total outstanding ordinary shares, at an average weighted price of SA R24.94 per share, and at a 19.02% discount from the market price.

9. In March, 1998, DataTec privately placed 2,367,984 of its ordinary shares in order to fund the acquisition of Blue Sky (UK) Plc (''Blue Sky'') and to complete the funding of Logical Networks. On March 20, 1998, the Global Fund purchased 1,677,894 of these DataTec shares, representing approximately 2.88% of DataTec's total outstanding ordinary shares, at an average weighted price of SA R28.35 per share, and at a 60.07% discount from the market price. The DataTec shares purchased by the Global Fund on August 11, 1997 and March 20, 1998 (the ''Settlement Dates'') are referred to as the ''DataTec Shares.''

10. Applicants propose that the Trust purchase the DataTec Shares from the Global Fund. The purchase price to be paid by the Trust will be the price paid by the Global Fund on the respective Settlement Data plus carrying costs (the ''Purchase Price''). The carrying costs will reimburse the Global Fund for its estimated cost of funds (the Eurodollar overnight deposit rate plus 0.5%) from the respective Settlement Date through the date on which the Trust purchases the DataTec Shares (the ''Trust Purchase Date'').

11. Applicants state that the proposed transaction is of substantial value to the Trust. Since October 1997, the price of DataTec ordinary shares has increased by 206% from SA R30.70 per share to SA R94.00 per share on April 24, 1998. If the Trust completed the proposed purchase of the DataTec Shares on April 24, 1998, the Trust would have realized an immediate benefit of SA R220 million (U.S. $44 million), based on a purchase price that represented a 71% discount from the market value of the DataTec shares on that date.

12. Applicants represent that the DataTec Shares have all the attributes of the DataTec ordinary shares listed on the JSE, and that the DataTec Shares are freely transferable under South African law. Applicants also state that the Trust has not entered into, and will not be subject to, any agreement or understanding, express or implied, that the Trust may not sell the DataTec Shares on the open market at any time after its proposed purchase.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting

[1] Based on holdings as of April 24, 1998.

[2] Based on holdings as of April 24, 1998.

as principal, knowingly to sell any security to the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person directly or indirectly controlling, controlled by, or under common control with the other person, or (c) if the other person is an investment company, any investment adviser of that person.

2. The Trust and the Global Fund are controlled by Old Mutual and share a common investment adviser. Thus, the Trust and the Global Fund are affiliated persons within the meaning of section 2(a)(3) of the Act, and the sale of the DataTec Shares by the Global Fund to the Trust is prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the requested relief meets the standards set forth in section 17(b). Applicants state that, while the Adviser utilizes analysts employed by Old Mutual, the decision to purchase the DataTec Shares was an independent decision made by the Adviser solely in the interests of the Trust and was not improperly influenced by Old Mutual or its personnel. Applicants further state that the board of trustees of the Trust, including a majority of the trustees who are not interested persons of the Trust (the ''Board''), approved the Trust's purchase of the DataTec Shares. In evaluating the terms of the proposed transaction, the Board considered the fact that the Trust Purchase Price will include reimbursement of the carrying costs.

5. Applicants state that the transaction will comply with the requirements of rule 17a–7 under the Act, except that (i) the Trust Purchase Price will be below the current market price, and (ii) the Trust and the Global Fund are affiliated persons by reason other than having a common investment adviser, common directors, and/or officers. Applicants further represent that the Trust will not purchase the DataTec Shares if on the Trust Purchase Date the market price of the DataTec Shares falls below the Trust Purchase Price. Thus, applicants believe that the terms of the proposed transaction, including the consideration to be paid, are fair and reasonable.

6. Applicants believe that the transaction does not involve overreaching on the part of any person concerned. Applicants state that, although under section 2(a)(9) of the Act, the Old Mutual Group presumptively controls DataTec through ownership of 28.34% of DataTec's voting securities, the Old Mutual Group does not exercise any control over the management or day-to-day operations of DataTec. Applicants state that Old Mutual Group's holdings in DataTec include approximately 6.0% of the total outstanding shares of DataTec held by accounts managed by Old Mutual for external clients, such as pension funds for charitable organizations and publicly traded companies. Old Mutual seeks instructions from these external clients regarding the voting of DataTec shares on non-routine matters, including the election of directors other than the nominees of DataTec management.

7. Applicants represent that the Old Mutual Group holds DataTec shares for investment purposes as a passive investor. None of the officers or directors of DataTec are officers or directors of any entity within the Old Mutual Group; the Old Mutual Group has never sought to elect its nominees to the board of directors of DataTec and has always either abstained from voting or voted for the nominees of DataTec management. Applicants state that, according to independent research reports, the directors of DataTec own approximately 24.70% of DataTec's ordinary shares and are the controlling shareholders of DataTec.

8. Applicants further represent that, other than the ownership of the DataTec ordinary shares, the Old Mutual Group does not have any ownership, investment or lending relationship with DataTec. Finally, applicants represent that the Old Mutual Group has no ownership, investment or lending relationship with Logical Networks or Blue Sky.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14404 Filed 5–29–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California dated April 21st, 1993, and filed April 23, 1993, the United States Small Business Administration hereby revokes the license of Business Equity & Development Corporation, a California corporation, to function as a small business investment company under Small Business Investment Company License No. 09/12–5151 issued to Business Equity & Development Corporation on March 19, 1970 and said license is hereby declared null and void as of April 23, 1993.

Dated: May 20, 1998.

Small Business Administration.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 98–14328 Filed 5–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Middle District of Louisiana dated April 5, 1995, the United States Small Business Administration hereby revokes the license of First Southern Capital Corporation, a Louisiana corporation, to function as a small business investment company under Small Business Investment Company License No. 01/12–0023 issued to First Southern Capital Corporation on May 11, 1961 and said license is hereby declared null and void as of April 5, 1995.

Dated: May 20, 1998.

Small Business Administration.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 98–14329 Filed 5–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of New York dated July 22, 1993, the United States Small Business Administration hereby revokes the license of ODA Capital Corporation, a New York corporation, to function as

a small business investment company under Small Business Investment Company License No. 02/02–5307 issued to ODA Capital Corporation on January 25, 1977 and said license is hereby declared null and void as of July 22, 1993.

Dated: May 20, 1998.

Small Business Administration.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 98–14327 Filed 5–29–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-3(6)]

Dennard v. Secretary of Health and Human Services; Effect of A Prior Finding of the Demands of Past Work on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-3(6).

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after June 1, 1998. If we made a determination or decision on your application for benefits between April 10, 1990, the date of the Court of Appeals' decision, and June 1, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security -Survivors Insurance; 96.005 - Special Benefits for Disabled Coal Miners; 96.006 - Supplemental Security Income.)

Dated: April 10, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-3(6)

Dennard v. *Secretary of Health and Human Services*, 907 F.2d 598 (6th Cir. 1990)—Effect of A Prior Finding of the Demands of Past Work on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Issue: Whether, in making a disability determination or decision on a subsequent disability claim with respect to an unadjudicated period, where the claim arises under the same title of the Social Security Act (the Act) as a prior claim on which there has been a final decision by an Administrative Law Judge (ALJ) or the Appeals Council, the Social Security Administration (SSA)[1] must adopt a finding of the demands of a claimant's past relevant work, made in the final decision by the ALJ or the Appeals Council on the prior disability claim.[2]

Statute/Regulation/Ruling Citation: Sections 205(a) and (h) and 702(a)(5) of the Social Security Act (42 U.S.C. 405 (a) and (h) and 902(a)(5)), 20 CFR 404.900, 404.957(c)(1), 416.1400, 416.1457(c)(1).

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee)

Dennard v. *Secretary of Health and Human Services*, 907 F.2d 598 (6th Cir. 1990).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, ALJ hearing and Appeals Council).

Description of Case: Donald Dennard filed an application for Social Security disability insurance benefits in 1981, claiming a disability which began on July 7, 1981. The application was denied initially and upon reconsideration. After a hearing held on September 28, 1982, an ALJ decided that Mr. Dennard was capable of performing sedentary work, that he had transferable skills, and that he was not disabled. This decision became the final decision of SSA and was affirmed by the district court.

Mr. Dennard filed a subsequent application on March 25, 1985, alleging an onset of disability of September 29, 1982. This application was also denied initially and upon reconsideration. At a hearing a vocational expert testified that Mr. Dennard's past relevant work as a resident care aide supervisor was light and semi-skilled, which provided him with skills transferable to other jobs in the supervisory field. The ALJ found that, despite his impairments, Mr. Dennard could ''perform the requirements of work except for prolonged standing or walking, manipulation of more than 10 pounds, heavy or extensive bending, or prolonged sitting that would not allow him an opportunity to stand occasionally to alleviate perceptions of discomfort ....'' While the ALJ determined that the claimant was unable to perform his past relevant work, he did determine that Mr. Dennard could perform sedentary work and, thereupon, found that he was not disabled. The Appeals Council denied review, and the claimant then appealed to district court. The case was remanded for a new hearing to obtain and develop the medical evidence and to obtain additional vocational testimony.

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

[2] Although *Dennard* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling extends to both title II and title XVI disability claims.

In a subsequent decision issued on April 6, 1988, an ALJ found that Mr. Dennard was not prevented from performing his past relevant work and, therefore, was not disabled. A vocational expert had testified that, based on the claimant's testimony at the prior hearing, his past work as a resident care aide supervisor was semi-skilled and heavy to very heavy in terms of exertional level. However, the vocational expert further testified that, based on the job description provided by Mr. Dennard with his application for benefits, the job was semi-skilled and was sedentary to light in nature, because there was no direct patient contact. The Appeals Council denied the claimant's request for review. Upon appeal to the district court, a United States Magistrate recommended that Mr. Dennard be found disabled, because he believed that the claimant's testimony that his former job was heavy in exertion was controlling. The district court did not adopt the magistrate's recommendation. Instead it found that SSA's decision denying benefits was supported by substantial evidence. From that adverse decision, the claimant appealed to the United States Court of Appeals for the Sixth Circuit.

Holding: On appeal Mr. Dennard argued that because SSA had determined in its final decision on his first application for benefits that he could not perform his past relevant work, SSA was precluded by estoppel from reconsidering the issue and finding that Dennard could perform this work. The Sixth Circuit observed that it seemed clear that SSA had reconsidered the nature and extent of Mr. Dennard's exertional level in his former job as a resident care aide supervisor. The United States Court of Appeals for the Sixth Circuit stated: ''We are persuaded that under the circumstances, we must remand this case to [SSA] . . . to determine whether [Mr.] Dennard is disabled in light of the prior determination that he could not return to his previous employment.''

Statement as to How Dennard Differs From SSA Policy

Under SSA policy, if a determination or decision on a disability claim has become final, the Agency may apply administrative res judicata with respect to a subsequent disability claim under the same title of the Act if the same parties, facts and issues are involved in both the prior and subsequent claims. However, if the subsequent claim involves deciding whether the claimant is disabled during a period that was not adjudicated in the final determination or decision on the prior claim, SSA considers the issue of disability with respect to the unadjudicated period to be a new issue that prevents the application of administrative res judicata. Thus, when adjudicating a subsequent disability claim involving an unadjudicated period, SSA considers the facts and issues *de novo* in determining disability with respect to the unadjudicated period.

The Sixth Circuit held that, where the final decision of SSA after a hearing on a prior disability claim contains a finding of the demands of a claimant's past relevant work, SSA may not make a different finding in adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim unless new and additional evidence or changed circumstances provide a basis for a different finding.

Explanation of How SSA Will Apply The Dennard Decision Within The Circuit

This Ruling applies only to disability findings in cases involving claimants who reside in Kentucky, Michigan, Ohio, or Tennessee at the time of the determination or decision on the subsequent claim at the initial, reconsideration, ALJ hearing or Appeals Council level. It applies to a finding of the demands of a claimant's past relevant work, under 20 CFR 404.1520(e) or 416.920(e), which was made in a final decision by an ALJ or the Appeals Council on a prior disability claim. In addition, because a finding of a claimant's date of birth (for purposes of ascertaining a claimant's age), education or work experience, also involves a finding of fact, relating to a claimant's vocational background, which would not ordinarily be expected to change, this Ruling also shall apply to a finding of a claimant's date of birth, education or work experience required under 20 CFR 404.1520(f)(1) or 416.920(f)(1).

When adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim, adjudicators must adopt such a finding from the final decision by an ALJ or the Appeals Council on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period unless there is new and material evidence relating to such a finding or there has been a change in the law, regulations or rulings affecting the finding or the method for arriving at the finding.

[FR Doc. 98–14264 Filed 5–29–98; 8:45 am]

BILLING CODE 4190–29–F

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-4(6)]

Drummond v. Commissioner of Social Security; Effect of Prior Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-4(6).

EFFECTIVE DATE: June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after June 1, 1998. If we made a determination or decision on your application for benefits between September 30, 1997, the date of the Court of Appeals' decision, and (*Insert the* **Federal Register** *publication date*), the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in

20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security -Survivors Insurance; 96.005 - Special Benefits for Disabled Coal Miners; 96.006 - Supplemental Security Income.)

Dated: April 10, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-4(6)

Drummond v. *Commissioner of Social Security*, 126 F.3d 837 (6th Cir. 1997)—Effect of Prior Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Issue: Whether, in making a disability determination or decision on a subsequent disability claim with respect to an unadjudicated period, where the claim arises under the same title of the Social Security Act (the Act) as a prior claim on which there has been a final decision by an Administrative Law Judge (ALJ) or the Appeals Council, the Social Security Administration (SSA) must adopt a finding of a claimant's residual functional capacity, or other finding required under the applicable sequential evaluation process for determining disability, made in the final decision by the ALJ or the Appeals Council on the prior disability claim.[1]

Statute/Regulation/Ruling Citation: Sections 205(a) and (h) and 702(a)(5) of the Social Security Act (42 U.S.C. 405 (a) and (h) and 902(a)(5)), 20 CFR 404.900, 404.957(c)(1), 416.1400, 416.1457(c)(1).

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee)

Drummond v. *Commissioner of Social Security*, 126 F.3d 837 (6th Cir. 1997).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, ALJ hearing and Appeals Council).

Description of Case: Grace Drummond applied for disability insurance benefits on July 6, 1987, claiming a disability onset date of November 17, 1985. The claim was denied initially and upon reconsideration. A hearing was held before an ALJ who concluded that the claimant was not disabled and denied her claim. The ALJ found that Ms. Drummond was unable to perform her past relevant work but retained the residual functional capacity for sedentary work.

Ms. Drummond filed a subsequent application for disability insurance benefits on June 21, 1989. This claim was denied initially and again upon reconsideration. After a hearing was held, an ALJ found that the claimant suffered from combined musculoskeletal and multiple body system impairments but retained the residual functional capacity for medium level work and could perform her past relevant work as a textile machine operator. Accordingly, the ALJ found that Ms. Drummond was not disabled. After the Appeals Council denied the claimant's request for review, she sought judicial review. The United States District Court for the Eastern District of Kentucky granted summary judgment to SSA finding that substantial evidence supported SSA's denial of benefits.

On appeal to the Court of Appeals for the Sixth Circuit, Ms. Drummond argued that, based on principles of res judicata, the first ALJ's determination that she was limited to sedentary work must be followed by the second ALJ in the absence of evidence of an improvement in her condition since the first hearing. Declining to address this issue initially on appeal, the Sixth Circuit reversed the judgment of the district court and remanded the case with instructions to remand it to SSA for further proceedings to determine whether res judicata is applicable against SSA and, if so, whether there was substantial evidence to support a finding that the claimant's condition had improved since the time of her first application.[2]

On remand, after oral argument was held before the Appeals Council on September 27, 1993, the Appeals Council issued a decision denying Ms. Drummond's claim for disability insurance benefits. The Appeals Council found that 42 U.S.C. 405(h) could not be applied against SSA as a bar to prevent reconsideration of an issue because SSA was not a party to the benefits determination.

Ms. Drummond sought judicial review of the Appeals Council's decision and the United States District Court for the Eastern District of Kentucky affirmed SSA's decision denying disability benefits. The district court found that ''administrative res judicata does not apply to the Commissioner when a transitory condition such as health is involved ....'' The claimant appealed this decision to United States Court of Appeals for the Sixth Circuit.

Relying on the Fourth Circuit's decision in *Lively v. Secretary of Health and Human Services*, 820 F.2d 1391 (4th Cir. 1987), the claimant argued that res judicata applied and that, absent evidence of an improvement in her condition, the first ALJ's finding that she had a residual functional capacity limited to sedentary work was binding on SSA in deciding her subsequent claim.[3] Noting the similarity between the *Lively* case and the case at bar, the Sixth Circuit observed that the court in *Lively* had relied on ''[p]rinciples of finality and fundamental fairness drawn from § 405(h)'' to conclude that ''evidence, not considered in the earlier proceeding, would be needed as an independent basis to sustain a finding [of the claimant's residual functional capacity] contrary to the final earlier finding.''[4]

Holding: The Court of Appeals for the Sixth Circuit found the reasoning of the *Lively* court persuasive and stated that ''[a]bsent evidence of an improvement in a claimant's condition, a subsequent ALJ is bound by the findings of a previous ALJ.'' The court held that SSA could not reexamine issues previously determined in the absence of new and additional evidence or changed circumstances. The court indicated that to allow such a reevaluation ''would contravene the reasoning behind 42 U.S.C. § 405(h) which requires finality in the decisions of social security claimants.'' The Court of Appeals further stated that ''[j]ust as a social security claimant is barred from relitigating an issue that has been previously determined, so is the Commissioner.''

After finding that there was no substantial evidence that Ms. Drummond's condition had improved significantly during the time period between the two ALJ hearings, the court

[1] Although *Drummond* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling extends to both title II and title XVI disability claims.

[2] *Drummond* v. *Secretary of Health and Human Services*, No. 92-5649 (6th Cir. April 26, 1993).

[3] In *Lively*, the Fourth Circuit held that where a final decision of SSA after a hearing on a prior disability claim contained a finding about a claimant's residual functional capacity, SSA may not make a different finding based on the same evidence when adjudicating a subsequent disability claim arising under the same title of the Act and covering a period not adjudicated in the decision on the prior claim. 820 F.2d at 1392. On July 7, 1994, SSA published Acquiescence Ruling 94-2(4) at 59 FR 34849 to reflect the holding in *Lively*.

[4] *Lively*, 820 F.2d at 1392.

concluded that SSA was bound by its previous finding that the claimant was limited to sedentary work. The Court of Appeals thereupon reversed the judgment of the district court and remanded with instructions for the district court to remand the case to SSA for an award of benefits.

Statement as to How Drummond Differs From SSA Policy

Under SSA policy, if a determination or decision on a disability claim has become final, the Agency may apply administrative res judicata with respect to a subsequent disability claim under the same title of the Act if the same parties, facts and issues are involved in both the prior and subsequent claims. However, if the subsequent claim involves deciding whether the claimant is disabled during a period that was not adjudicated in the final determination or decision on the prior claim, SSA considers the issue of disability with respect to the unadjudicated period to be a new issue that prevents the application of administrative res judicata. Thus, when adjudicating a subsequent disability claim involving an unadjudicated period, SSA considers the facts and issues *de novo* in determining disability with respect to the unadjudicated period.

The Sixth Circuit concluded that where a final decision of SSA after a hearing on a prior disability claim contains a finding of a claimant's residual functional capacity, SSA may not make a different finding in adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim unless new and additional evidence or changed circumstances provide a basis for a different finding of the claimant's residual functional capacity.

Explanation of How SSA Will Apply The Drummond Decision Within The Circuit

This Ruling applies only to disability findings in cases involving claimants who reside in Kentucky, Michigan, Ohio, or Tennessee at the time of the determination or decision on the subsequent claim at the initial, reconsideration, ALJ hearing or Appeals Council level. It applies only to a finding of a claimant's residual functional capacity or other finding required at a step in the sequential evaluation process for determining disability provided under 20 CFR 404.1520, 416.920 or 416.924, as appropriate, which was made in a final decision by an ALJ or the Appeals Council on a prior disability claim.[5]

When adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim, adjudicators must adopt such a finding from the final decision by an ALJ or the Appeals Council on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period unless there is new and material evidence relating to such a finding or there has been a change in the law, regulations or rulings affecting the finding or the method for arriving at the finding.

[FR Doc. 98–14265 Filed 5–29–98; 8:45 am]

BILLING CODE 4190–29–F

[5] In making a finding of a claimant's residual functional capacity or other finding required to be made at a step in the applicable sequential evaluation process for determining disability provided under the specific sections of the regulations described above, an ALJ or the Appeals Council may have made certain subsidiary findings, such as a finding concerning the credibility of a claimant's testimony or statements. A subsidiary finding does not constitute a finding that is *required* at a step in the sequential evaluation process for determining disability provided under 20 CFR 404.1520, 416.920 or 416.924.

DEPARTMENT OF STATE

[Public Notice 2827]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Office of Defense Trade Controls, State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to Section 127.7(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130) on persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act (AECA) (22 U.S.C. § 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA prohibits licenses and other approvals for the export of defense articles and the furnishing of defense services to be issued to a person, or any party to the export, convicted of violating or conspiring to violate the AECA. Pursuant to Section 127.7(c) of the ITAR, statutory debarment is imposed upon persons convicted of violating or conspiring to violate the AECA. Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court, and as such the administrative proceedings outlined in Part 128 of the ITAR are not applicable.

This notice is provided in order to make the public aware that the persons listed below are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR:

1. Mohammad Iqbal Badat, 11025 Maidencane Court, Houston, TX 77086. Conviction date: March 13, 1996, 18 U.S.C. § 371 (conspiracy to violate the AECA), *U.S.* v. *Mohammad Iqbal Badat,* U.S. District Court for the Western District of Louisiana, 6:93CR60013–002
2. Sanford B. Groetzinger, 82 Dennison Street, Gloucester, MA 01930, 22 U.S.C. § 2778 (violation of the AECA). Conviction date: June 13, 1997, *U.S.* v. *Sanford B. Groetzinger,* U.S. District Court for the District of Massachusetts, 1:96CR10326–001
3. Alfred Peter Harms, Merkurstr. 32, 76461 Muggensturm, Germany. Conviction date: October 25, 1996, 18 U.S.C. § 371 (conspiracy to violate the AECA), *U.S.* v. *Alfred Peter Harms,* U.S. District Court for the Northern District of Texas, 3:96–CR–280–R(1)
4. James Lee, 410 Auburn Way, No. 34, San Jose, CA 95129. Conviction date: June 18, 1997, 22 U.S.C. § 2778 (violation of the AECA), *U.S.* v. *James Lee,* U.S. District Court for the Northern District of California, 5:95CR20142–002
5. Thomas McGuinn, Cloommull Drumcliffe, County Sligo, Republic of Ireland. Conviction date: April 19, 1996, 22 U.S.C. § 2778 (violation of AECA), *U.S.* v. *Thomas McGuinn,* U.S. District Court for the Southern District of Florida, 94–170–CR–UNGARO–BENAGES
6. Penny Ray, 7100 Rainbow Drive #30, San Jose, CA 95129. Conviction date: June 18, 1997, 22 U.S.C. § 2778 (violation of AECA), *U.S.* v. *Penny Ray,* U.S. District Court for the Northern District of California, 5:95CR20142–001
7. Salvador Romavi-Orue, 15400 S.W. 75 Circle Lane, Apt. 104, Miami, FL 33193. Conviction date: February 16, 1996, 22 U.S.C. § 2778 (violation of AECA) *U.S.* v. *Salvador Romavi-Orue,* U.S. District Court for the Southern

District of Florida 95–118–CR–UNGARO–BENAGES

8. Wayne P. Smith, 2333 Big Woods, Edgerly Road, Vinton, LA 70668. Conviction date: October 3, 1995, 22 U.S.C. § 2778 (violation of AECA), *U.S.* v. *Wayne P. Smith,* U.S. District Court for the Western District of Louisiana, 2:95CR20069–001
9. Erickson Trouillot, 8840 N.W. 23rd Street, Coral Springs, FL. Conviction date: October 29, 1996, 22 U.S.C. § 2778 (violation of AECA), *U.S.* v. *Erickson Trouillot,* U.S. District Court for the Southern District of Florida, 95–6138–CR–GONZALES(s)

Specific case information may be obtained from the Office of the Clerk for each respective U.S. District Court.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: May 11, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 98–14315 Filed 5–29–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3880]

Vessel Traffic Management Measures in the Monterey Bay National Marine Sanctuary; Public Workshop Notice

AGENCY: Coast Guard, DOT.

ACTION: Notice of public workshops; request for comments.

SUMMARY: The United States Coast Guard (USCG) and the National Oceanic and Atmospheric Administration (NOAA) will hold four Public Workshops to obtain views and comments regarding the need for offshore vessel management in the Monterey Bay National Marine Sanctuary (MBNMS) for the protection of the marine environment.

DATES: Public Workshops will be held on the following dates:

June 17, 1998, 7 p.m., Half Moon Bay, CA
June 18, 1998, 7 p.m., Oakland, CA
June 29, 1998, 7 p.m., Santa Cruz, CA
June 30, 1998, 7 p.m., Monterey, CA

Oral presentations are encouraged to promote an open forum with group participation, however if interested parties are unable to attend the workshop, written comments will be accepted and should reach the Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch on or before July 14, 1998.

ADDRESSES: Public workshops will be held at the following locations:

Half Moon Bay, CA—Ted Adcock Community/Senior Center, 535 Kelly Avenue, Half Moon Bay, CA 94019
Oakland, CA, Port of Oakland, 2nd Floor Board Room, 530 Water Street, Oakland, CA 94607
Monterey, CA—Doubletree Hotel at the Intersection of Del Monte Avenue and Alvarado Street, Monterey, CA 93940
Santa Cruz, CA—Cocoanut Grove Hotel, 400 Beach Street, Santa Cruz, CA 95060

You may mail your comments to the Docket Management Facility, (USCG–1998–3880), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

You may also deliver comments or other written materials for inclusion in the public docket to Commander (Pow), Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501; Attn: MBNMS Public Comment, between 7 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (510) 437–2982.

The Docket Management Facility maintains the public docket for these workshops. Comments and other submitted documents will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: LTJG Kati Sylvester, Waterways Management Officer, Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501. The telephone number is (510) 437–2982.

SUPPLEMENTARY INFORMATION:

Public Workshop

Public Workshops to discuss the need for Vessel Traffic Management Measures in the Monterey Bay National Marine Sanctuary will be held in the following locations:

- *Half Moon Bay*, 7 p.m., Wednesday June 17, 1998, Ted Adcock Community/Senior Center, 535 Kelly Avenue, Half Moon Bay, CA.
- *Oakland*, 7 p.m., Thursday, June 18, 1998, Port of Oakland, 2nd Floor Board Room, 530 Water Street, Oakland, CA.
- *Santa Cruz*, 7 p.m., Monday, June 29, 1998, Cocoanut Grove Hotel, 400 Beach Street, Santa Cruz, CA.
- *Monterey*, 7 p.m., Tuesday, June 30, 1998, Doubletree Hotel, intersection of Del Monte Avenue & Alvarado Street, Monterey, CA.

The doors for the public workshops will open at 6:30 p.m. for registration. The workshops will begin at 7 p.m. with a brief presentation. The presentation will cover the steps leading to the workshops, a description of the vessel activity in and near the Sanctuary, an overview of the sensitive Sanctuary resources and their value to the coastal culture and economy, a description of a work group process used by the Coast Guard and NOAA to shape the analysis, and lastly a set of management measures believed to increase Sanctuary resource protection while preserving the economic viability of California ports. Meeting attendees will then be invited to present comments or direct questions to a panel of representatives from a work group assembled by NOAA and the Coast Guard to help frame the issues. We are particularly interested in comments relating to:

- Distance Off Shore—Identification of a distance off shore for tankers, tank barges, vessels carrying hazardous materials, and large commercial vessels that would provide adequate protection to the sensitive marine resources of the Sanctuary without imposing undue economic stress to the shipping industry.
- Traffic Separation Schemes (TSS)—Implementation of pre-approved adjustments to existing TSSs, including a western rotation of the southern leg of the San Francisco TSS to provide a true north/north alignment and an eighteen miles extension on the western end of the Santa Barbara Channel TSS.
- Rescue—Identification of vessels of opportunity available to assist vessels which become disabled during coastal transit.
- Implementation Mechanisms—To include Industry Agreements and Recommended Routes approved by the International Maritime Organization (IMO).
- Reporting Systems:—Voluntary Reporting System, approved by the IMO, to monitor vessel transits along the California coastline via radio call-in points and/or Automated Information System (AIS).

A detailed Information Packet concerning these issues is available for review and copying in the public docket at the address under **ADDRESSES** or on the internet at http://dms.dot.gov, or may be obtained from the Coast Guard Internet Home Page at www.uscg.mil/pacarea/pm/graphic/mbnms.htm or by calling (408) 647–4201 in Monterey, CA or (510) 437–2982 in Oakland, CA.

Purpose of Workshop

In January of 1997 the USCG and NOAA submitted a *Report to Congress on Regulating Vessel Traffic in the Monterey Bay National Marine Sanctuary,* which was mandated by the National Marine Sanctuaries Program Amendments Act of 1992. In this report, the USCG and NOAA made a commitment to hold public workshops to help formulate a policy concerning the need for vessel management measures in the Sanctuary. These public workshops are designed to realize this goal.

Sanctuary Background

In September of 1992 the Monterey Bay National Marine Sanctuary (MBNMS) was established in recognition of its dramatic underwater geology and topography, its floral and fauna diversity, its abundant commercial fishery, and its standing as an important research site. The Monterey Bay National Marine Sanctuary is the largest of its kind in the country, and includes over 5,000 square miles of water off the central California Coast. It spans over 350 miles of coastline from Cambria to Rocky Point, and extends as much as fifty-three miles offshore. The Sanctuary supports diverse bird species and several threatened and endangered marine mammals.

Formation of the Monterey Bay National Marine Sanctuary Vessel Traffic Management Work Group

To better prepare for the public workshops, the Coast Guard and NOAA invited members from industry, conservation, and government groups to participate in the Monterey Bay National Marine Sanctuary Vessel Management work group. Formed as a Panel under the Navigation Safety Advisory Committee (NAVSAC), its purpose was to frame the issues in such a way as to facilitate productive public workshops. The work group will help NOAA and the Coast Guard incorporate the views obtained from the public workships into a report to NAVSAC containing suggested strategies for increasing Sanctuary protection at reasonable cost to the shipping industry. NAVSAC will in turn make recommendations to the Coast Guard and NOAA on implementation.

Sanctuary Resources and Potential Threats

The MBNMS is characterized by a combination of oceanic conditions and undersea topography that provides for a rich and highly productive ecosystem. Six distinct marine habitats can be described in the MBNMS: (1) A submarine canyon habitat (2) a near-shore sublittoral habitat (3) a rocky intertidal habitat (4) a sandy beach intertidal habitat (5) a kelp forest habitat (6) estuaries and sloughs.

Living resources found in the MBNMS include twenty-seven different types of marine mammals including several endangered species, approximately ninety-four bird species, approximately 345 fish species and one of the most diverse populations of invertebrate marine fauna in the world. The proximity of the Monterey submarine canyon to shore allows scientists a unique opportunity to study the land-deep sea interface.

Current Vessel Traffic Management Procedures

Shipping activity in the Sanctuary includes both U.S. and foreign registered vessels of the following types: Tankers, container ships, bulk carriers, chemical carriers, military vessels, research vessels, cruise ships, tugboats, registered fishing vessels and other types of vessels used for commercial purposes. Altogether, these total about 4,000 vessel transits through the Sanctuary per year. There are no formal vessel routes along the central California coast. However, there are a variety of preventative measures in place to reduce the likelihood of marine accidents. These include an Industry Agreement between tankers carrying Alaskan crude oil and the State of California to transit at least fifty nautical miles offshore; Vessel Traffic Services in San Francisco and Los Angeles/Long Beach; TSS's in the approach to San Francisco Bay and the Santa Barbara Channel; regulatory initiatives relating to vessel construction, equipment, and operating procedures; and the Coast Guard's Prevention Through People and vessel inspection programs.

Vessel Traffic Work Group Processes and Evaluations

The goal of the Vessel Traffic Management work group was to identify, evaluate, and prioritize strategies for vessel traffic management in the MBNMS. Using public comment from past studies, key components of vessel traffic management were categorized as Traffic Separation Schemes (TSS), Distance From Shore, Implementation Mechanisms for routing, Reporting, and Response to Disabled Vessels. Each potential strategy was listed under one of the above categories and was individually evaluated by the group in terms of its environmental effectiveness, socio-economic impacts, and institutional feasibility.

Through the systematic evaluation process, a set of vessel routing and management measures emerged as increasing Sanctuary protection without unreasonable cost to industry. These measures are discussed below to help facilitate discussion at the workshops.

Distance From Shore

One of the work group's challenges was to identify a distance off shore for the implementation of routing measures that would provide adequate protection to the sensitive marine resources of the Sanctuary without imposing undue economic stress to the shipping industry. The following recommended transit distances off shore were derived based on current practice and threat level:

Tankers—Fifty nautical miles
Barges—Twenty-five nautical miles
Hazmat Vessels—Twenty-five nautical miles
LCVs—Off Pigeon Point:
  Twelve decimal seven nautical miles (northbound)
  Sixteen nautical miles (southbound)
Off Point Sur:
  Fifteen nautical miles (northbound)
  Twenty nautical miles (southbound)

A Vessel Drift Rate Analysis was used to help determine a suitable protection level for the Sanctuary by identifying a line along the central coast where a response vessel from a nearby port could arrest the drift of a disabled vessel prior to shore impact during a worst case wind event.

Implementation Mechanisms for Routing

The minimum transit distances from shore listed above would be implemented by establishing IMO approved Recommended Routes for LCV's. The Recommended Routes would be depicted on National Oceanic Service nautical charts. This system would reduce risk by adding order and predictability to coastwise traffic flow and by virtually eliminating the threat of grounding by a disabled vessel. Tankers would be encouraged to continue their participation in Industry Agreements with Western States Petroleum Association. The Industry Agreements would be strengthened with

Coast Guard involvement. Tank barges would be encouraged to remain 25 nautical miles offshore, in compliance with the Responsible Carriers Program, and standard developed by the American Waterway Operators.

Reporting

An effective way to monitor vessel transits along the California coastline is through the use of radio call-in points at two key geographical points: Point Sur and Point Arguello.

The work group also supports the implementation of the Automatic Identification System (AIS) for ships currently being developed by the IMO. AIS is an automated electronic vessel position reporting system that transmits a real-time positional information packet to a shore based station such as the Vessel Traffic Service (VTS).

A Near-Miss Reporting system is currently under development at the National level and will help to identify causes of marine accidents and rectify problem areas before accidents occur.

Traffic Separation Schemes (TSS)

To provide alignment with the recommended routing measures, the Santa Barbara Channel Traffic Separation Scheme will be extended approximately eighteen nautical miles to Point Arguello. The southern leg of the San Francisco TSS would be shifted slightly to the west to provide a true north-south alignment for vessels entering and departing the TSS. These recommended changes to the TSS have been approved by the International Maritime Organization (IMO) and are ready for implementation.

Response to Disabled Vessels

There is a low but existing risk to the resources of the Sanctuary from a disabled vessel grounding on the rocky shoreline. Timely response from one or more appropriate vessels could make the difference between an environmental disaster and an insignificant event. The work group recommended the development of a vessel response network to enable a shoreside authority to identify and locate vessels willing and able to provide immediate emergency assistance to a disabled vessel.

Informaiton on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: May 22, 1998.

R. C. North,

Rear Admiral, Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 98–14393 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program and Determination on Revised Noise Exposure Maps Akron-Canton Regional Airport Akron, Ohio

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Akron-Canton Regional Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 16, 1997, the FAA determined that the noise exposure maps submitted by Akron-Canton Regional Airport Authority under Part 150 were in compliance with applicable requirements. On April 9, 1998, the Associate Administrator for Airports approved the Akron-Canton Regional Airport noise compatibility program.

Most of the recommendations of the program were approved. The Akron-Canton Regional Airport Authority has also requested under FAR Part 150, section 150.35(f), that FAA determine that revised noise exposure maps submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program are in compliance with applicable requirements of FAR Part 150. The FAA announces its determination that the revised noise exposure maps for Akron-Canton Regional Airport for the years submitted with the noise compatibility program, are in compliance with applicable requirements of FAR Part 150 effective May 13, 1998.

EFFECTIVE DATE: The effective date of the FAA's approval of the Akron-canton Regional Airport noise compatibility program is April 9, 1998. The effective date of the FAA's determination on the revised noise exposure maps is May 13, 1998.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, program Manager, Federal Aviation administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Akron-Canton Regional Airport, effective April 9, 1998, and that revised noise exposure maps for 1997–2002 for this same airport are determined to be in compliance with applicable requirements of FAR Part 150.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

Akron-Canton Regional Airport Authority submitted to the FAA on September 22, 1997, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 20, 1995, through September 22, 1997. The Akron-Canton Regional Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on October 16, 1997. Notice of this determination was published in the **Federal Register** on November 10, 1997.

The Akron-Canton Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phrased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 16, 1997, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-four proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associated Administrator for Airports effective April 9, 1998.

Outright approval was granted for twenty-two of the specific program elements. Noise Abatement Measure NA–5 was disapproved. It recommended that all eastbound and southbound turbojet aircraft departing on Runway 19 initiate at run to a heading of 160 degrees at 1 nautical mile from the radar instead of the current voluntary procedure to turn at 2 nautical miles. 1 nautical mile from the radar site is approximately over the departure end of the runway. Flights will be very low to the ground and at relatively slow airspeed. Crews should not be required or requested to initiate turns at this critical phase of the flight. Program Management Measure PM–5 was approved in part and disapproved in part. The part that was approved concerned the use of Automatic Terminal Information Service (ATIS). FAA permits the use of the ATIS for short messages such as ''noise abatement procedures in effect'' when time and space permit. The part that was disapproved concerned air traffic control tower (ATCT) advisories. The tower controller's role to maintain safe, efficient use of the navigable airspace does not include educating pilots in regard to specific noise abatement procedures. Other measures are available for pilot education.

Seven noise abatement measures were approved. One measure recommends pilots of all turbojet aircraft voluntarily use noise abatement departure procedures. One measure establishes maximum climb departures for helicopters. One measure recommends that pilots of all turbojet aircraft voluntarily restrict the use of reverse thrust activity at night. One measure recommends noise abatement procedures for all eastbound turbojet aircraft departing Runway 23.

Two measures relate to the location and orientation of engine runups and engine runup enclosures. One measure recommends improvement of engine runup and taxiing procedures.

Nine land use management measures were approved. Two measures recommends land acquisition for noise. One measure recommends improvement of engine runup and taxiing procedures.

Nine land use management measures were approved. Two measures recommended land acquisition for noise. One measure recommends development of a sound insulation program. One measure recommended that an avigation easement acquisition program be developed. One measure recommended overlay zoning for one vacant parcel. One measure recommends development of subdivision regulations. One measure recommends that fair disclosure regulations be developed. One measure recommends comprehensive planning be developed. One measure recommends capital improvement planning.

Six program management measures were approved. One measure recommends updating noise complaint receipt and response procedures. One measure would establish a noise monitoring system. One measure recommends establishing a public information program and publishing informational pilot handouts. One measure will designate a noise abatement contact. One measure recommends purchasing and installing airside signs to advertise NCP measures. One measure recommends NEM/NCP review and revision.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on April 9, 1998.

The FAA also has completed its review of the revised noise exposure maps and related descriptions submitted by Akron-Canton Regional Airport Authority. The specific maps under consideration are Figure 8.2, Pages 107–108 of the NEM, and Figure 4.1, Pages 43–44 of the NCP in the submission. The FAA has determined that these maps for Akron-Canton Regional Airport are in compliance with applicable requirements. This determination is effective on May 13, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise

contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps, and copies of the record of approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Mr. Frederick J. Krum, Director of Aviation, Akron-Canton Regional Airport, 5400 Lauby Road, N.W., P.O. Box 9, North Canton, OH 44720–1598.

Questions on either of these FAA determinations may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on May 13, 1998.

Robert H. Allen,

Assistant Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 98–14425 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Newport News, Hampton, Norfolk, Suffolk, Portsmouth and Chesapeake, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is reissuing this notice to advise the public that an environmental impact statement will be prepared to determine the impact of a proposed new crossing of Hampton Roads in southeastern Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Turner, Planning and Environmental Manager, Federal Highway Administration, The Dale Building Suite 205, 1504 Santa Rosa Road, Richmond, Virginia 23229, Telephone: (804) 281–5100.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Virginia Department of Transportation (VDOT), is reestablishing its intent to prepare an environmental impact statement (EIS) to determine the impact of a proposed new crossing of Hampton Roads in southeastern Virginia. A previous Notice of Intent was published on May 27, 1994. A Major Investment Study (MIS), completed in accordance with 23 CFR 450 Subpart C, was published in October of 1997. The MIS initially investigated various alternatives developed to alleviate congestion and improve access and mobility across Hampton Roads. The various alternatives ranged from transportation demand management strategies to constructing a new crossing. After a screening of the initial alternatives, the MIS studied 11 multimodal transportation corridors and the no build alternative.

The EIS will examine reasonable alternatives, including the no-build alternative, in an area generally bounded by the interchange of I–64/I–664 on the north, I–64/I–564 on the east, I–264/I–64 on the south, and the I–664 alignment on the west.

The Hampton Roads Metropolitan Planning Organization selected a locally preferred corridor in July of 1997, and the Commonwealth Transportation Board endorsed the locally preferred corridor in September of 1997. Termini for the preferred corridor consists of the following: the intersection of I–64 and I–644 in Hampton; the intersection of I–264 and I–64 in Chesapeake; the intersection of I–64 and I–564 in Norfolk, and the intersection of VA 164 in Portsmouth. The proposed corridor consists of a new crossing, which connects Norfolk to southeastern Newport News. It also includes a connection to VA 164 in Portsmouth, and it includes the widening of existing I–664 and I–564. The proposed corridor includes a multimodal component, which could be used for reversible HOV lanes, an exclusive busway, exclusive truck lanes, and/or a passenger rail system.

Regularly scheduled meetings with Federal and State agencies will occur during the study. A set of public meetings, one on the Southside and one on the Peninsula, will be held to present the results of the Draft EIS. In addition, a set of formal public hearings will be held. The Draft EIS will be available for public and agency review and comment prior to the hearings. Public notice will be given of the time and place of the meetings and hearings. Additional public outreach will occur through the issuance of project newsletters and a project home page, which will be accessible through VDOT's Internet site (www.vdot,state.va.us). A formal scoping meeting will be held.

To ensure that the full range of issues related to this project are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be direct to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

(Authority: 23 U.S.C. 315: 49 CFR 1.48)

Issued on: May 13, 1998.

J. Bruce Turner,

Planning and Environmental Manager, Richmond, Virginia.

[FR Doc. 98–14320 Filed 5–29–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8655

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 8655, reporting Agent Authorization for Magnetic Tape/Electronic Filers.

DATES: Written comments should be received on or before July 31, 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 form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting Agent Authorization for Magnetic Tape/Electronic Filers.

OMB Number: 1545–1058.

Form Number: Form 8655.

Abstract: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns electronically or on magnetic tape, to receive copies of notices and other tax information, and to submit Federal tax deposits. The form permits IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized agents.

Current Actions:

The form is being revised to make it more user friendly, easier to process, and to remove unnecessary items. The changes are as follows:

- Rearranged the information on the form so that it is in the same order as it is input into the Reporting Agent File (RAF) system (items 1 through 6).
- Provided separate boxes for printing the critical taxpayer information (items 1, 2, 7, 8, 9, and 10).
- Provided separate lines for the taxpayer legal name and the doing business as (dba) name (items 7 and 8).
- Separated the check boxes for authorizing return filing and authorizing federal tax deposits (item 16).
- Expanded the check boxes for authorizing federal tax deposits to include additional types of tax (item 16).
- Included items 17 and 18 to make the form usable by reporting agents for their authorizations to file with State agencies.
- Removed the reporting agent signature line.
- Clarified the language and combined items A and B from the prior form (item 16).
- Removed check boxes C and D.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 11,000.

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: May 26, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–14300 Filed 5–29–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4562

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 4562, Depreciation and Amortization (Including Information on Listed Property).

DATES: Written comments should be received on or before July 31, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Depreciation and Amortization (Including Information on Listed Property).

OMB Number: 1545–0172.

Form Number: 4562.

Abstract: Form 4562 is used to claim a deduction for depreciation and amortization; to make the election to expense certain tangible property under Internal Revenue Code section 179; and to provide information on the business/investment use of automobiles and other listed property. The form provides the IRS with the information necessary to determine that the correct depreciation deduction is being claimed.

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: Business or other for-profit organizations, farms, and individuals.

Estimated Number of Respondents: 6,500,000.

Estimated Time Per Respondent: 45 hr., 41 min.

Estimated Total Annual Burden Hours: 297,002,500.

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: May 14, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–14301 Filed 5–29–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4868

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 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before July 31, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.

OMB Number: 1545–0188.

Form Number: 4868.

Abstract: Form 4868 is used by taxpayers to apply for an automatic 4-month extension of time to file Form 1040, Form 1040A, or Form 1040EZ. The form contains information used by the IRS to determine if a taxpayer qualifies for the extension.

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 Respondents: 5,572,999.

Estimated Time Per Respondent: 1 hr., 5 min.

Estimated Total Annual Burden Hours: 6,074,569.

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: May 14, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–14302 Filed 5–29–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453

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 8453, U.S. Individual Income Tax Declaration for Electronic Filing.

DATES: Written comments should be received on or before July 31, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Declaration for Electronic Filing.

OMB Number: 1545–0936.

Form Number: 8453.

Abstract: Form 8453 is used to secure the taxpayer's signature and declarations in conjunction with the Electronic Filing program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return. The information on Form 8453 will be used by the IRS to verify the electronic return, allow for direct deposit of any refund, provide consent for the IRS to disclose the status of the return to the Electronic Return Originator and/or transmitter, and obtain the required signatures.

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 Respondents: 12,300,000.

Estimated Time Per Respondent: 15 min.

Estimated Total Annual Burden Hours: 3,075,000.

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: May 14, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–14303 Filed 5–29–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8752

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 8752, equired Payment or Refund Under Section 7519.

DATES: Written comments should be received on or before July 31, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Required Payment or Refund Under Section 7519.

OMB Number: 1545–1181.

Form Number: 8752.

Abstract: Partnerships and S corporations use Form 8752 to compute and report the payment required under Internal Revenue Code section 7519 or to obtain a refund of net prior year payments. Such payments are required of any partnership or S corporation that has elected under Code section 444 to have a tax year other than a required tax year.

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: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 72,000.

Estimated Time Per Respondent: 6 hr., 58 min.

Estimated Total Annual Burden Hours: 501,840.

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: May 20, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–14304 Filed 5–29–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 945, 945–A, and 945–V

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 ReductionAct of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 945, Annual Return of Withheld Federal Income Tax; Form 945–A, Annual Record of Federal Tax Liability; and Form 945–V, Form 945 PaymentVoucher.

DATES: Written comments should be received on or before July 31, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue

Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Return of Withheld Federal Income Tax (Form 945), Annual Record of Federal Tax Liability (Form 945–A), and Form 945 Payment Voucher (Form 945–V).

OMB Number: 1545–1430.

Form Number: 945, 945–A, and 945–V.

Abstract: Form 945 is used to report income tax withholding on nonpayroll payments including backup withholding and withholding on pensions, annuities, IRAs, military retirement, and gambling winnings. Form 945–A is used to report nonpayroll tax liabilities. Form 945–V is a payment voucher that is used by those taxpayers who submit a payment with their return.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 193,468.

Estimated Time Per Respondent: 8 hr., 54 min.

Estimated Total Annual Burden Hours: 1,721,011.

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: May 20, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–14305 Filed 5–29–98; 8:45 am]

BILLING CODE 4830–01–U

U.S. HOUSE OF REPRESENTATIVES

Designation of Agent To Receive Child Support and Alimony Orders and Process Pursuant to Sec. 362 of Pub. L. 104–193

AGENCY: U.S. House of Representatives.

ACTION: Notice: Designation of agent.

SUMMARY: Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, Sec. 362), the United Stats House of Representatives designates the Office of General Counsel for the House to receive orders and accept service of process in matters relating to child support or alimony.

ADDRESSES: Such orders and process shall be directed to: Office of General Counsel, U.S. House of Representatives, 219 Cannon Building, Washington, DC 20515, (202) 225–9700.

Authority: 42 U.S.C. 659, as amended by Sec. 362, Pub. L. 104–193, 110 Stat. 2105)

Dated: May 26, 1998.

Geraldine R. Gennet,

General Counsel, U.S. House of Representatives.

[FR Doc. 98–14316 Filed 5–29–98; 8:45 am]

BILLING CODE 1100–00–M

Corrections

Federal Register

Vol. 63, No. 104

Monday, June 1, 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 HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Correction

In notice document 98–11253 appearing on page 23294, in the issue of Tuesday, April 28, 1998, make the following correction:

On page 23294, in the second column, in the 27th line from the bottom ‘‘ 8:00 p.m.’’ should read ‘‘8:00 a.m.’’

BILLING CODE 1505-01-D

federal register

Monday
June 1, 1998

Part II

Office of Management and Budget

Cost Principles for Educational Institutions; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for Educational Institutions

AGENCY: Office of Management and Budget.

ACTION: Final Revision and interim final revision of OMB Circular A–21, ''Cost Principles for Educational Institutions.''

SUMMARY: The Office of Management and Budget revises Circular A–21, ''Cost Principles for Educational Institutions,'' by: (1) establishing review and documentation requirements to assure the reasonableness of large research facility costs, (2) implementing a new alternative approach to replace using special cost studies for the recovery of utility costs and deferring the elimination of special cost studies for the recovery of library costs, (3) providing additional guidance on the calculation of depreciation and use allowances on buildings and equipment, and (4) changing the distribution basis for the facilities and administrative cost application (from salaries and wages to modified total direct costs) at universities that use the simplified (short-form) method to calculate their facilities and administrative rate.

In addition, OMB is issuing an interim final revision to allow trustees' travel expenses.

DATES: The revision and the interim final revision are effective on June 1, 1998. Comments on the interim final revision must be received by July 1, 1998.

ADDRESSES: Comments should be mailed to Gilbert Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW, Room 6025, Washington, DC 20503. Comments up to three pages in length may be submitted via facsimile to 202–395–4915. Electronic mail comments may be submitted via Internet to TRAN—H@A1.EOP.GOV. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Non-Federal organizations should contact the organization's cognizant Federal agency. Federal agencies should contact Gilbert Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993.

SUPPLEMENTARY INFORMATION:

A. Purpose of Circular A–21

Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions,'' establishes principles for determining costs applicable to Federal grants, contracts, and other sponsored agreements with educational institutions.

B. Recent Prior Revisions

On February 6, 1995, OMB published two sets of proposed revisions (60 FR 7104 and 60 FR 7105): one for immediate consideration and the other for future consideration. The first set of proposed revisions was finalized on May 8, 1996 (61 FR 20880) with the following revisions.

- Incorporated four Cost Accounting Standards applicable to educational institutions, issued by the Cost Accounting Standards Board (CASB) on November 8, 1994 (59 FR 55746), and extended these standards to all sponsored agreements.
- Required certain large institutions to disclose their cost accounting practices by the submission of a Disclosure Statement prescribed by the CASB.
- Amended the definition of equipment.
- Eliminated in 1998 the use of special cost studies to allocate utility, library and student services costs.
- Required the use of fixed facilities and administrative (F&A) cost rates for the life of sponsored agreements.
- Established cost negotiation cognizant agency responsibilities.
- Replaced the term ''indirect costs'' with ''facilities and administrative costs''.
- Clarified the policy for a change from use allowance to depreciation.
- Added criteria to interest allowability.
- Disallowed tuition benefits for employee family members.

C. Current Revisions

On September 10, 1997, OMB proposed the second set of revisions (62 FR 47722) to complete OMB's intention expressed in February 1995. The proposal included the following:

1. Establish guidance for Federal cost negotiators to assure the reasonableness of facility costs.
2. Implement a new alternative approach to replace using special cost studies for the recovery of utility costs and defer the elimination of special cost studies for the recovery of library costs.
3. Provide additional guidance on the calculation of depreciation and use allowances on buildings and equipment.
4. Change the distribution basis for the facilities and administrative cost application (from salaries and wages to modified total direct costs) at universities that use the simplified (short-form) method to calculate their facilities and administrative rate.
5. Develop a standard format for F&A proposal submissions.

Circular A–21 is revised to:

1. Establish a review process to ensure the reasonableness of facility costs. To increase accountability in the research component of F&A costs and ensure that the cost of new research facilities passes a ''prudent person'' test of reasonableness, OMB establishes a review and documentation process for large research facilities. Large facilities are defined as buildings costing more than $10 million. The new provisions apply to large research facilities that are included in F&A rate proposals negotiated after January 1, 2000, with design and construction beginning after July 1, 1998. The revision, which is detailed in a new Section F.2.c, ''Large research facilities,'' is based on a university proposal and implements the following requirements:

- A requirement for institutions to maintain an adequate internal review and approval process for facility costs to ensure that the construction costs for large research facilities are reasonable. The requirement is applicable when an institution has a new large research facility (costing more than $10 million), of which more than 40 percent is expected to be allocated to Federal research. An annual review of the institution's internal review process would be performed under the audit for Federal programs, as required by OMB Circular A–133, ''Audits of State, Local Governments, and Non-Profit Organizations.'' Future revisions to the OMB Single Audit Compliance Supplement, which provides steps and procedures for auditors in conducting A–133 audits, will address the auditor's responsibility for assessing institutional compliance with the research facility cost review process.
- An additional documentation requirement for a building costing more than $25 million, of which more than 50 percent is expected to be allocated to Federal research. For any such building, the institution must perform and document an analysis of construction costs, which includes a comparison of those costs with the National Science Foundation data on research construction costs (based on its biennial survey, ''Science and Engineering Facilities at Colleges and Universities''), and any other relevant construction cost data.

2. Implement an alternative approach for the payment of utility costs and defer the elimination of special cost studies for the recovery of library costs. For the fiscal year beginning on or after July 1, 1998, institutions that have included special cost studies in their most recently submitted F&A proposal (listed in Exhibit B) may, instead, add a utility cost adjustment (UCA) of 1.3 percentage points to the university's overall F&A organized research rate calculated using the standard Circular A–21 allocation methods.

As explained below, the 1.3 percentage points represent the weighted average incremental rate that the Federal Government paid above the rate calculated using the standard allocation methodology to the 50 institutions that previously submitted special utility studies for utility costs related to research activities. OMB will periodically reassess the UCA.

OMB will also develop criteria and publish them in a **Federal Register** notice by which the institutions may be periodically recertified and by which other institutions could qualify for the UCA by July 1, 2002 and may change the UCA percentage point.

Further, OMB revises the Circular to allow special studies for library costs. Due to the uncertain effects of recent and ongoing changes to university libraries and their services brought about by the increased use of the Internet and on-line research, OMB defers the elimination of special cost studies to support the allocation of library costs until OMB has an opportunity to evaluate the impact of these changes on the costs of library services benefitting organized research.

3. Provide additional guidelines on depreciation and use allowances.

To provide more consistency in the treatment of use allowances and depreciation among educational institutions and Federal cognizant agencies, the Circular is revised as follows:

(a) Limit use allowance recovery to the acquisition costs of assets, or fair market value of donated assets at the time of donation (see subsection J.12.c).

(b) Require institutions that report depreciation on their financial statements to use the same depreciation method and useful lives for the F&A proposals (see subsection J.12.b).

(c) Establish guidelines for the calculation of depreciation on buildings when depreciation is calculated on individual building components (see subsection J.12.b). This revision establishes general categories of building components.

(d) Require institutions that record depreciation in their financial statements to record gains and losses on the disposition of depreciable assets (see section J.33).

4. Change the distribution basis for F&A application (from salaries and wages to modified total direct costs) for institutions that use the simplified allocation method. This change, detailed in Section H.3, provides more comparability of F&A rates between small and large universities.

5. Allow trustees' travel expenses. This change is issued as an interim final revision and is made to provide consistency with recent revisions to Circular A–122, ''Cost Principles for Non-Profit Organizations.'' OMB requests comments on this change.

Circular A–21, as amended by this revision, consists of the Circular published in 1979 (44 FR 12368; February 26, 1979), as amended in 1982 (47 FR 33658; July 23, 1982), in 1986 (51 FR 20908; June 9, 1986), in 1986 (51 FR 43487; December 2, 1986), in 1991 (56 FR 50224; October 1, 1991), in 1993 (58 FR 39996), in 1996 (61 FR 20880; May 8, 1996), and in this notice. The 1996 amendment included a recompilation of the Circular up to that date (61 FR 20893). A recompilation of the entire Circular with all its amendments, including this amendment, is available in electronic form on the OMB Home Page at http://www.whitehouse.gov/WH/EOP/omb.

D. Comments and Responses

OMB received about 130 comments from universities, Federal agencies, professional organizations, and accounting and law firms. The comments received and OMB's responses are summarized below. Several comments resulted in modifications to OMB's original proposal.

Facility Costs

Comment: The commenters strongly opposed the proposal to establish benchmark rates for facility costs, citing the following reasons: (1) benchmarks are unnecessary given that there is no evidence of abuse and universities already have rigid internal review and approval processes to assure reasonable construction costs; (2) benchmarks would compromise scientific excellence by discouraging universities' investment in modern facilities; (3) negotiators are not qualified to review justifications of facilities costs; and (4) the proposed NSF data are not suitable for establishing benchmark rates.

Some universities proposed a less rigid approach that relies on university cost management procedures to control the research facility costs.

Response: The objective of the proposed review process based on benchmark rates was to improve accountability by requiring and reviewing construction cost justifications of buildings costing more than 125 percent above the calculated average regional median. However, OMB recognizes that there may exist review and approval systems at universities to assure that construction costs are reasonable. Therefore, in accordance with the universities' suggestion, the Circular is revised to implement an approach that relies more on a university's internal review process for facility costs rather than established benchmarks. The approach requires a review of universities' internal cost management procedures, combined with additional documentation for large research facilities that are substantially allocated to Federal programs.

Comment: The review of any internal control system for costs charged against Federal programs should be included as part of the annual audit of Federal programs required by Circular A–133.

Response: OMB agrees. The review of the university's internal control and approval process for construction costs, which are indirectly charged to Federal programs through depreciation/use allowance costs, is included as part of the annual university A–133 audit. The review procedures will be included in the A–133 Compliance Supplement.

Comment: The National Science Foundation (NSF) survey data for research construction costs are inadequate for establishing benchmark rates. The data does not identify costs by project and produces an average rate based on the total of all construction projects, regardless of size. Some commenters added that benchmark rates should be based only on construction cost data for large projects at research-intensive schools, since these buildings tend to cost more.

Response: OMB has requested NSF to conduct a follow-up survey that would identify costs by project, and accumulate data for projects costing more than $10 million. For the revised review process in section F.2.c, universities shall include these NSF construction cost data for comparison purposes in their analysis of large research facilities costs.

Comment: One of the criteria that triggers a review for construction costs is that a building is substantially allocated to Federal programs. Does this criteria apply only when the building is initially put in service or during the life of the building?

Response: The criteria for Federal participation (use) percentage are based on university's estimation of the building use for its entire life. Therefore, when a university estimates during the planning phase that the space of a particular research building will be substantially allocated to Federal programs during its life (thus, the Federal government will fund a substantial part of the building costs), then the university must comply with requirements of section F.2.c. The Federal cognizant agencies will monitor the actual Federal participation percentage in the building usage versus the universities' estimation, so that OMB may evaluate whether further revisions to the review requirements would be appropriate.

Comment: The review process for facility costs should exclude reconstruction and renovation projects because of the diverse nature of these projects, and therefore their costs. In addition, the total costs of these projects are usually not material.

Response: OMB agrees. Reconstruction and renovation projects are not subject to the requirements of section F.2.c.

Comment: The criteria for construction projects subject to benchmark review should be increased to $25 million in construction costs and 50 percent of space allocated to Federal programs (instead of the proposed $10 million and 40 percent Federal participation).

Response: The revised requirements consist of two sets of criteria. The first one (buildings costing more than $10 million and 40 percent Federal participation) triggers the requirement for an internal review and approval system for facility construction costs at the institution. As suggested by some, the second set of criteria (buildings costing more than $25 million and 50 percent Federal participation) triggers the documentation requirement for that particular building.

Comment: The NSF construction data, which are required to be used as comparison data in section F.2.c, should be made available publicly and published as a separate schedule, as an attachment to A–21, or as part of the NSF biennial report.

Response: OMB agrees. NSF data will be available publicly because this data must be used by institutions in the comparative analysis for buildings costing more than $25 million. NSF will publish this data as part of their biennial report on research facilities.

Comment: Do the provisions in section F.2.c apply to buildings on which the design and construction begins prior to July 1, 1998 (and the buildings are not completed until fiscal year 2000)?

Response: OMB generally does not apply new provisions retroactively. Therefore, the new provisions in section F.2.c apply only to construction projects, on which the design and planning begins after July 1, 1998, and whose costs are included in the F&A rate proposals negotiated after January 1, 2000. The design and planning of a particular building start when the architectural design of the building is first presented to the institution's board of trustees for consideration.

Utility cost adjustment

Comment: Some commenters suggested an increase in the utility cost adjustment (UCA) from 1.3 percent to 1.7 percent based on the weighted average of negotiated UCA at 11 major research universities.

Response: The UCA remains at 1.3 percent at this time. The 1.3 percent UCA is the weighted average for 50 universities that have performed special utility cost studies, as OMB identified at proposal time. Since the proposal was published, an additional 16 universities have been identified to be eligible for the UCA because of their previous submission of the special cost studies. The revised weighted average UCA for the 66 schools dropped subsequently to 1.2 percent. Instead of reducing the UCA to 1.2 percent, OMB will finalize the UCA at 1.3 percent.

Comment: The UCA should be allowable to all schools regardless of whether they have previously performed a special utility cost study, since it is evident that research space require more utility costs than other types of space.

Response: OMB allows the universities to conduct special cost studies to support the utility consumption for research activities under section E.2.d of the Circular. As a result, 66 universities performed the special studies that support the allocation of utility costs to their research activities. OMB does not believe it is appropriate to grant the UCA at this time to universities that have not demonstrated the heavier utility consumption for their research activities. In addition, utility consumption varies greatly depending on the types of research space. For certain types of research space (e.g., computer laboratory, agricultural research barn, dry laboratory, and math laboratory), the standard allocation method (based on square foot) generally provides the best allocation of utility costs to benefiting activities. However, OMB will develop criteria by fiscal year 2002 for these universities to become certified for the UCA.

Comment: The UCA number needs to be connected with future actual utility costs because utility costs can increase astronomically in the future.

Response: OMB will periodically reassess the UCA number. OMB plans to reevaluate the UCA in fiscal year 2002 with the assistance from Federal agencies and the universities.

Comment: How is the UCA applied? On a building by building basis or on the total F&A rate?

Response: The UCA is added to the university's overall F&A rate that is computed using the standard allocation method. For example, a university computes its total F&A rate of 50 percent (using the square feet basis to allocate its utility costs); the F&A adjusted rate with the UCA would be 51.3 percent.

Depreciation and use allowance

Comment: Can a state university, that is not required to record depreciation for financial statements under generally accepted accounting principles (GAAP), use depreciation for its F&A proposal?

Response: A state university, which is not currently required under GAAP to record depreciation on its assets, can either use depreciation or use allowance for its F&A proposal. When the depreciation method is selected, the university must comply with the existing provisions in section J.12.b of the Circular to calculate depreciation costs.

Comment: The revision requires that the same depreciation method be used for financial statements and for a F&A proposal. Can a Federal negotiator question the useful life of an asset when that useful life is used for financial statements?

Response: The Federal negotiator can always question the reasonableness of a particular asset's useful life as part of the F&A proposal review. However, with this revision, the Federal negotiator should address his/her concerns to the institution's external auditors, who are responsible for certifying the adequacy of the institution's financial statements (including the asset depreciation methods). For public universities that do not currently record depreciation on their financial statements, but use depreciation methods on their F&A proposals, the Federal negotiator can address his/her concerns to the institution's management and make any necessary adjustments on the F&A proposal.

Comment: The revision suggests the grouping of building components for depreciation purposes into three general groups: building shell, building services systems, and fixed equipment. Can a university have more than three general groups with the authorization from the Federal cognizant agency?

Response: OMB believes that the three general groups are sufficient for grouping building components for depreciation. If, in an exceptional case, a university believes it should have more than the three general groups for building components, the university may so proceed if it receives authorization from the Federal cognizant agency to do so. Such an exception should rarely be authorized, if ever. The use of the three general groups standardizes the ''componentization'' process, eases the review of depreciation, and allows better data collection on depreciation costs.

Comment: Can each component within a major building group have a separate useful life?

Response: Each component within a general building group can have a separate useful life that takes into consideration such factors as: type of construction, nature of equipment, technological developments in the particular area, and the renewal and replacement policies for the assets. When a general component group has more than one useful life for its components, a composite useful life for the entire group must be calculated.

Comment: The commenters, particularly the public universities, opposed a requirement to limit (i.e., cap) the use allowance recovery on assets to the acquisition costs. They argued that (1) the requirement is contrary to current policy regarding use allowance; (2) the over-recovery of use allowance on those assets that have surpassed their useful life is balanced by the under-recovery of assets that are disposed of earlier than their useful life; and (3) the new limitation will lead universities to convert to depreciation, which is costly, will add accounting burden, and will increase the F&A rate.

Response: OMB disagrees. To allow use allowance for assets in excess of the assets' acquisition costs can result in over-recovery of costs by the universities, particularly when the universities can select either the depreciation or use allowance methods for a particular class of assets. In many instances, universities use both the depreciation and use allowance methods for different classes of assets: often using use allowance for long-lasting assets such as buildings and laboratory benches, while using depreciation for shorter-life assets such as computers. In these instances, the under-recovery and over-recovery of asset costs do not balance each other out, but rather the result is an over-recovery of costs against Federal programs.

Under special circumstances, when a university uses the use allowance method for all its assets, current section J.12.c.(3) allows the university to claim use allowance recovery in excess of acquisition costs for certain assets, with approval from Federal cognizant agencies.

This issue may soon become moot when the public universities are required, by the Governmental Accounting Standards Board (GASB), to record depreciation for financial statements (at this time, this requirement is projected to be effective for fiscal year 2001).

Comment: The conversion to depreciation for old buildings is extremely difficult, if not impossible, because of the lack of records for older capital improvement projects. The commenters suggest that capital improvement projects be excluded from the limitations of use allowance recovery.

Response: For older capital improvement projects, for which records are unavailable, the university and the Federal cognizant agency may negotiate a reasonable use allowance amount as long as the buildings are still in use for the benefit of Federal programs.

Comment: The provision on gains and losses on the sale, retirement, or other disposition of depreciable property should not apply to public universities, which are not required to depreciate under GAAP, and therefore, do not maintain depreciation records.

Response: OMB agrees. Section J.33.a (d) provides an exemption for institutions that claim use allowance in lieu of depreciation for the recovery of their asset costs.

Distribution Basis for ''Short-Form'' Universities

Comment: The use of the modified total direct costs (MTDC) basis should be an option rather than a requirement for the simplified allocation method since the determination of a MTDC basis can be much more complicated than the salaries and wages basis. In some cases, universities have to make major accounting system changes to accommodate this requirement.

Response: OMB agrees. OMB encourages universities to use the MTDC as the distribution basis for the simplified allocation method, as it would improve the consistency of F&A rate reporting among small and large universities. However, because of the possible difficulties for some universities to calculate the MTDC amount, the revision allows the universities to use either the MTDC or salaries and wages as distribution basis.

Definition of ''Major Projects'

Comment: In July 1994, OMB issued a memorandum to the Federal agencies to clarify its policy on administrative costs for ''major project'', referred in subsection F.6.b, ''Departmental administration expenses.'' OMB should add this clarification to the Circular to provide consistent definition and treatment of the administrative costs related to ''major project.''

Response: OMB agrees. The OMB memorandum to the Federal agencies (dated July 13, 1994) provided guidance on defining the circumstances under which administrative and clerical salaries may be charged directly to Federal sponsored agreements. The definition of ''major project'', as provided in OMB's memorandum, is added to section F.6.b. A sample of examples is listed as new exhibit C.

E. Other Items

Develop a standard format for the submission of F&A proposals

OMB proposed in September 1997 to develop a standard format for the submission of F&A proposals, that would assist universities in completing their F&A rate proposals more efficiently and help the Federal cognizant agency review each proposal on a more consistent basis. OMB, with assistance from Federal agencies and universities, is in the process of developing this standard format. When completed, OMB will request comments under the Paperwork Reduction Act through a separate **Federal Register** notice. The standard format will be included as an Appendix to the Circular and be available electronically.

Interim Final Revision—Trustees' Travel Expenses

OMB is making an interim final revision to allow trustees' travel expenses at educational institutions under the administrative cost component of the F&A rate. The revision is made to provide consistency with recent revisions to Circular A–122, ''Cost Principles for Non-Profit Organizations,'' which retained the allowability of trustees' travel expenses.

OMB recently issued final revisions to Circular A–122 to provide consistency across all cost circulars. Based on the comments received from non-profit

grantees regarding the proposed disallowance of trustees' travel expenses, OMB determined that trustees' travel expenses are reasonable and necessary business expenses for the operations of non-profit organizations and should remain allowable. In considering this issue for A–122, OMB also decided that trustees' travel expenses are reasonable and necessary for universities. In October 1991, trustee travel was made unallowable in Circular A–21, along with a number of other cost categories (e.g., alcohol and advertising costs). This interim final rule reflects the view that trustee travel, unlike the other unallowable costs, is a reasonable cost of business, and should be allowed. Accordingly, OMB is revising Circular A-21 to allow trustees' travel expenses (see revised section 50). OMB requests comments on this change.

Franklin D. Raines,

Director.

Circular A–21 is revised as follows:

1. Replace subsection E.2.d.(5) with the following:

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section F shall not be used to distribute utility or student services costs. Instead, subsections F.4.c and F.4.d may be used in the recovery of utility costs.

2. Add new subsection F.2.c:

c. *Large research facilities*. The following provisions apply to large research facilities, that are included in F&A rate proposals negotiated after January 1, 2000, and on which the design and construction begin after July 1, 1998. Large facilities, for this provision, are defined as buildings with construction costs of more than $10 million. The determination of the Federal participation (use) percentage in a building is based on institution's estimates of building use over its life, and is made during the planning phase for the building.

(1) When an institution has a large research facilities, of which 40 percent or more of total assignable space is expected for Federal use, the institution must maintain an adequate review and approval process to ensure that construction costs are reasonable. The review process shall address and document relevant factors affecting construction costs, such as:

—Life cycle costs
—Unique research needs
—Special building needs
—Building site preparation
—Environmental consideration
—Federal construction code requirements
—Competitive procurement practices

The approval process shall include review and approval of the projects by the institution's Board of Trustees (which can also be called Board of Directors, Governors or Regents) or other independent entities.

(2) For research facilities costing more than $25 million, of which 50 percent or more of total assignable space is expected for Federal use, the institution must document the review steps performed to assure that construction costs are reasonable. The review should include an analysis of construction costs and a comparison of these costs with relevant construction data, including the National Science Foundation data for research facilities based on its biennial survey, ''Science and Engineering Facilities at Colleges and Universities.'' The documentation must be made available for review by Federal negotiators, when requested.

3. Add new subsections F.4.c and F.4.d:

c. For F&A rates negotiated on or after July 1, 1998, an institution that previously employed a utility special cost study in its most recently negotiated F&A rate proposal in accordance with Section E.2.d, may add a utility cost adjustment (UCA) of 1.3 percentage points to its negotiated overall F&A rate for organized research. Exhibit B displays the list of eligible institutions. The allocation of utility costs to the benefitting functions shall otherwise be made in the same manner as described in subsection F.4.b. Beginning on July 1, 2002, Federal agencies shall reassess periodically the eligibility of institutions to receive the UCA.

d. Beginning on July 1, 2002, Federal agencies may receive applications for utilization of the UCA from institutions not subject to the provisions of subsection F.4.c.

4. Replace subsection F.6.b with the following:

b. The following guidelines apply to the determination of departmental administrative costs as direct or F&A costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or F&A costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs shall be treated as direct cost wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances.

(2) The salaries of administrative and clerical staff should normally be treated as F&A costs. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for administrative or clerical services and individuals involved can be specifically identified with the project or activity. ''Major project'' is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. Some examples of major projects are described in Exhibit C.

(3) Items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as F&A costs.

5. Replace subsection H.1.a with the following:

a. Where the total direct cost of work covered by Circular A–21 at an institution does not exceed $10 million in a fiscal year, the use of the simplified procedure described in subsections 2 or 3, may be used in determining allowable F&A costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information shall be utilized as basis for determining the F&A cost rate applicable to all sponsored agreements. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as distribution basis.

6. Change the title for subsection H.2. to ''Simplified Procedure—Salaries and Wages Base.''

7. Add a new subsection H.3.

3. *Simplified procedure—Modified total direct cost base*.

a. Establish the total costs incurred by the institution for the base period.

b. Establish a F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The modified total direct costs amount included in the F&A cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section G.2, that consists of all institution's direct functions.

d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the F&A cost rate to the modified total direct costs for individual agreements to determine the amount of F&A costs allocable to such agreements.

8. Replace subsection J.12.b.(2) with the following:

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. The depreciation methods used to calculate the depreciation amounts for F&A rate purposes shall be the same methods used by the institution for its financial statements. This requirement does not apply to institutions (e.g., public institutions) which are not required to record depreciation by applicable generally accepted accounting principles (GAAP).

9. Replace subsection J.12.b.(4) with the following:

(4) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components shall be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fumehoods, cold rooms and glassware/washers). In exceptional cases, a Federal cognizant agency may authorize an institution to use more than these three groupings. When an institution elects to depreciate its buildings by its components, the same depreciation methods must be used for F&A purposes and financial statements purposes, as described in subsection (2).

10. Replace subsection J.12.c.(1) with the following:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) shall be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. Use allowance recovery is limited to the acquisition cost of the assets. For donated assets, use allowance is limited to the fair market value of the assets at the time of donation.

11. Replace section J.33 with the following:

33. Profits and losses on disposition of plant equipment or other capital assets.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under Section J.12.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in Section J.21.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a shall be excluded in computing Federal award costs.

c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

12. Replace Section 50 with the following:

50. *Trustees.* Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in Section 48.

13. Add Exhibit B—Listing of institutions receiving the utility cost adjustment and Exhibit C—Examples of ''major project'' where direct charging of administrative or clerical staff salaries may be appropriate, as follows:

Exhibit B

Listing of institutions that are eligible for the utility cost adjustment.

1. Baylor University
2. Boston College
3. Boston University
4. California Institute of Technology
5. Carnegie-Mellon University
6. Case Western University
7. Columbia University
8. Cornell University (Endowed)
9. Cornell University (Statutory)
10. Cornell University (Medical)
11. Dayton University
12. Emory University
13. George Washington University (Medical)
14. Georgetown University
15. Harvard Medical School
16. Harvard University (Main Campus)
17. Harvard University (School of Public Health)
18. Johns Hopkins University
19. Massachusetts Institute of Technology
20. Medical University of South Carolina
21. Mount Sinai School of Medicine
22. New York University (except New York University Medical Center)
23. New York University Medical Center
24. North Carolina State University
25. Northeastern University
26. Northwestern University
27. Oregon Health Sciences University
28. Oregon State University
29. Rice University
30. Rockefeller University
31. Stanford University
32. Tufts University
33. Tulane University
34. Vanderbilt University
35. Virginia Commonwealth University
36. Virginia Polytechnic Institute and State University
37. University of Arizona
38. University of CA, Berkeley
39. University of CA, Irvine
40. University of CA, Los Angeles
41. University of CA, San Diego
42. University of CA, San Francisco
43. University of Chicago
44. University of Cincinnati

45. University of Colorado, Health Sciences Center
46. University of Connecticut, Health Sciences Center
47. University of Health Science and The Chicago Medical School
48. University of Illinois, Urbana
49. University of Massachusetts, Medical Center
50. University of Medicine & Dentistry of New Jersey
51. University of Michigan
52. University of Pennsylvania
53. University of Pittsburgh
54. University of Rochester
55. University of Southern California
56. University of Tennessee, Knoxville
57. University of Texas, Galveston
58. University of Texas, Austin
60. University of Texas Southwestern Medical Center
61. University of Virginia
62. University of Vermont & State Agriculture College
63. University of Washington
64. Washington University
65. Yale University
66. Yeshiva University

Exhibit C

Examples of ''major project'' where direct charging of administrative or clerical staff salaries may be appropriate.

- Large, complex programs such as General Clinical Research Centers, Primate Centers, Program Projects, environmental research centers, engineering research centers, and other grants and contracts that entail assembling and managing teams of investigators from a number of institutions.
- Projects which involve extensive data accumulation, analysis and entry, surveying, tabulation, cataloging, searching literature, and reporting (such as epidemiological studies, clinical trials, and retrospective clinical records studies).
- Projects that require making travel and meeting arrangements for large numbers of participants, such as conferences and seminars.
- Projects whose principal focus is the preparation and production of manuals and large reports, books and monographs (excluding routine progress and technical reports).
- Projects that are geographically inaccessible to normal departmental administrative services, such as research vessels, radio astronomy projects, and other research field sites that are remote from campus.
- Individual projects requiring project-specific database management; individualized graphics or manuscript preparation; human or animal protocols; and multiple project-related investigator coordination and communications.

These examples are not exhaustive nor are they intended to imply that direct charging of administrative or clerical salaries would always be appropriate for the situations illustrated in the examples. For instance, the examples would be appropriate when the costs of such activities are incurred in unlike circumstances, i.e., the actual activities charged direct are not the same as the actual activities normally included in the institution's facilities and administrative (F&A) cost pools or, if the same, the indirect activity costs are immaterial in amount. It would be inappropriate to charge the cost of such activities directly to specific sponsored agreements if, in similar circumstances, the costs of performing the same type of activity for other sponsored agreements were included as allocable costs in the institution's F&A cost pools. Application of negotiated predetermined F&A cost rates may also be inappropriate if such activity costs charged directly were not provided for in the allocation base that was used to determine the predetermined F&A cost rates.

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Part III

Office of Management and Budget

Cost Principles for Non-Profit Organizations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Final revision of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

SUMMARY: The Office of Management and Budget (OMB) revises OMB Circular A–122 by amending the definition for equipment; requiring the breakout of indirect costs into two categories (facilities and administration) for certain non-profit organizations; modifying the multiple allocation basis; and, clarifying the treatment of certain cost items.

DATES: The revision is effective on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Federal agencies should contact Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. Non-Federal organizations should contact the organization's Federal cognizant agency.

SUPPLEMENTARY INFORMATION:

A. Background

On October 6, 1995, the Office of Management and Budget (OMB) issued a final revision to OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' in the **Federal Register** (60 FR 52516) regarding interest allowability. The revision was made in a continuing effort to increase consistency across OMB's cost principles circulars A–122, A–21, ''Cost Principles for Educational Institutions,'' and A–87, ''Cost Principles for State, Local and Indian Tribal Governments.'' To further the goals of consistency, OMB proposed on the same date (60 FR 52522) to revise the definition of equipment, to clarify the treatment of certain types of costs, to modify the multiple allocation base method for computing indirect cost rate(s), and to place an upper-limit on payments of administrative expenses for certain non-profit organizations.

With this final revision, Circular A–122 consists of the Circular as issued in 1980 (45 FR 46022; July 8, 1980), as amended in 1984 (49 FR 18260; April 27, 1984), in 1987 (52 FR 19788; May 27, 1987), in 1995 (60 FR 52516; October 6, 1995), in 1997 (62 FR 45934; August 29, 1997), and in this notice. A recompilation of the entire Circular A–122, with all its amendments, accompanies the notice and is available in electronic form on the OMB Home Page at http://www.whitehouse.gov/WH/EOP/omb.

B. Current Revisions

Circular A–122 is revised in this notice to:

1. Amend the definition of equipment by increasing the capitalization threshold to the lesser amount used for financial statement purposes or $5,000 (see paragraph 15).
2. Require major non-profit organizations (those receiving more than $10 million in direct Federal funding) to report indirect cost rates by two major component categories: facilities and administration (see paragraph D, Attachment A).
3. Modify the multiple allocation base method (MAB) to be consistent with OMB Circular A–21 (see paragraph D.3). However, major non-profit organizations are not required to use the multiple allocation base method. MAB remains one of the three available methodologies for computing indirect costs.
4. Clarify the treatment of the following cost items to provide consistency across OMB's cost principles circulars (A–21 and A–87) and the Federal Acquisition Regulations, where applicable:

- Alcoholic beverages.
- Advertising and public relations costs.
- Organization-furnished automobiles.
- Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.
- Housing and living expenses.
- Insurance.
- Memberships.
- Selling or marketing of goods and services.
- Severance pay for foreign nationals.

OMB is not implementing the proposed restrictions on trustees' travel expenses at non-profit organizations. In line with this decision, and to further consistency between cost circulars, OMB will be amending Circular A–21 to allow trustees' travel expenses.

OMB defers considering an upper-limit on payment of administrative expenses until better data on indirect costs at non-profit organizations are collected.

C. Comments and Responses

OMB received about 185 comments from non-profit organizations, Federal agencies, professional organizations and accounting firms. A summary of comments and OMB's responses are included in this notice. Several comments resulted in modifications to OMB's original proposal.

The comments and OMB's responses are summarized by section as follow.

Equipment Definition

Comment: Clarification is needed on the treatment of depreciation of those assets which had costs between the old $500 threshold and the new $5,000.

Response: In order to clarify the accounting for the undepreciated portion of any equipment costs as a result of a change in capitalization levels, paragraph 15 has been added to explain that the undepreciated amount may be recovered by continuing to claim otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

Comment: Clarification is needed on whether equipment under the $5,000 threshold, as established by the non-profit organizations' policy, requires Federal approval prior to acquisition.

Response: Equipment under the $5,000 threshold, as established by the non-profit organization's policy, can be directly charged to sponsored agreements (subparagraph 15.b) without prior Federal approval.

Comment: Current subparagraph 13.b requires prior approval for special purpose equipment, as direct costs, with a unit cost of $1,000 or more. This requirement is not consistent with the higher threshold of $5,000 allowed in the proposed revision. This requirement should be revised to be consistent with the proposed revision.

Response: OMB agrees. The Circular is revised to require prior Federal approval only for special purpose equipment with a unit cost of $5,000 or more.

Unallowable Cost Items

These ten revised cost items are already unallowable under OMB Circulars A–21, ''Cost Principles for Educational Institutions,'' and A–87, ''Cost Principles for State, Local and Indian Tribal Governments,'' and/or the Federal Acquisition Regulations. OMB addressed the issue of trustees' travel in response to the comments received. For the other items, consistency across Federal cost regulations was a more significant issue than most of the commenters' concerns. Comments related to specific cost items are presented below, followed by OMB's responses.

Advertising and Public Relations Costs

Comment: Current paragraph 37, Public information service costs, should be combined with the ''Advertising'' paragraph to be consistent with other OMB cost principles in Circulars A–21 and A–87.

Response: The commenter is correct. The treatment of public information service costs is now addressed in revised paragraph 1, Advertising and public relations costs. Current paragraph 37 is deleted.

Comment: Clarify the types of activities that are allowable as public relations costs. Public relations costs to carry out certain functions, such as legitimate program outreach, that are required under sponsored programs and contracts should be allowable.

Response: The Circular is revised to clarify that certain public relations costs for the purpose of communicating specific activities related to the sponsored programs to the public or the press are allowable costs. When they are necessary for program outreach effort as required by sponsored programs, public relations costs are allowable. Costs of advertising and public relations incurred solely to promote the organization are unallowable.

Comment: Clarify whether advertising media costs such as radio and television are allowable.

Response: As long as the public relations costs are specifically required by the sponsored programs or are related to the promotion of sponsored programs, any reasonable advertising media, including magazines, newspapers, radio, television, direct mail, exhibits, and the like, can be used and its costs are allowable. See paragraph 1.a.

Comment: Community relation costs should be allowable as part of program outreach effort for Federal sponsored programs.

Response: Community relations are defined in subparagraph 1.b as ''those activities dedicated to maintain the image of the organization or promoting understanding and favorable relations with the community or public at large or any segment of the public.'' Costs related to community relations are allowable when the costs are required or necessary to the performance of the sponsored programs.

Organization-Furnished Automobiles for Personal Use

Comment: For security and economic reasons, non-profit organizations often furnish automobiles and housing for its personnel working on Federal projects (e.g., overseas projects sponsored by the U.S. Agency for International Development or the U.S. State Department). These costs should be allowable as direct costs.

Response: The Circular is revised to allow these costs when they are necessary to perform the Federal projects, particularly the overseas sponsored projects with prior approval by the Federal awarding agency. These costs are allowable only as direct costs to the Federal projects, and not as fringe benefit or indirect costs.

Comment: The Circular should specify which types of automobiles are allowable or unallowable (e.g., cars, vans, trucks and buses).

Response: The types of automobiles are irrelevant for the purpose of determining the allowability of automobile costs. Rather, the determinant factors should be whether the automobile costs are reasonable and necessary for the performance of the Federal projects and authorized by the Federal awarding agency.

Defense and Prosecution of Criminal and Civil Proceedings, Claims, Appeals and Patent Infringements

Comment: Current paragraph 35.d, Professional service costs, should be combined with new paragraph 10.

Response: OMB agrees. Current paragraph 35.d is deleted. Professional service costs related to defense of antitrust suits, prosecution of claims against the Federal Government and patent infringement litigation are discussed in new paragraph 10. Professional service costs incurred for organization and reorganization are discussed in paragraph 31, Organization costs.

Comment: Clarification is needed as to when legal costs related to claims, appeals or proceeding become unallowable. Commenters noted that Federal agencies are inconsistent in the determination of the allowability of legal costs as one agency would allow legal costs up to the point where the case goes out of the Federal agency appeal process and to the courts, whereas other agencies would only allow legal costs through the first phase of appeals within the Federal agency.

Response: The policy makes unallowable legal and related costs for either defending against claims made by the Federal Government or prosecuting claims against the Government. As such, once a final management decision letter is issued by the agency (for example, a disallowance letter), all legal and related costs are unallowable from that point forward. Unallowable costs would include claims and defenses pursued through agencies' formal appeal procedures such as administrative law judges and agency appeal boards. Note that legal and related costs may be allowable if the non-profit organization's position is sustained by the administrative appeal process or an agreement is reached between the organization and the Federal Government (see subparagraghs 10.b, 10.c, 10.d and 10.e). This revision is consistent with the language contained in OMB Circular A–21, ''Cost Principles for Educational Institutions.''

Comment: Some commenters objected to the proposed 80 percent limitation on reimbursement when the institution is found innocent.

Response: The proposed revision was retained because it provides consistency with procurement contracts. This limitation is based on the statutory language of Public Law 100–700, Major Fraud Act of 1988, November 19, 1988 (41 U.S.C., 256 (k)(5)), which only allows recovery of 80 percent of the legal costs.

Comment: Legal expenses to defend against lawsuits brought by a foreign government for violation of that country's law should be allowable.

Response: The Circular is revised in subparagraph 10.d to authorize Federal agencies to allow legal expenses to defend against lawsuits brought by a foreign government for violation of its law when such costs were necessary or were direct results of the performance of Federal sponsored programs. The same authorizations apply for legal costs for defense against lawsuits brought by state or local governments.

Comment: Legal fees to defend against lawsuits filed by former employees for termination or by subrecipients should be allowable.

Response: Legal fees incurred in defense of lawsuits not brought by a Federal, State, local or foreign government, except when the suits are brought by former employees under Section 2 of the Major Fraud Act of 1988 (Pub. L. 100–700), are allowable.

Housing and Living Expenses

Comment: For security and economic reasons, non-profit organizations often furnish automobiles and housing for its personnel working on overseas Federal projects (e.g., overseas projects sponsored by the U.S. Agency for International Development). These costs should be allowable as direct costs.

Response: As previously noted (in the discussion of automobiles), the Circular is revised to allow these costs when they are necessary to perform the Federal projects and when they are approved by the Federal awarding agency. These costs are allowable only as direct costs to the Federal projects, and not as fringe benefit or indirect costs.

Insurance

Comment: General and casualty liability insurance costs for

organization's directors and administrators should be allowable.

Response: General and casualty liability insurance costs for organization's directors and administrators are allowable, subject to limitations, as described in subparagraph 22.a.(2). New subparagraph 22.a.(2).f, Insurance against defects, prohibits the reimbursement of costs against Federally sponsored awards for product (or services) liability insurance costs.

Comment: Medical liability insurance costs for participants in Federal training programs should be allowable.

Response: Medical liability insurance costs associated with participants in Federal training programs are allowable to Federal programs as direct costs.

Comment: Malpractice insurance costs for physicians should be direct charged to Federal programs while malpractice insurance costs for nurses or laboratory assistants, which are immaterial in most cases, should be charged as indirect costs.

Response: Subparagraph B.2 of Attachment A provides that when a direct cost is of minor amounts, it may be treated as an indirect cost for reasons of practicality and efficiency, provided that the accounting treatment for such cost is consistently applied to all final cost objectives. Therefore, when malpractice insurance costs for nurses or lab technicians are immaterial in relation to its effect on the overall indirect cost rates of the organization, they may be treated as indirect costs.

Memberships

Comment: Membership costs in civic and community organizations should be allowable.

Response: Membership costs are allowable for business and professional organizations. The Circular is further revised to allow membership costs in civic and community organizations when associations with these organizations are essential to the performance of the Federal programs (as an outreach function). These membership costs must be approved by the Federal cognizant agency.

Comment: Costs of membership in organizations that lobby should be unallowable.

Response: Paragraph 25 of the Circular disallows lobbying costs. Membership dues to lobbying organizations are therefore unallowable. The unallowable portion of membership dues is determined by the percentage of lobbying activities versus other allowable activities of the lobbying organization.

Selling or Marketing of Goods and Services

Comment: Clarification is needed for what types of activities are considered to be the selling or marketing of goods and services.

Response: Selling or marketing of goods and services generally include an organization's efforts to market the organization's products or services such as through advertising, organizational image enhancement, market planning and direct selling. Direct selling efforts are those acts or actions used to induce particular customers to purchase particular products or services of the organization. The allowability provisions for advertising costs are described in paragraph 1.

Comment: The guidelines for selling or marketing of goods and services should be consistent with those in FAR 31.205.38(c)(1).

Response: FAR 31.205.38(c)(1) allows direct selling costs at commercial contractors if they are reasonable in amount. By contrast to the commercial contract context, direct selling costs are generally not considered to be necessary costs for the performance of Federal sponsored programs by non-profit organizations. In those cases where they are essential for certain Federal sponsored programs, these costs can be charged as direct costs to the Federal sponsored programs if they are approved by the Federal awarding agency.

Comment: Given that the Bayh-Dole Act encouraged technology transfer, selling or marketing costs of goods or services should be allowable costs. At the minimum, these costs should be allowable as direct costs to the Federal projects.

Response: The Circular is revised to allow selling or marketing costs as direct costs to some Federal sponsored programs when approved by the Federal awarding agency.

Severance Pay

Comment: Early retirement benefits should be allowable costs.

Response: Early retirement benefit costs are allowable costs, subject to limitations, and are discussed in subparagraph 6.f, Fringe Benefits, along with other forms of fringe benefits. Paragraph 49, Severance Pay, deals only with severance policy, i.e., dismissal, and the reimbursement of its costs.

Comment: Guidelines for costs of severance pay to foreign nationals in excess of customary or prevailing practices should be consistent with section 2151 of the Federal Acquisition Streamlining Act of 1994 (FASA).

Response: OMB agrees. The Circular is revised to be consistent with FASA guidelines for severance pay to foreign nationals in excess of customary or prevailing practices. As a result, the Federal awarding agency may allow these costs when they are necessary for the performance of the Federal sponsored programs.

Trustees' Travel

Comment: Several commenters opposed the proposal to disallow trustees' travel costs citing the difficulty of retaining or obtaining members to serve voluntarily on the Board of Trustees (or Directors) of a non-profit organization, if Board members have to pay for their own travel expenses to attend Board meetings. The commenters added that since serving on a non-profit organization's Board is often not as prestigious and desirable as serving on a University's Board (where trustees' travel costs are unallowable under Circular A–21), non-reimbursement of the travel costs would inhibit the recruitment of Board members.

Response: OMB concurs that disallowing the reimbursement of trustees' travel costs could inhibit the recruitment of qualified Board members (particularly at smaller non-profit organizations), thereby hampering the operations of a non-profit organization. OMB also recognizes that trustees' travel costs are reasonable and necessary business costs. As a result, trustees' travel costs remain allowable.

Comment: Trustees' travel costs should be allowable if they are reasonable. Some suggested tests for reasonableness of trustees' travel costs are: limit number of allowed trips per year, restriction of trips to organization's principal place of business or reasonable surroundings, distinction between scheduled Board meetings and emergency Board meetings, and disallowance of first-class airfare travels.

Response: All costs charged to Federal projects must satisfy a reasonableness test. Although some of the suggested reasonableness tests appear to be good, OMB does not believe it is necessary at this time to impose specific restrictions on trustees' travel expenses. The reasonableness of a particular travel expense remains at the judgement of Federal negotiators.

Comment: At Head Start organizations, some Trustee members are first sent for training in the operations of a Head Start program. These travel costs related to training should be allowable.

Response: Travel costs related to training and education are allowable,

subject to limitations, and are addressed in paragraph 53 of the Circular, Training and education costs.

Comment: At Head Start organizations, there often are several advisory boards in addition to the Board of Trustees (or Directors). These advisory boards are involved in day-to-day operations of the organizations and often incur travel costs. Are these costs subject to the same restrictions as trustees' travel?

Response: Travel costs for members of advisory groups are allowable, subject to the limitations in paragraph 55, Travel costs.

Multiple Allocation Basis (MAB)

Comment: The multiple allocation method for calculating indirect costs rates is much more complicated and burdensome than the simplified method and it will cost non-profit organizations much more to prepare the indirect cost proposal. Several commenters recommended the flexibility of using one of the three different allocation methods as they are currently described in the Circular. The multiple allocation basis (MAB) should remain an optional allocation methodology rather than a required methodology for certain organizations.

Response: The use of MAB for major non-profit organizations promotes consistency in the calculation and the reporting of indirect costs. It would facilitate the accumulation of indirect cost data by cost components (i.e., facilities and administration) and provide comparable rates between major research non-profit organizations and universities. However, OMB recognizes that a conversion to MAB may require some substantial changes in the organization's accounting system and that MAB is not practical for single-function organizations. Therefore, the Circular continues to allow non-profit organizations to use any of the current three allocation methodologies.

Comment: Several commenters suggested raising the threshold for the requirement to $25 million in direct Federal funding. Several commenters also suggested an exemption from this requirement for single-function organizations regardless of Federal funding levels.

Response: The Circular is revised to allow the use of the current three allocation methodologies for all non-profit organizations. For organizations that receive more than $10 million in direct Federal funding, a breakout of indirect costs into two components, facilities and administration, is required regardless of the selected allocation methodology.

Comment: The allocation methodology for general administration under MAB on the basis of modified total direct costs conflicts with the required methodology under Cost Accounting Standard (CAS) 410 applicable to contracts using the salaries and wages basis. One commenter suggested that a fully CAS-covered non-profit organization be exempted from the MAB requirement.

Response: MAB is not a requirement for non-profit organizations and remains one of the three available methodologies in the Circular for computing indirect costs. In addition, CAS-covered non-profit organizations should continue to follow CAS with respect to the measurement, assignment and allocation of costs.

Comment: The revision should clarify that the modified total direct cost base should only include the first $25,000 of a subcontract regardless of the period during which the project is started (consistent with OMB Circular A–21).

Response: The modified total direct cost base, described in subparagraph D.3.f of the Circular, includes the first $25,000 of each subgrant or subcontract regardless of the period covered by the subgrant or subcontract. Subgrant or subcontract costs above $25,000 shall be excluded from the modified total direct cost base. For example, for a $300,000 subgrant that lasts three years, only the first $25,000 incurred on the award should be included in the modified total direct cost base.

Administrative Cap of 26 Percent

Comment: Most commenters strongly opposed the 26 percent administrative cap stating that such limitation on cost reimbursement is arbitrary, capricious, and unnecessary. Some argued that a cap would be financially disastrous to non-profit organizations because they receive most of their funding from Federal sources (unlike universities). A detailed analysis is urged to determine the average administrative costs applicable to non-profit organizations, if an administrative cap is to be implemented at non-profit organizations.

Response: Based on the comments against the implementation of an administrative cap at non-profit organizations, OMB defers the consideration of establishing any administrative cap until better data on indirect costs at non-profit organizations can be collected. If OMB believes that an administrative cap should be implemented, it would be proposed in a subsequent notice.

Other

Comment: Attachment C of the Circular should be updated since a few listed organizations no longer exist.

Response: OMB agrees. Attachment C is updated to delete those organizations that no longer exist or are no longer exempted from OMB Circular A–122.

Franklin D. Raines,

Director.

Attachments A, B and C of Circular A–122 are revised as follows:

A. Attachment A

1. Add subparagraph 3 to paragraph C (''Indirect Costs'').

3. Indirect costs shall be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ''Administration'' is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of ''Facilities'' (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in subparagraphs D.2.e and D.3.g.

2. Add subparagraph 2.e to paragraph D.

e. For an organization that receives more than $10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in subparagraph C.3, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

3. Replace subparagraph D.3 with the following:

3. *Multiple allocation base method.*

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in subparagraph b. Each grouping shall then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in subparagraph c.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping

on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: ''Facilities'' and ''Administration,'' as described in subparagraph C.3. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with paragraph 11 of Attachment B (''Depreciation and use allowances'').

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with paragraph 23 of Attachment B (''Interest, fund raising, and investment management costs'').

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefitting functions based on modified total direct costs (MTDC), as described in subparagraph D.3.f. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefitting functions based on MTDC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation and use allowances,

interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subparagraph (2), this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with subparagraph D.5, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefitting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of $25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: ‘‘Facilities’’ and ‘‘Administration,’’ as described in subparagraph C.3.

B. Attachment B

Revise the following cost items in Attachment B to Circular A–122 (‘‘Selected Items of Cost’’).

1. Revise the Table of Contents for Attachment B to read:

1. Advertising and public relations costs
2. Alcoholic beverages
3. Bad debts
4. Bid and proposal costs (reserved)
5. Bonding costs
6. Communication costs
7. Compensation for personal services
8. Contingency provisions
9. Contributions
10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
11. Depreciation and use allowances
12. Donations
13. Employee morale, health, and welfare costs and credits
14. Entertainment costs
15. Equipment and other capital expenditures
16. Fines and penalties
17. Fringe benefits
18. Goods or services for personal use
19. Housing and personal living expenses
20. Idle facilities and idle capacity
21. Independent research and development (reserved)
22. Insurance and indemnification
23. Interest, fund raising, and investment management costs
24. Labor relations costs
25. Lobbying costs
26. Losses on other awards
27. Maintenance and repair costs
28. Materials and supplies
29. Meetings and conferences
30. Memberships, subscriptions, and professional activity costs
31. Organization costs
32. Overtime, extra-pay shift, and multi-shift premiums
33. Page charges in professional journals
34. Participant support costs
35. Patent costs
36. Pension plans
37. Plant security costs
38. Pre-award costs
39. Professional service costs
40. Profits and losses on disposition of depreciable property or other capital assets
41. Publication and printing costs
42. Rearrangement and alteration costs
43. Reconversion costs
44. Recruiting costs
45. Relocation costs
46. Rental costs
47. Royalties and other costs for use of patents and copyrights
48. Selling and marketing
49. Severance pay
50. Specialized service facilities
51. Taxes
52. Termination costs
53. Training and education costs
54. Transportation costs
55. Travel costs
56. Trustees

2. Revise and retitle paragraph 1 to read:

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of obligations arising under a sponsored award, when considered in conjunction with all other recruitment costs, as set forth in paragraph 44 (‘‘Recruiting costs’’);

(2) The procurement of goods and services for the performance of a sponsored award;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored award except when organizations are reimbursed for disposal costs at a predetermined amount in accordance with OMB Circular A–110, Sec. _____.34, ‘‘Equipment’’; or

(4) Other specific purposes necessary to meet the requirements of the sponsored award.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored awards;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored awards (these costs are considered necessary as part of the outreach effort for the sponsored awards); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of

public concern, such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one sponsored award or for both sponsored work and other work of the organization, are allowable to the extent that the principles in paragraphs B (''Direct Costs'') and C (''Indirect Costs'') of Attachment A are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;

(2) Costs of meetings or other events related to fund raising or other organizational activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees or cost of services engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

3. Renumber current paragraphs 2 through 8 as paragraphs 3 through 9, respectively.

4. Add the following new paragraph 2:

2. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

5. In paragraph 7 (''Compensation for personal services''), as renumbered above in item 3, rename the current subparagraph g (''Pension costs''), as subparagraph h. Add a new subparagraph g:

g. *Organization-furnished automobiles.* That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

6. Renumber current paragraphs 9 through 15 as paragraphs 11 through 17, respectively.

7. Add new paragraph 10:

10. *Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.*

a. Definitions.

(1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means (i) acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subparagraph b.(1).

c. If a proceeding referred to in subparagraph b is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subparagraph b may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subparagraph b is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a federally-sponsored award, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subparagraph b, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subparagraph c has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-

employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100–700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subparagraphs b and f, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

8. In paragraph 15 (''Equipment and other capital expenditures''), as renumbered in item 6 above, replace subparagraphs 15.a.(1) and 15.b.(2) to read:

15.a.(1) ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5000. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

15.b.(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of awarding agency.

9. Renumber current paragraphs 16 through 36 as paragraphs 20 through 40, respectively.

10. Add new paragraph 18:

18. *Goods or services for personal use.* Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

11. Add new paragraph 19:

19. *Housing and personal living expenses.*

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored awards when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term ''officers'' includes current and past officers and employees.

12. Add to paragraph 22.a.(2) (''Insurance and indemnification''), as renumbered in item 9, subparagraphs (f) and (g):

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

13. Revise paragraph 30, as renumbered in item 9, to read:

30. *Memberships, subscriptions and professional activity costs.*

a. Costs of the organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

d. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.

e. Costs of membership in any country club or social or dining club or organization are unallowable.

14. Delete subparagraph 39.d, as renumbered in item 9.

15. Delete current paragraph 37 (''Public service costs'').

16. Renumber current paragraphs 38 through 44 as paragraphs 41 through 47, respectively.

17. Revise paragraph 44, as renumbered in item 16, to read:

44. *Recruiting costs.*

a. Subject to subparagraphs b, c, and d, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of ''help wanted'' advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

18. Renumber current paragraphs 45 through 51 as paragraphs 49 through 55, respectively.

19. Add new paragraph 48:

48. *Selling and marketing.* Costs of selling and marketing any products or services of the organization (unless allowed under paragraph 1 as allowable

public relations costs) are unallowable. These costs, however, are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

20. Add new subparagraphs c, d and e to paragraph 49 (''Severance pay''), as renumbered in item 18, as follow:

c. Costs incurred in certain severance pay packages (commonly known as ''a golden parachute'' payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

d. Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

e. Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

21. Add new paragraph 56:

56. *Trustees.* Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in paragraph 55.

C. Attachment C

1. Delete the following organizations from Attachment C. These organizations either no longer exist or are no longer exempted from complying with Circular A–122.

- Associated Universities, Incorporated, Washington, D.C.
- Associated Universities for Research and Astronomy, Tucson, Arizona.
- Center for Energy and Environmental Research (CEER), (University of Puerto Rico), Commonwealth of Puerto Rico.
- Comparative Animal Research Laboratory (CARL), (University of Tennessee), Oak Ridge, Tennessee.
- Institute of Gas Technology, Chicago, Illinois.
- Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana.
- Project Management Corporation, Oak Ridge, Tennessee.
- Sandia Corporation, Albuquerque, New Mexico.
- Universities Corporation for Atmospheric Research, Boulder, Colorado.

2. Change Argonne Universities Association, Chicago, Illinois to Argonne National Laboratory, Chicago, Illinois.

3. Change the location of the Institute for Defense Analysis in Virginia from Arlington to Alexandria.

4. Replace Midwest Research Institute, Headquartered in Kansas City, Missouri to National Renewable Energy Laboratory, Golden, Colorado.

D. A Recompilation of the Entire Circular A–122, With All Its Amendments, Follows:

Circular No. A–122 Revised

To the Heads of Executive Departments and Establishments

Subject: Cost Principles for Non-Profit Organizations

1. *Purpose.* This Circular establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations. It does not apply to colleges and universities which are covered by Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions''; State, local, and federally-recognized Indian tribal governments which are covered by OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments''; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Supersession.* This Circular supersedes cost principles issued by individual agencies for non-profit organizations.

3. *Applicability.*

a. These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A–21 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, Circular A–87 shall apply.

4. *Definitions.*

a. *Non-profit organization* means any corporation, trust, association, cooperative, or other organization which:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term ''non-profit organization'' excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally-recognized Indian tribal governments; and (iv) those non-profit organizations which are excluded from coverage of this Circular in accordance with paragraph 5.

b. *Prior approval* means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. *Exclusion of some non-profit organizations.* Some non-profit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such non-profit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Attachment C. Other organizations may be added from time to time.

6. *Responsibilities.* Agencies responsible for administering programs that involve awards to non-profit

organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to OMB. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to OMB within 30 days of the date of this Circular.

7. *Attachments.* The principles and related policy guides are set forth in the following Attachments:

Attachment A—General Principles
Attachment B—Selected Items of Cost
Attachment C—Non-Profit Organizations Not Subject To This Circular

8. *Requests for exceptions.* OMB may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. *Effective Date.* The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards, the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions, is also permitted by mutual agreement between an organization and the cognizant Federal agency.

10. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, OMB, Washington, DC 20503, telephone (202) 395–3993.

Attachments

Attachment A—Circular No. A–122

General Principles

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Attachment A—Circular No. A–122

General Principles

A. Basic Considerations

1. *Composition of total costs.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. *Factors affecting allowability of costs.* To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.

d. Be accorded consistent treatment.

e. Be determined in accordance with generally accepted accounting principles (GAAP).

f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.

g. Be adequately documented.

3. *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. *Allocable costs.*

a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. *Applicable credits.*

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see Sec.

____.24 of Office of Management and Budget (OMB) Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

6. *Advance understandings.* Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

7. *Conditional exemptions.*

a. OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

b. To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A–87 (Attachment A, subsection C.3), ''Cost Principles for State, Local, and Indian Tribal Governments,'' A–21 (Section C, subpart 4), ''Cost Principles for Educational Institutions,'' and A–122 (Attachment A, subsection A.4), ''Cost Principles for Non-Profit Organizations,'' and from all of the administrative requirements provisions of OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and the agencies' grants management common rule.

c. When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A–87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in paragraph 23 of Attachment B). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

d. Meetings and conferences except those held to conduct the general administration of the organization.

e. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Costs

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in subparagraph B.2. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many non-profit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

3. Indirect costs shall be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ''Administration'' is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses

and all other types of expenditures not listed specifically under one of the subcategories of ''Facilities'' (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in subparagraphs D.2.e and D.3.g.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General.

a. Where a non-profit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in subparagraph 2.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subparagraphs 2 through 5.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. Simplified allocation method.

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in subparagraph B.3.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 34 of Attachment B.

d. Except where a special rate(s) is required in accordance with subparagraph 5, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in subparagraph C.3, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

3. Multiple allocation base method.

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in subparagraph b. Each grouping shall then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in subparagraph c.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: ''Facilities'' and ''Administration,'' as described in subparagraph C.3. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with paragraph 11 of Attachment B (''Depreciation and use allowances'').

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with paragraph 23 of Attachment B (''Interest, fundraising, and investment management costs'').

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that

costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefitting functions based on modified total direct costs (MTDC), as described in subparagraph D.3.f. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefitting functions based on MTDC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subparagraph (2), this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with subparagraph D.5, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefitting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of $25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories:

''Facilities'' and ''Administration,'' as described in subparagraph C.3.

4. *Direct allocation method.*

a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in subparagraph 2.

5. *Special indirect cost rates.* In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under subparagraphs 2, 3, and 4, and (ii) the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates

1. *Definitions.* As used in this section, the following terms have the meanings set forth below:

a. *Cognizant agency* means the Federal agency responsible for negotiating and approving indirect cost rates for a non-profit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate* or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. *Negotiation and approval of rates.*

a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular non-profit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with subparagraph D.5, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A non-profit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute copies of the

agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the non-profit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

Attachment B—Circular No. A–122

Selected Items of Cost

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Attachment B—Circular No. A–122

Selected Items of Cost

Paragraphs 1 through 56 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. Advertising and public relations costs.

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of obligations arising under a sponsored award, when considered in conjunction with all other recruitment costs, as set forth in paragraph 44 (''Recruiting costs'');

(2) The procurement of goods and services for the performance of a sponsored award;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored award except when organizations are reimbursed for disposal costs at a predetermined amount in accordance with OMB Circular A–110, Sec. __.34, ''Equipment''; or

(4) Other specific purposes necessary to meet the requirements of the sponsored award.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored awards;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored awards (these costs are considered necessary as part of the outreach effort for the sponsored awards); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one sponsored award or for both sponsored work and other work of the organization, are allowable to the extent that the principles in paragraphs B (''Direct Costs'') and C (''Indirect Costs'') of Attachment A are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;

(2) Costs of meetings or other events related to fund raising or other organizational activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees or cost of services engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

2. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

3. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

4. *Bid and proposal costs.* (reserved)

5. Bonding costs.

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the

organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

6. *Communication costs*. Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like are allowable.

7. *Compensation for personal services.*

a. *Definition*. Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in subparagraph h). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. *Allowability*. Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Federal and non-Federal activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. *Reasonableness.*

(1) When the organization is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in federally-sponsored activities and in cases where the kind of employees required for the Federal activities are not found in the organization's other activities, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. *Special considerations in determining allowability*. Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of non-profit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Federal awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

e. *Unallowable costs*. Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. *Fringe benefits.*

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable, provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see subparagraph h), and the like, are allowable, provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3) (a) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency, provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. *Organization-furnished automobiles.* That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

h. *Pension plan costs.*

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP), as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93–406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

i. *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

j. *Overtime, extra-pay shift, and multi-shift premiums. See* paragraph 32.

k. *Severance pay. See* paragraph 49.

l. *Training and education costs. See* paragraph 53.

m. *Support of salaries and wages.*

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in subparagraph (2), except when a substitute system has been approved in writing by the cognizant agency. (See subparagraph E.2 of Attachment A.)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2), must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR Part 516). For this purpose, the term ''nonprofessional employee'' shall have the same meaning as ''nonexempt employee,'' under FLSA.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term ''contingency reserve'' excludes self-insurance reserves (see subparagraphs 7.f(3) and 22.a(2)(d)); pension funds (see subparagraph 7.h); and reserves for normal severance pay (see subparagraph 49.b(1)).

9. *Contributions.* Contributions and donations by the organization to others are unallowable.

10. *Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.*

a. Definitions.

(1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means (i) acts of fraud, corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subparagraph b.(1).

c. If a proceeding referred to in subparagraph b is commenced by the Federal Government and is resolved by consent or compromise pursuant to an

agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subparagraph b may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subparagraph b is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a federally-sponsored award, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subparagraph b, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subparagraph c has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100–700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subparagraphs b and f, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

11. *Depreciation and use allowances.*

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in subparagraph f, a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no

depreciation may be allowed on any such assets that, under subparagraph e, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. *Donations.*

a. *Services received.*

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government,

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Sec. _____.23 of Circular A–110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) *Rates for volunteer services.* Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) *Services donated by other organizations.* When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs), provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a).

b. *Goods and space.*

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Sec. _____.23 of Circular A–110. The value of the donations shall be determined in accordance with Sec. _____.23 of Circular A–110. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

13. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

14. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see paragraphs 13 and 30).

15. *Equipment and other capital expenditures.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

(2) *Acquisition cost* means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) *Special purpose equipment* means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) *General purpose equipment* means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5,000 or more have the prior approval of awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 11 for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 46 for allowability of rental costs for land, buildings, and equipment.

16. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

17. *Fringe benefits.* See subparagraph 7.f.

18. *Goods or services for personal use.* Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

19. *Housing and personal living expenses.*

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term ''officers'' includes current and past officers and employees.

20. *Idle facilities and idle capacity.*

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) *Facilities* means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) *Idle facilities* means completely unused facilities that are excess to the organization's current needs.

(3) *Idle capacity* means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) *Costs of idle facilities or idle capacity* means costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see subparagraphs 48.b and d).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

21. *Independent research and development.* [Reserved]

22. *Insurance and indemnification.*

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see subparagraphs 7.f and 7.h(2)).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Federal property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see subparagraph 7.f(4)). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping

with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the organization only to the extent expressly provided in the award.

23. *Interest, fundraising, and investment management costs.*

a. Interest.

(1) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable. However, interest on debt incurred after the effective date of this revision to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after the effective date of this revision and used in support of sponsored agreements is allowable, provided that:

(a) For facilities acquisitions (excluding renovations and alterations) costing over $10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the non-profit organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

- A statement of purpose and justification for facility acquisition or replacement.
- A statement as to why current facilities are not adequate.
- A statement of planned future use of the facility.
- A description of the financing agreement to be arranged for the facility.
- A summary of the building contract with estimated cost information and statement of source and use of funds.
- A schedule of planned occupancy dates.

(b) For facilities costing over $500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of Sec. _____.30 through _____.37 of Circular A–110, which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated (''arm's length'') third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(c) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated (''arm's length'') third party.

(d) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(e) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subparagraph (b). For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(f) Non-profit organizations are also subject to the following conditions:

(i) Interest on debt incurred to finance or refinance assets acquired before or reacquired after the effective date of this Circular is not allowable.

(ii) For debt arrangements over $1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(iii) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(iv) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated (''arm's length'') third party.

(2) For non-profit organizations subject to ''full coverage''' under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of subparagraph a do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

(3) The following definitions are to be used for purposes of paragraph 23:

(a) *Re-acquired assets* means assets held by the non-profit organization prior to the effective date of this revision that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(b) *Initial equity contribution* means the amount or value of contributions made by non-Federal entities for the acquisition of the asset or prior to occupancy of facilities.

(c) *Asset costs* means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

b. Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fundraising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subparagraph B.3 of Attachment A.

24. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

25. *Lobbying.*

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subparagraph a:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by subparagraph a(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subparagraph B.3 of Attachment A.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph 25 complies with the requirements of this Circular.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: (1) the employee engages in lobbying (as defined in subparagraphs (a) and (b)) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) are met, organizations are not required to establish records to support the allowabliliy of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph 25. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Circular; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

26. *Losses on other awards.* Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

27. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 15).

28. *Materials and supplies.* The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

29. *Meetings and conferences.*

a. Costs associated with the conduct of meetings and conferences include the cost of renting facilities, meals, speakers' fees, and the like. But see paragraph 14, Entertainment costs, and paragraph 34, Participant support costs.

b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective (see paragraph B of Attachment A). These costs are allowable, provided that they meet the general tests of allowability, shown in paragraph A of Attachment A to this Circular.

c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

30. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

d. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.

e. Costs of membership in any country club or social or dining club or organization are unallowable.

31. *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

32. *Overtime, extra-pay shift, and multi-shift premiums.* Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior approval of the awarding agency except:

a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

b. When employees are performing indirect functions, such as administration, maintenance, or accounting.

c. In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

d. When lower overall cost to the Federal Government will result.

33. *Page charges in professional journals.* Page charges for professional journal publications are allowable as a qnecessary part of research costs, where:

a. The research papers report work supported by the Federal Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

34. *Participant support costs.* Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

35. *Patent costs.*

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see paragraph 39).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Federal Government, are unallowable (also see paragraph 47).

36. *Pension plans.* See subparagraph 7.h.

37. *Plant security costs.* Necessary expenses incurred to comply with Federal security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

38. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

39. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

40. *Profits and losses on disposition of depreciable property or other capital assets.*

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under paragraph 11.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subparagraph 22.a(3).

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 11.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subparagraph a shall be excluded in computing award costs.

41. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed in paragraph 33.

42. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

43. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, fair wear and tear excepted, are allowable.

44. *Recruiting costs.*

a. Subject to subparagraphs b, c, and d, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of ''help wanted'' advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

45. *Relocation costs.*

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in subparagraphs b, c, and d, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the

disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in (1) and (2) of subparagraph b. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 55 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

46. *Rental costs.*

a. Subject to the limitations described in subparagraphs b through d, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

d. Rental costs under leases which are required to be treated as capital leases under GAAP, are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed, i.e., to the amount that minimally would pay for depreciation or use allowances, maintenance, taxes, and insurance. Interest costs related to capitalized leases are allowable to the extent they meet criteria in subparagraph 23.a. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the organization purchased the facility.

47. *Royalties and other costs for use of patents and copyrights.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to an organization.

c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the organization retained title thereto.

48. *Selling and marketing.* Costs of selling and marketing any products or services of the organization (unless allowed under paragraph 1 as allowable public relations costs) are unallowable. These costs, however, are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

49. *Severance pay.*

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

c. Costs incurred in certain severance pay packages (commonly known as ''a golden parachute'' payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership

of, the organization's assets are unallowable.

d. Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

e. Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

50. *Specialized service facilities.*

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable, provided the charges for the services meet the conditions of either subparagraph b or c and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subparagraph A.5 of Attachment A.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally-supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to subparagraph A.6 of Attachment A are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

51. *Taxes.*

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Federal Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government.

52. *Termination costs.* Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. *Common items.* The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. *Loss of useful value.* Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default (see Sec. _____.61 of Circular A–110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Sec. _____.30 through _____.37 of Circular A–110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs (1) and (2). Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. *Claims under subawards.* Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

53. *Training and education costs.*

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including

training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or post-graduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution or, in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise, such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a post-graduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in subparagraphs b and c.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 11, 27, and 46.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under subparagraphs b and c may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

54. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 28). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

55. *Travel costs.*

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to subparagraphs b through e, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to paragraphs 44 and 45, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term ''foreign travel'' means travel outside that country.

56. *Trustees.* Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in paragraph 55.

Attachment C—Circular No. A–122

Non-Profit Organizations Not Subject to This Circular

Aerospace Corporation, El Segundo, California
Argonne National Laboratory, Chicago, Illinois
Atomic Casualty Commission, Washington, D.C.
Battelle Memorial Institute, Headquartered in Columbus, Ohio
Brookhaven National Laboratory, Upton, New York
Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
Environmental Institute of Michigan, Ann Arbor, Michigan
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Institute, Chicago, Illinois
Institute for Defense Analysis, Alexandria, Virginia
Mitre Corporation, Bedford, Massachusetts

National Radiological Astronomy Observatory, Green Bank, West Virginia
National Renewable Energy Laboratory, Golden, Colorado
Oak Ridge Associated Universities, Oak Ridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
Other non-profit organizations as negotiated with awarding agencies

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federal register

Monday
June 1, 1998

Part IV

Department of Housing and Urban Development

Notices of Funding Availability for Community Planning and Development, Public and Indian Housing, Housing, and Lead Hazard Control Programs; Introduction; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4371–N–01]

Notices of Funding Availability for Community Planning and Development, Public and Indian Housing, Housing, and Lead Hazard Control Programs; Introduction

AGENCY: Office of the Secretary, HUD.

ACTION: Notices of Funding Availability for Community Planning and Development, Public and Indian Housing, Housing, and Lead Hazard Control Programs; Introduction.

SUMMARY: HUD is publishing in today's **Federal Register** its remaining notices announcing the availability of funding for Fiscal Year (FY) 1998. These notices announce the availability of approximately $188,465,605 in HUD program funds covering seven (7) programs operated and managed by the following HUD offices: Community Planning and Development (CPD), Housing—Federal Housing Administration (FHA), Public and Indian Housing (PIH), and the Office of Lead Hazard Control (OLHC). Today's notices are being published separately from the three SuperNOFAs published by HUD on March 31, 1998 and April 30, 1998 due to the distinctive application selection procedures used by these programs. This document introduces the HUD notices being published in today's **Federal Register**, and briefly describes HUD's FY 1998 funding process. The individual notices that follow this introduction contain a description of the specific programs for which funding is made available and the procedures and requirements that are applicable to each program.

DUE DATES, ADDRESSES, APPLICATION SUBMISSION PROCEDURES, APPLICATION KITS, AND TECHNICAL ASSISTANCE: For the convenience of readers, this notice contains a chart that sets forth application due date for each program and the address to which applications must be submitted. However, applicants should refer to the individual notices published in today's **Federal Register** for specific information regarding due dates, addresses, application submission procedures, application kits, and technical assistance.

SUPPLEMENTARY INFORMATION:

I. The SuperNOFA Process

HUD is publishing in today's **Federal Register** its remaining notices announcing the availability of funding for Fiscal Year (FY) 1998. The publication of these notices marks the final stage in HUD's dramatic reinvention of its competitive funding process. This reinvention, conducted under the leadership of Secretary Andrew Cuomo, improves customer service and provides the necessary tools for revitalizing communities and improving the lives of people within those communities.

As part of this process, HUD has published three Super Notices of Funding Availability (SuperNOFAs) in 1998, which coordinate program funding for over forty competitive programs and cut across traditional program lines. The first was the SuperNOFA and consolidated application process for Housing and Community Development Programs, covering nineteen Housing and Community Development programs, published in the **Federal Register** on March 31, 1998 (63 FR 15490). The second SuperNOFA and consolidated application process, which covered ten of HUD's Economic Development and Empowerment Programs, was published in the **Federal Register** on April 30, 1998 (63 FR 23876). The third SuperNOFA and consolidated application process, also published in the **Federal Register** on April 30, 1998 (63 FR 23988), covered six of HUD's Targeted Housing and Homeless Assistance Programs.

HUD believes the SuperNOFAs represent a significant improvement over HUD's past approach to the funding process. The SuperNOFA approach is designed to simplify the application process; promote effective and coordinated use of program funds in communities; reduce duplication in the delivery of services and economic development and empowerment programs; allow interested applicants to seek to deliver a wider, more integrated array of services; and improve the system for potential grantees to be aware of, and compete for program funds.

The three SuperNOFAs together offer a ''menu'' of approximately 40 programs from which communities can select those that best meet their needs. The SuperNOFAs also encourage nonprofits, public housing agencies, local and State governments, tribal governments and tribally designated housing entities, veterans service organizations and others to cooperatively work together to form a comprehensive approach which builds on community assets and addresses community needs.

In addition to the three SuperNOFAs, HUD also published in the **Federal Register** on April 30, 1998 (63 FR 23958) a consolidated NOFA and application process for three national competition programs: the Fair Housing Initiatives Program National Competition; the National Lead Hazard Awareness Campaign; and the Housing Counseling National Competition.

Interested readers should consult the March 31, 1998 and April 30, 1998 editions of the **Federal Register** or the HUD website at www://hud.gov for additional information regarding HUD's SuperNOFAs and the SuperNOFA process.

II. HUD's Notices Published in Today's Federal Register

The remaining HUD notices published in today's **Federal Register** announce the availability of approximately $188,465,605 in HUD program funds covering seven (7) programs. These notices include six (6) NOFAs and one Request for Expressions of Interest (REI). The seven notices being published today are identified in the chart below, along with the approximate funding available for each program. The chart also includes the application due date for each program and the address to which applications must be submitted.

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PROGRAM NAME	FUNDING AVAILABLE	DUE DATE	SUBMISSION LOCATION
Self-Help Homeownership Opportunity Program **(REI)**	$6,262,500	July 17, 1998	Headquarters Processing and Control Unit, Room 7251
Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG Program) **(NOFA)**	$67,003,105	September 1, 1998	Appropriate Area ONAP
Demolition of Severely Distressed Public Housing (HOPE VI Demolition) **(NOFA)**	$60,000,000	September 3, 1998	HUD Headquarters, Room 4138
Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs **(NOFA)**	$25,200,000	July 24, 1998	Appropriate Local HUD Field Office HUB or Local Field Office Program Center
Family Unification Program **(NOFA)**	$15,000,000	July 24, 1998	Appropriate Local HUD Field Office HUB or Local Field Office Program Center
Service Coordinator Program **(NOFA)**	$13,000,000	August 4, 1998	Appropriate Multifamily HUB, Multifamily program Center, or Public Housing Field Office
Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards **(NOFA)**	$2,000,000	July 21, 1998	Postal Service: HUD Headquarters Office of Lead Hazard Control, Room B-133 Courier Service or Hand Carried: HUD Office of Lead Hazard Control, 490 East L'Enfant Plaza, S.W., Suite 3206, Washington, DC 20024

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HUD determined that the seven notices identified in the chart above should be published separately from the SuperNOFAs due to the distinctive application selection procedures used in each of these programs. The funding under several of these programs is being made available on a non-competitive basis. For example, HOPE VI demolition projects that meet the specified threshold eligibility criteria will be funded on a first-come, first-serve basis within the three priority groups established by the NOFA. Other notices (including those for the Service Coordinator Program and the Family Unification Program) include the use of lotteries to select applications for funding. Therefore, in order to avoid confusion on the part of potential applicants between the funding procedures used for these programs and the approximately forty programs included in the SuperNOFAs, HUD has decided to issue these notices independently of the SuperNOFA process.

III. Future HUD Funding Processes

In FY 1997, Secretary Cuomo took the first step at changing HUD's funding process to better promote comprehensive, coordinated approaches to housing and community development. In FY 1997, the Department published related NOFAs on the same day or within a few days of each other. In the individual NOFAs published in FY 1997, HUD advised that additional steps on NOFA coordination might be considered for FY 1998. The SuperNOFA process represents the additional steps taken by HUD in 1998 to improve HUD's funding process and assist communities to make better use of available resources through a coordinated approach. This new funding process was developed based on comments received from HUD clients, and the Department believes it represents a significant improvement over HUD's approach to the funding process in prior years.

For FY 1999, HUD may take even further steps to enhance this process. HUD welcomes comments from applicants and other members of the public on this process and how it may be improved in future years. Comments and suggestions may be submitted electronically to the SuperNOFA mailbox at www://hud.gov or by regular mail to the following address: Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Dated: May 22, 1998.

Saul N. Ramirez, Jr.,

Acting Deputy Secretary.

[FR Doc. 98–14365 Filed 5–29–98; 8:45 am]

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federal register

Monday
June 1, 1998

Part V

Department of Housing and Urban Development

Request for Expressions of Interest: Self-Help Homeownership Opportunity Program; Fiscal Year 1998; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4343–N–01]

Request for Expressions of Interest: Self-Help Homeownership Opportunity Program; Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice for fiscal year 1998 request for expressions of interest (REI).

SUMMARY: This Notice announces the availability of $6,262,500 in funding for the Self-Help Homeownership Opportunity Program (SHOP), and requests expressions of interest from eligible and capable nonprofit organizations. The Notice is issued under section 11 of the Housing Opportunity Program Extension Act of 1996. No special materials or forms are required other than as set out in this Notice.

Purpose. The Self-Help Homeownership Opportunity Program is intended to facilitate and encourage innovative homeownership opportunities through the provision of self-help housing where the homebuyer contributes a significant amount of sweat-equity toward the construction of the new dwelling.

Available Funding. $6,262,500.

Eligible Respondents. Respondents are nonprofit national or regional organizations or consortia that have the capacity and experience to provide or facilitate self-help housing homeownership opportunities. ''Regional'' is defined for the purpose of this Notice to be a ''regional area'' such as the Southwest or Northeast which must include at least two or more States (the States need not be contiguous and the operational boundaries of the organization need not precisely conform to State boundaries). Affiliates of Habitat for Humanity International are not eligible for funding under this NOFA/REI since SHOP funds are being made available to them separately under section 11 of the Extension Act.

DUE DATE: Expressions of interest for SHOP grants must be physically received by HUD by 4:30 p.m. Eastern Time on July 17, 1998. It is NOT sufficient for an expression of interest to bear a postmark within the deadline. *Expressions of interest sent by facsimile (FAX) or e-mail will not be accepted.* HUD will not waive this deadline for actual submission for any reason. The deadline is firm as to date and hour. The Department will treat as ineligible for consideration any expression of interest that is received after the deadline. Respondents should take this policy into account and consider early submission to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems.

ADDRESS FOR SUBMITTING EXPRESSIONS OF INTEREST: One original and two copies of the expression of interest must be submitted to HUD Headquarters, Office of Community Planning and Development, Processing and Control Unit, Room 7251, 451 Seventh Street, SW, Washington, DC 20410, ATTN: Self-Help Program.

FOR FURTHER INFORMATION CONTACT: Joan Morgan, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7168, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3226, ext. 2213. (This is not a toll-free number). This number can be accessed via TTY by calling the Federal Information Relay Service Operator at 1–800–877–TDDY (1–800–877–8339).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice are not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and 5 CFR 1320.13 since fewer than 10 responses are anticipated. Therefore, no OMB control number is required. In cases where 10 or more responses to an information collection are expected, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(A) Authority

The funding made available under this Notice is authorized by section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) (the ''Extension Act''). No separate implementing regulations will be issued.

(B) Purpose and Program Requirements

The Self-Help Homeownership Opportunity Program is intended to facilitate and encourage innovative homeownership opportunities through the provision of self-help housing where the homebuyer contributes a significant amount of sweat-equity toward the construction of the new dwelling. This program will increase homeownership levels and is in furtherance of the National Homeownership Strategy. The strategy is a five-year blueprint for cooperative actions identified by 56 private and public organizations that is intended to achieve an all-time high level of homeownership by the year 2000. The National Homeownership Strategy, ''Partners in the American Dream'' was prepared by the Department and its Partners in response to a request from President Clinton in 1995.

The decent, safe, and sanitary non-luxury dwellings that are constructed under the Self-Help Homeownership Opportunity Program must be made available to eligible homebuyers at prices below the prevailing market prices. Eligible homebuyers are low-income families (families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD) who are unable to otherwise afford to purchase a dwelling. Activities to develop housing assisted under this Notice must involve community participation, by providing for the use of volunteers in the construction of dwellings or by other activities designed to involve the community in the project. The assistance under this Notice must be used to develop dwellings on a national geographically-diverse basis, which includes areas having high housing costs, rural areas, and areas underserved by other homeownership opportunities that are populated by low-income families unable to otherwise afford housing.

The only eligible expenses for program funds are land acquisition (including financing and closing costs), infrastructure improvement (installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure, including removal of environmental hazards), and administration, planning and management development (as defined under the HOME Investment Partnerships Program (24 CFR Part 92) and not to exceed 20 percent of any SHOP grant). Costs associated with the rehabilitation, improvement, or construction of dwellings *are not eligible* uses of program funds. Among the program requirements contained in section 11 of the Extension Act that the respondent must be capable of are as follows:

(1) To provide for development, through significant amounts of sweat-equity and volunteer labor, of at least 30 dwellings at an average cost of no more than $10,000 per unit in SHOP funds;

(2) To use the grant in a manner that leverages other sources of funding, including private or other public funds;

(3) To construct quality dwellings that comply with local building and safety

codes and standards and are available at prices below the prevailing market price; and

(4) To schedule activities so as to substantially fulfill the obligations under the grant agreement within 24 months after grant amounts are first made available to the organization or consortia. HUD will recapture undisbursed amounts from the grantees who fail to substantially fulfill these obligations within 24 months.

(C) Other Federal Requirements

Grantees awarded funds under this Notice are subject to the following requirements: The administrative requirements of 24 CFR part 84, OMB Circular A–122 and the audit requirements as found in OMB Circular A–133; the Equal Opportunity requirements referred to in 24 CFR 5.105(a) (61 FR 5198, 5202, published February 9, 1996); the provisions contained in Section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, Environmental Review, implemented in the Environmental Review regulations at 24 CFR part 58, are applicable to properties assisted with SHOP funds (see next paragraph); the requirements of the Uniform Relocation Act, as implemented by 49 CFR part 24; the lead-based paint requirements set out in 24 CFR part 35; the requirements of section 3 of the Housing and Urban Development Act of 1968 concerning infrastructure improvements funded with SHOP funds; restrictions on participation by ineligible, debarred or suspended persons or entities referred to in 24 CFR 5.105(c); and the Drug-Free Workplace authorities referred to in 24 CFR part 24.

All SHOP assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities. SHOP grant respondents are cautioned that no federal or non-federal funds or assistance which limits reasonable choices or could produce a significant adverse environmental impact may be committed to a project until all required environmental reviews and notifications have been completed by a unit of general local government, tribe or State and until HUD approves a recipient's request for release of funds under the environmental provisions contained in 24 CFR part 58.

(D) Allocation Amounts

This Notice makes available $6,262,500 in SHOP grants, in accordance with sections 11(c)(2) of the Housing Opportunity Program Extension Act of 1996, and the HUD–VA Appropriations Act of 1998.

(E) Unused Funds

If funds remain after HUD has funded all approvable expressions of interest, the excess will be provided to Habitat for Humanity International for use in accordance with the requirements of section 11 of the Extension Act.

(F) Eligible Respondents

Respondents are nonprofit national or regional organizations or consortia that have the capacity and experience to provide or facilitate self-help housing homeownership opportunities. *Regional* is defined for the purpose of this Notice to be a ''regional area'' such as the Southwest or Northeast which must include at least two or more States (the States need not be contiguous and the operational boundaries of the organization need not precisely conform to State boundaries).

Respondents receiving awards are required to have standards of financial accountability that conform to 24 CFR 84.21, ''Standards for Financial Management Systems'' and have audits conducted in accordance with the provisions of OMB Circular A–133 or a program-specific financial audit, as appropriate. Where the respondent is a consortium, one organization must be chosen as the lead entity. The lead entity will execute and submit the expression of interest and, if selected for funding, will execute the grant agreement and assume primary responsibility for carrying out the grant activities in compliance with all program requirements. Other participants in the consortium should be identified in the expression of interest. Affiliates of Habitat for Humanity International are not eligible for funding under this Notice since SHOP funds are being made available to them separately under section 11 of the Extension Act.

II. Expressions of Interest—Requirements

(A) Submission Deadline

Only timely expressions of interest received at HUD Headquarters will be considered for funding (see **ADDRESSES** at the beginning of this Notice). Expressions of interest (original and two copies) must be physically received by HUD no later than 4:30 p.m. Eastern Time on the deadline (see **DATES** at the beginning of this Notice). It is NOT sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile (FAX) or e-mail will NOT be accepted.

(B) Contents of an Expression of Interest

All respondents must submit Expressions of interest on 8½″×11″ paper which is bound in loose leaf binders for easy copying. All pages and attachments must be numbered consecutively. Expressions of interest must contain the following items:

(1) OMB *Standard Form 424*, Request for Federal Assistance;

(2) *Standard Form 424B*, Non-Construction Assurances; if required,

(3) *Disclosure of Lobbying Activities*, Standard Form LLL, if required;

(4) *Certification for a Drug-Free Workplace*, HUD–50070, signed by a person legally authorized to enter into an agreement with HUD;

(5) Certification that the respondent will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing;

(6) *Certification Regarding Debarment and Suspension*, HUD–2992. Certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.); and

(7) A detailed narrative statement and program description which addresses each of the minimum and other requirements described in the following paragraphs, and specifies the amount of funding requested up to the maximum amount available under this Notice of $6,262,500.

Requests for copies of the standard forms and certifications can be made by calling Community Connections at 1–800–998–9999 or by fax to HUD, ATTN: Mary Higgs, at (202) 708–1744. (This is not a toll-free number.) Please refer to the ''Self-Help Program'' in your request. The expression of interest will become part of the grant agreement to be entered into by successful respondents.

(C) Minimum Requirements

Respondents, including participating organizations, must meet the following minimum requirements to be considered for funding:

(1) Respondent is a national or regional organization or consortia (''regional'' is defined in Section F). Respondent must provide a description of the geographic area in which it operates.

(2) Capacity of respondent and other participating organizations to

successfully undertake the program within a 24 month period. In addressing this requirement, the respondent must demonstrate:

(a) Experience in developing self-help housing within a national or regional area. In addressing this requirement, the respondent must clearly demonstrate the total number of self-help homeownership units that it has completed within the 24 month period preceding the publication of this Notice. At a minimum, the respondent must have completed at least 30 self-help homeownership units (where the homebuyers contributed a significant amount of sweat-equity toward the construction of the dwellings);

(b) Evidence of its nonprofit status, such as a copy of a current Internal Revenue Service ruling that the respondent is exempt from taxation under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986. Where an IRS ruling is unavailable, a respondent may submit a certified copy of its approved charter, articles of incorporation or bylaws, demonstrating that the respondent is established as a nonprofit organization under state law. Where the respondent is a consortium, each participant in the consortium must be a nonprofit organization, but only the lead entity should submit evidence of its nonprofit status. However, the lead entity must maintain a copy of the above-described documentation for each participant in the consortium;

(c) Evidence that existing financial control procedures meet 24 CFR 84.21, ''Standards for Financial Management Systems''. In addition, respondents must provide a copy of their most recent audit (only an audit of the lead entity must be provided with an application for a consortium); and

(d) An acquisition and construction schedule for the number of units proposed, with performance benchmarks for the initial 24 month period of the grant agreement. The schedule must include provision for the HUD environmental review process under 24 CFR part 58 which will be required prior to the purchase of any land.

(3) Evidence of the respondent's intent to leverage other sources of funding in developing the dwellings including financial commitments by the public and private sector in support of the program, such as the donation of labor or materials, interest rate reductions or other financing subsidies, volunteer assistance, tax abatements, public works improvements, waivers of fees or taxes, expedited processing of permits and applications, removal of regulatory barriers to affordable housing, and supportive services (including counseling and training). Respondents must provide letters or other documentation evidencing that these commitments (together with the grant funds requested) are sufficient to develop not less than 30 dwellings.

(4) All respondents must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). If a respondent (1) has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, or Section 504 of the Rehabilitation Act the respondent is not eligible to apply for funding under this Notice until the respondent resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(a) Respondents must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(b) Each successful respondent will have a duty to affirmatively further fair housing and promote fair housing rights and fair housing choice. Further, respondents have a duty to carry out the specific activities cited in their responses to the affirmatively furthering fair housing requirements as set forth in Section II(D) of this Notice.

(c) Recipients of HUD assistance to fund infrastructure improvements under this program are required to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons) and the HUD regulations at 24 CFR part 135, including the reporting requirements subpart E. Section 3 provides that recipients shall ensure that training, employment and other economic opportunities, to the greatest extent feasible, be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low and very low income persons.

(D) Other Requirements

In addition to the minimum requirements set forth in II.(C) above, the expression of interest must indicate the amount of SHOP funds being requested, the number of units to be developed. Respondents must request funds to develop a minimum of 30 units. No more than $10,000 in SHOP funds per unit on average may be used to develop each unit (excluding any SHOP funds spent on administration). Respondents must provide a description of the program and how it will operate, including how the SHOP funds will be used and the number and geographic location of the proposed units.

The respondent must describe the steps which will be taken to affirmatively further fair housing. This should include, but is not limited to: Methods to remedy past discrimination in housing; promoting fair housing rights and fair housing choice; outreaching to members of classes protected by the Fair Housing Act who are least likely to benefit from this program including women, families with children, and individuals with disabilities; and developing tasks which persons with various disabilities could perform to meet the ''sweat-equity'' requirements.

The program description must be complete and clearly demonstrate that the respondent can substantially fulfill programmatic obligations within 24 months. The respondent must also present a budget which includes the sources and uses of all funds, including program income and accrued interest, and provide a description of the respondent's cash management system and proposed distribution of funds among participating organizations.

Other aspects of the program must be described including, but not limited to, the administrative structure and program monitoring; in the case of a consortium, identification of all the participating members listing the responsibilities and geographic scope of each; the procedures to be followed in selecting properties, meeting environmental review requirements, and choosing homebuyers; the sweat-equity and community participation volunteer requirements; the size and design of the new dwellings, including accessible design, as needed in homes for occupants with disabilities; respondents are encouraged to incorporate ''visitability'' standards where feasible, and to promote energy efficiency; the use of cost reducing innovations in construction technologies and land planning; the counseling and training components; the terms of sale to homebuyers; and the identification of participating lenders.

This section of the expression of interest should contain sufficient information for HUD to determine that the respondent understands and intends to comply with all requirements of the Extension Act and the Notice.

(E) Selection Process

HUD will conduct a review of the information provided by the applicant which addresses the minimum requirements concerning experience, capacity, financial commitments, and Fair Housing compliance. Expressions of interest meeting the minimum requirements, and providing feasible and complete program designs will be funded. (HUD may check to independently verify information contained in the expression of interest.) SHOP funds must be used in a manner that results in national geographic diversity. HUD reserves the right not to fund any of the expressions of interest received or to award an amount less than that which was requested. Funds remaining from the $6,262,500 will be added to the funds being provided to Habitat for Humanity International.

Where HUD determines that an expression of interest does not include a required form or certification, it will notify the respondent in writing and give it an opportunity to correct the technical deficiency(ies). The notification will require the respondent to submit additional or corrected items so that they are received in HUD Headquarters by no later than 4:30 p.m. Eastern Time on the 14th calendar day after the date of the written notification to the respondent giving it an opportunity to correct the deficiency(ies). HUD will not extend this deadline for actual receipt of the material for any reason.

HUD will NOT notify the respondent of any deficiencies in material that is to be evaluated to determine whether the respondent meets the minimum requirements, other requirements, or has provided a feasible and complete program design.

Once these selections have been made (within 6 months of the publication of this Notice), HUD will provide excess funds remaining from the $6,262,500 allocation to Habitat for Humanity International to be used as provided for under section 11 of the Extension Act.

III. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made for the program in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this Notice are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This Notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Prohibition Against Lobbying Activities

Applicants for funding under this Notice are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.)

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the SHOP Program is 14.247.

Dated: May 22, 1998.

Saul Ramirez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–14366 Filed 5–29–98; 8:45 am]

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federal register

Monday
June 1, 1998

Part VI

Department of Housing and Urban Development

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages Fiscal Year 1998 Notice of Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4344–N–01]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages Fiscal Year 1998 Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 1998.

SUMMARY: This notice announces the availability of $67,003,105 for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG Program). The primary objective of this program is the development of viable Indian and Alaska Native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low and moderate income. In the body of this Notice of Funding Availability (NOFA) is information concerning the following: (a) The purpose of the NOFA and information regarding eligibility and available amounts; (b) A list of steps involved and a checklist of the exhibits required in the application process, including where and how to apply and what to submit; and (c) A description of application processing, including the selection process and the selection criteria.

Application Due Date

Completed applications must be submitted no later than 6 pm, local time, on September 1, 1998 to the addresses shown below. See below for specific procedures governing the form of application submissions (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Mailed Applications

Applications will be considered timely filed if postmarked on or before 12 midnight on the application due date and received by the appropriate Area ONAP on or within ten (10) days of the application due date.

Applications Sent By Overnight/Express Delivery

Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications

Hand carried applications to the appropriate Area ONAP will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm.

Addresses for Submitting Applications

Applicants in the following geographic locations should submit their applications to the identified Area ONAP:

All States East of the Mississippi River, Plus Iowa and Minnesota: Eastern/Woodlands Office of Native American Programs, Community Development and Tribal Relations (CD & TR) Staff, 77 West Jackson Blvd., Chicago, IL 60604–3507; Telephone: (312) 886–4532, Ext. 2815.

Louisiana, Kansas, Oklahoma, and Texas, except West Texas: Southern Plains Office of Native American Programs, CD & TR Staff, Suite 400, 500 W. Main Street, Oklahoma City, OK 73102–3202; Telephone: (405) 553–7525.

Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Northern Plains Office of Native American Programs, CD & TR Staff, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607; Telephone: (303) 672–5457.

Arizona, California, and Nevada: Southwest Office of Native American Programs, CD & TR Staff, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, AZ 85004–2361; Telephone: (602) 379–4197.

New Mexico and West Texas: Southwest Office of Native American Programs, CD & TR Specialist, Albuquerque Plaza, 201 3rd Street NW, Suite 1830, Albuquerque, NM 87102–3368; Telephone: (505) 766–1372.

Idaho, Oregon, Washington: Northwest Office of Native American Programs, CD & TR Staff, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000; Telephone: (206) 220–5271.

Alaska: Alaska Office of Native American Programs, CD & TR Staff, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135; Telephone: (907) 271–4603.

FOR FURTHER INFORMATION, APPLICATION KITS, AND TECHNICAL ASSISTANCE CONTACT:

For Further Information. General program questions may be directed to the Area ONAP serving your area or to Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Ave., San Francisco, CA 94102; telephone (415) 436–8122. The TTY number is (415) 436–6594. (These are not toll-free numbers.)

For Application Kits. Application kits may be obtained from the Area ONAPs identified above. Requests for application kits should be made immediately to ensure sufficient time for application preparation. HUD will distribute application kits as soon as they become available.

For Technical Assistance. Prior to the application deadline, staff will be available to provide general guidance, but not guidance in actually preparing the application. If applicable, following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is required to address a pre-award requirement or condition.

SUPPLEMENTARY INFORMATION:

Changes From FY 1997 NOFA

1. *Due Date for Application Submission.* The Area ONAP will take into consideration circumstances beyond an applicant's control when determining if the due date has been met by applicants which choose to submit applications via the mail or an overnight delivery service. If mailed, an application will be determined to have met the submission timing requirements if it was postmarked by 6 p.m. on September 1, 1998 and received in the Area ONAP within ten days of that date. If sent via an overnight delivery service, an application will be determined to have met the submission timing requirements if the applicant provides documentation that it was placed in transit with such a service by no later than 6 p.m. on September 1, 1998 and received by the Area ONAP within five days of that date.

2. *Grant Ceilings.* Grant ceilings have been changed for applicants in the following Area ONAP jurisdictions.

Eastern/Woodlands—The ceiling for all applicants has been raised from $300,000 to $400,000.

Southwest—The ceiling for the applicants with the smallest populations (0–1,500) has been raised from $450,000 to $550,000. In addition, the total number of applicant population categories has been reduced from nine to six.

Northwest—The ceiling for all applicants has been raised from $320,000 to $335,000.

3. *Proposed Biennial Funding for Applicants in the Jurisdiction of the Alaska Area ONAP.* A single application process under the provisions and requirements set forth in this NOFA is proposed to be used for

both the FY 1998 and the FY 1999 funding allocations to the Alaska Area ONAP. The basis for this proposal and the procedures which would be followed if it is implemented are set forth in section I(C) of this NOFA.

4. *Application Requirements—Certificate Regarding Lobbying.* The need to include a certificate regarding lobbying and a SF–LLL (if applicable) has been explicitly referenced as an application component. In FY 1997, these requirements were stated in section XII., Findings and Certifications, but were not specifically mentioned in section IV., Application Process and Submission Requirements.

5. *Number of Copies of an Application to be Submitted.* In FY 1997, the requirement that an applicant submit one originally signed and two copies of an application was stated in the application kit but not the NOFA. This year this requirement is stated in the NOFA as well as the kit.

6. *Documentation Required for Point Award for Leveraged Resources.* It has been made explicit that neither the contribution of indirect administrative costs nor resources to pay for the costs of operation and maintenance of a proposed project will be considered leveraged resources for purpose of point award.

7. *Corrections to Technically Deficient Applications and Provision of Supplemental Information.* The processes to be used by the Area ONAPs to allow applicants to provide corrections to deficient applications and to request supplemental or additional information from an applicant have been more fully detailed and explained. However, the circumstances or situations under which these processes will be used have not been changed: the definition of a correctable technical deficiency remains the same as does the provision that nothing submitted by an applicant after the deadline date can enhance the rating of a project.

8. *Applicant Specific Thresholds.* (i) *Community Development.* The benchmarks and process to be used to assess whether or not an applicant is making satisfactory progress in completing previously approved ICDBG projects have been clarified. This has been done by establishing a specific link between compliance with an approved project implementation schedule and performance.

(ii) *Housing Assistance.* The process and procedures to be used to assess applicant performance in the provision of housing assistance to low and moderate income tribal members have been modified to reflect the requirements and characteristics of assistance provided under the Native American Housing and Self Determination Act of 1996 (25 U.S.C. 4101, *et seq.*) also known as NAHASDA.

9. *New Threshold for Housing Category Projects.* A new threshold requirement for housing category projects has been established. This threshold will require an applicant to provide an assurance that the project proposed is consistent with, and to the extent possible, identified in, the Indian Housing Plan (IHP) submitted by or on behalf of the applicant under the provisions of NAHASDA. If the IHP has not been submitted, the applicant shall provide an assurance that if an IHP is submitted, it will specifically reference the proposed project.

10. *Housing Rehabilitation Grant Limits.* The grant limits set forth for applicants in the following Area ONAP jurisdictions have been changed.

	FY 1998	FY 1997
Eastern/Woodlands ...	$20,000	$15,000.
Southern Plains	$15,000	$20,000.
Southwest	$40,000	$35,000.
Alaska	$50,000	Lesser of $45/sq.ft. or $35,000.

11. *Housing Rehabilitation Projects—Adopted Rehabilitation Standards.* The selection criterion regarding adopted housing rehabilitation standards has been increased in maximum value from 5 to 10 points. The additional 5 points would be awarded to projects if the applicant's adopted and submitted standards include specific requirements which address child safety measures. This revision reflects the Healthy Homes initiative being implemented by HUD.

12. *Housing Rehabilitation Projects—Priority to Neediest Households.* The selection criterion regarding the proposed provision of assistance by the applicant to the neediest households as defined in the NOFA has been reduced to 5 points from 10 points.

13. *Land Acquisition to Support New Housing Projects—Commitment and Availability of Housing Resources Selection Criterion.* This selection criterion has been modified to reflect situations in which these resources are committed under the provisions of NAHASDA.

14. *Threshold for New Housing Construction.* Since the Indian Housing Block Grant Program was not in existence in FY 1997, the threshold which addresses the availability of other resources to meet the needs of the households to be assisted has been modified so that an applicant must now demonstrate that an Indian Housing Block Grant would not be available to meet the needs of these households.

15. *New Housing Construction Projects—Adopted Housing Construction Policies and Plan.* The maximum possible point award under this selection criterion has been increased from 20 to 25 points. The additional 5 points would be awarded to projects if the applicant's policy and plan specifically address the incorporation of child safety measures in the housing to be constructed. This revision reflects the Healthy Homes initiative being implemented by HUD.

16. *New Housing Construction Projects—Beneficiary Identification.* The maximum point award for this selection criterion has been reduced to 5 points from 10 points.

17. *Community Facilities—Buildings—Benefits the Neediest.* The maximum points available under this criterion has been increased from 10 to 15 points and values of intermediate point awards have also been changed to be consistent with the similar factor under Community Facilities—Infrastructure.

18. *Community Facilities—Buildings—Multi-use/multi-benefit.* This selection criterion has been eliminated and the 5 points available under it in FY 1997 have been reassigned to the Benefits the Neediest criterion.

19. *Editorial and Formatting Revisions.* In addition to the changes discussed above, this notice makes a number of non-substantive technical changes to the FY 1997 NOFA. These editorial and formatting changes should make the NOFA easier to understand.

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting and supporting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, as noted above, a new threshold has been included for all housing category projects. Specifically, applicants will be required to demonstrate that such projects are consistent with, and where possible, are identified in, the Indian Housing Plan (IHP) submitted on, or on behalf of, the applicant under the provisions of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). If the IHP has not been

submitted by the ICDBG application due date, the applicant must submit an assurance that if an IHP is submitted, it will specifically reference the proposed housing category project.

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Additional Information

I. Authority; Purpose; Amounts Allocated; and Eligibility

(A) *Authority.* Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301, *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 1003.

(B) *Purpose.* This notice announces the availability of $67,003,105 for the ICDBG Program.

(C) *Amount Allocated.*

(1) *General.* Amendments to title I of the Housing and Community Development Act of 1974 have required that the allocation for Indian Tribes be awarded on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 1003. Applicants within an Area ONAP's geographic jurisdiction compete only against each other for that Area ONAP's allocation of funds.

(2) *Allocations.* The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 1003.101. Following these requirements, the allocations for FY 1998 are as follows:

Eastern/Woodlands	$5,103,221
Southern Plains	12,076,948
Northern Plains	10,186,349
Southwest	27,790,427
Northwest	3,891,943
Alaska	5,454,217
Total	64,503,105

The total allocation includes $3,105 in unused funds from the amount reserved by the Assistant Secretary in Fiscal Year 1997 for imminent threat grants. As indicated in section I.(a)(4) below, $2,500,000 will be retained to fund imminent threat grants.

(3) *Grant Ceilings.* The authority to establish grant ceilings is found at 24 CFR 1003.100(b)(1). Grant ceilings are established for FY 1998 funding at the following levels:

Area ONAPs	Population	Ceiling
Eastern/Woodlands	ALL	$400,000
Southern Plains:	ALL	750,000
Northern Plains:	ALL	800,000
Southwest:	50,001+	5,000,000
	10,501–50,000	2,500,000
	7,501–10,500	2,000,000
	6,001–7,500	1,000,000
	1,501–6,000	750,000
	0–1,500	550,000
Northwest	ALL	335,000
Alaska	ALL	500,000

For the Southwest Area ONAP jurisdiction, the population used to determine ceiling amounts is the Native American population which resides on a reservation or rancheria.

(4) *Proposed biennial funding for applicants in the jurisdiction of the Alaska Area ONAP.* This NOFA provides a single application process for the FY 1998 funds allocated to the Alaska Area ONAP and, subject to appropriation for FY 1999, that may be allocated to the Alaska Area ONAP in FY 1999.

The jurisdiction of the Alaska Area ONAP includes the largest number of potentially eligible applicants. Given the fact that the vast majority of these entities have small population bases, however, the total amount allocated to the Alaska Area ONAP under the requirements of § 1003.101 is the third smallest amount allocated to any of the Area ONAPs. In recent years, given the relationship between potentially eligible applicants and the funds available and the very competitive nature of the program, fewer than one in four of the applications submitted have been funded in the annual competition. A score in excess of 90 (out of a potential 100 points) has typically been required for any project to be successful. Many applicants have expended considerable amounts of time and resources year after year in an unsuccessful pursuit of funding and many worthy projects are returned unfunded each year. It is the opinion of HUD that having one process would reduce the administrative burden to the applicants of preparing and submitting applications repeatedly and would potentially provide that more applicants which have not been funded in the past could be funded.

Under this process, if implemented, applicants would prepare and submit applications under the provisions and requirements of the NOFA. All applications would be screened, reviewed, and rated under the

provisions and requirements of the NOFA. After rating is completed and a ranked list of projects developed, grant awards would be made using FY 1998 allocated funds until these funds are exhausted. Applications not funded would be retained by the Alaska Area ONAP.

Subject to appropriations, any FY 1999 funds allocated to the Alaska Area ONAP are expected to be used for grant offers to those applicants with the highest ranking retained applications until these funds are exhausted. In FY 1998, HUD will only announce those ICDBG grant offers made in FY 1998. FY 1999 ICDBG program grant offers will not be made or announced until the enactment of FY 1999 appropriations. The FY 1999 grant offers would also be contingent upon the applicant confirming in writing and providing such supporting documentation as is required to the Alaska Area ONAP within 30 days of the offer that:

(a) The applicant continues to meet performance threshold requirements;

(b) The project still meets all community development appropriateness and project specific threshold requirements; and

(c) No changes have occurred since the submission of the application which would affect the rating or viability of the project.

Potential applicants and other interested parties are encouraged to submit their comments on this proposal directly to the Alaska Area ONAP at the address identified in this NOFA. To be considered, these comments must be received July 2, 1998. A final determination on this proposal will be made within 35 calendar days of this NOFA. If, based on an evaluation of the comments received, it is determined to implement the proposal, an amendment to this NOFA will be published. The proposed biennial funding process is one method of responding to the unique situation existing in the Alaska Area ONAP. HUD may, in the future, propose other methods for addressing these distinctive Alaskan issues. HUD intends to award FY 2000 funds through the issuance of a separate competitive funding notice.

(5) *Imminent Threats.* (a) The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 1003, subpart E. Please note that the problem to be addressed must be such that an emergency situation exists or would exist if it were not addressed. In addition, funds provided under the provisions of that subpart may only be used to address imminent threats which are not of a recurring nature and which represent a unique and unusual circumstance that impact an entire service area. In accordance with the provisions of 24 CFR part 1003, subpart E, $2,500,000 will be retained to meet the funding needs of imminent threat applications submitted to any of the Area ONAPs. The grant ceiling for imminent threat applications for FY 1998 is $350,000. This ceiling is established pursuant to the provisions of § 1003.400(c).

(b) Requests for assistance under the imminent threat set-aside (24 CFR part 1003, subpart E) do not have to be submitted by the deadline established in this NOFA; the deadline applies to applications submitted for assistance under 24 CFR part 1003, subpart D, Single purpose grants.

(c) If, in response to a request for assistance, an Area ONAP issues a letter to proceed under the authority of § 1003.401(a), an application must be submitted to and approved by the Area ONAP before a grant agreement may be executed. This application must consist of the following components:

(i) Standard Form 424, Application for Federal Assistance;

(ii) Brief description of the proposed project;

(iii) Form HUD–4123, Cost Summary;

(iv) Form HUD–4125, Implementation Schedule;

(v) Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

(vi) Form HUD–4126, Certifications;

(vii) Drug-free workplace certification (24 CFR part 24, subpart F); and

(viii) Certification regarding lobbying activities (24 CFR part 87) and SF-LLL (if applicable).

(D) *Eligible Applicants.*—(1) *General.* To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaska Native Village (or as a tribal organization) by the application submission date.

(2) *Tribal Organizations.* Tribal organizations are permitted to submit applications under 24 CFR 1003.5(b) on behalf of eligible tribes or villages when one or more eligible tribe(s) or village(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under title I of the Indian Self-Determination and Education Assistance Act.

(3) *Successors to Eligible Entities.* If a tribe or tribal organization claims that it is a successor to an eligible entity, the Area ONAP must review the documentation to determine whether it is in fact the successor entity.

(4) *Alaskan Tribal Entities.* (a) Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 1003.5, a Tribal Organization which submits an application for activities in the jurisdiction of one or more eligible tribes or villages must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the Village Corporation and the Regional Corporation.

(b) On October 23, 1997 (62 FR 205), the Bureau of Indian Affairs (BIA) published a **Federal Register** Notice entitled ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs.'' This notice provides a listing of Indian Tribal Entities in Alaska found to be Indian Tribes as the term is defined and used in 25 CFR part 83. Additionally, pursuant to title I of the Indian Self Determination and Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

(c) Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska Area ONAP prior to the deadline for submitting an application. (See 24 CFR 1003.5 for a complete description of eligible applicants.)

Please note: when used in this NOFA the word *''tribe''* means an Indian Tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos, Alaska Native Villages, ANCSA Village Corporations and Regional Corporations.

(E) *Eligible Activities.* Activities that are eligible for ICDBG funds are identified at 24 CFR part 1003, subpart C.

II. Program Requirements

(A) *Statutory and Regulatory Requirements.* All applicants must meet and comply with all statutory and regulatory requirements. Applicable program specific statutory requirements for this program are found in title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*). Applicable program specific regulatory

requirements are found at 24 CFR part 1003. Copies of the regulations are available from HUD Community Connections Information Clearinghouse.

(B) *Nondiscrimination and Compliance with Civil Rights Laws.* Under the authority of section 107(e)(2) of the Housing and Community Development Act of 1974, as amended, the Secretary has waived the requirement that recipients comply with the antidiscrimination provisions in section 109 of the Act with respect to race, color and national origin. Recipients must comply with the other prohibitions against discrimination found in Section 109; the Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 24 U.S.C. 1001–1303); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Recipients must comply with the substantial rehabilitation and new construction requirements, in addition to the other requirements of 24 CFR part 8.

(C) *Relocation.* If an applicant's proposed activities involve the relocation or displacement of persons, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the government-wide implementing regulations at 49 CFR part 24 apply to funding under this NOFA.

(D) *Debarred or Suspended Contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

(E) *Indian Preference.* HUD has determined that programs funded under this NOFA are subject to section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). The provisions and requirements for implementing this section are set forth in 24 CFR 1003.510.

(F) *Conflict of Interest.* In addition to the conflict of interest requirements with respect to procurement transactions found in 24 CFR 85.36 and 84.42, as applicable, the provisions of 24 CFR 1003.606 apply to such activities as the provision of assistance by the recipient or by its subrecipients to businesses, individuals, and other private entities under eligible activities which authorize such assistance.

(G) *Certifications and Assurances.* The specific certifications and assurances which must be provided by an applicant are included under section IV. of this NOFA,

(H) *Economic Opportunities for Low and Very Low Income Persons.* Recipients must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Recipients must ensure that training, employment and other economic opportunities are directed, to the greatest extent feasible, toward low and very low income persons, particularly those who are recipients of government assistance for housing and to business concerns that provide economic opportunities to low and very low income persons. Recipients must comply with the reporting and recordkeeping requirements found at 24 CFR part 135, subpart E. Tribes that receive HUD assistance described in this part shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b).

III. Application Selection Process

(A) *Rating and Ranking*

(1) *Screening for Acceptance.* Each Area ONAP will screen applications for single purpose grants. Applications failing this screening shall be rejected and returned to the applicants unrated. Area ONAPs will accept applications if all the criteria listed below as items (a) through (f) are met:

(a) The application is received or submitted in accordance with the requirements set forth under APPLICATION DUE DATE in this NOFA;

(b) The applicant is eligible;

(c) The proposed activities are eligible. Activities assisted with ICDBG funds are subject to the requirements of section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8;

(d) The application contains substantially all the components specified in section IV.(D) of this notice;

(e) At least 70% of the grant funds are to be used for activities that benefit low and moderate income persons, in accordance with the requirements of § 1003.208; and

(f) The application is for an amount which does not exceed the grant ceilings that are established by the NOFA.

(2) *Application Review Process.*

Threshold review. The Area ONAP will review each application that passes the screening process to ensure that each applicant and each proposed project meets the applicable threshold requirements set forth in 24 CFR 1003.301(a) and 1003.302, as implemented by this NOFA. *If an applicant fails to meet any of the applicant-specific thresholds, its application cannot be accepted for rating and ranking. Project(s) that do not meet the community development appropriateness or applicable project-specific thresholds will not be considered for funding.*

(b) *Rating Team.* All projects that meet the acceptance criteria and threshold requirements will be reviewed and rated by an Area ONAP rating team of at least three voting members. The Area ONAP rating team will examine each project to determine in which one of the rating categories set forth in 24 CFR 1003.303(a) the project most appropriately belongs. The project will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component are 100, which is the maximum any project can receive.

(c) *Public service projects.* Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the other project(s) included in the application. If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

(d) *Final ranking.* (i) All projects will be ranked against each other according to the point totals they receive, regardless of the rating category or component under which the points were awarded. Projects will be selected for funding based on this final ranking, to the extent that funds are available. Individual grant amounts will be determined in a manner consistent with the considerations set forth in 24 CFR 1003.100(b)(2). Specifically, an Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, and the administrative capacity of the applicant to complete the activities in a timely manner.

(ii) If the Area ONAP determines that an insufficient amount of money is

available to adequately fund a project, it may decline to fund that project and fund the next highest ranking project or projects for which adequate funds are available. The Area ONAP may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded, or if additional funds become available.

(e) *Tiebreakers.* When rating results in a tie among projects and insufficient resources remain to fund all tied projects, Area ONAPs shall approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the following factors will be used in the order listed to resolve the tie:

(i) *Eastern/Woodlands Office.*

(*1*) The applicant with the fewest active grants.

(*2*) The applicant that has not received an ICDBG grant over the longest period of time.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(ii) *Southern Plains Office.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time over the last 8 years.

(*2*) The applicant with the fewest active grants.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(iii) *Northern Plains and Southwest Offices.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The applicant with the fewest active grants.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(iv) *Northwest Office.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The applicant that has received the fewest ICDBG dollars since the inception of the program.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(v) *Alaska Office.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The project that would benefit the highest percentage of low and moderate income persons.

(*3*) The project that would benefit the most low and moderate income persons.

(f) *Pre-award requirements.*

(i) Successful applicants may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will normally be given no less than thirty (30) calendar days to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the Area ONAP may determine that the applicant has not met the requirements and the grant offer may be withdrawn. The Area ONAPs shall require supporting documentation in those instances where:

(*1*) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

(*2*) The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(ii) New projects may not be substituted for those originally proposed in the application.

(iii) Grant amounts allocated for applicants unable to meet pre-award requirements will be awarded in accordance with the provisions of this NOFA.

(3) *General threshold requirements.*

(*a*) General. Two types of general thresholds are set forth in 24 CFR 1003.301(a): those that relate to applicants, and those that address the overall community development appropriateness of the project(s) included in the application. Project-specific thresholds are set forth in 24 CFR 1003.302.

(b) *Applicant Thresholds.* (i) *General.* Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project, on its past performance in the ICDBG program, and on its provision of housing assistance to low and moderate income tribal members.

(ii) *Applicant-Specific Thresholds:* Capacity. The Area ONAP will assume, absent evidence to the contrary, that the applicant possesses, or can obtain the managerial, technical, or administrative capability necessary to carry out the proposed project. The application should address who will administer the project and how the applicant plans to handle the technical aspects of executing the project. If the Area ONAP determines, based on substantial evidence (which could include information provided by the most recent risk analysis conducted by the Area ONAP), that the applicant does not have or cannot obtain the capacity to undertake the proposed project, the application will not receive further consideration.

(iii) *Applicant-Specific Thresholds: Performance—*(*1*) *Community Development.* (*a*) If an applicant has previously participated in the ICDBG Program, the Area ONAP shall determine whether the applicant has performed adequately in grant administration and management. This determination will include an evaluation of the most recent RADAR (Risk Analysis and Determination for Allocation of Resources) conducted by the Area ONAP for the applicant. The applicant is presumed to be performing adequately unless the Area ONAP makes a performance determination to the contrary during periodic evaluations.

(*b*) To assess whether or not a recipient is making satisfactory progress in completing previously approved programs, actual progress will be measured against the most recent implementation schedule(s) for the recipient's program(s). This assessment will be done in conjunction with the evaluation of the RADAR and other relevant information, e.g., monitoring reports, which document or reflect a recipient's performance. A recipient which is more than *sixty days* behind schedule will be determined to be performing inadequately with respect to this aspect of grant administration.

(*c*) Where an applicant was found to be performing inadequately, the Area ONAP shall determine whether the applicant has corrected the deficiency or is following a schedule to correct performance to which the applicant and the Area ONAP have agreed. In cases of previously documented deficient performance, the Area ONAP must determine that the applicant has taken appropriate corrective action to improve its performance prior to the application due date.

(*d*) *The Area ONAP will inform in writing any potential applicant which has been determined not to meet this performance threshold no later than 30 days prior to the application due date.* If the performance threshold is not met as of the application submission deadline, an application will not be accepted for rating and ranking.

(*2*) *Housing assistance.* (*a*) The applicant is presumed not to have taken actions to impede the provision of housing assistance for low and moderate income members of the tribe or village. Any action taken by the applicant to prevent or obstruct the provision or operation of assisted housing for low and moderate income persons shall be evaluated in terms of whether it constitutes inadequate performance by

the applicant. If an applicant has established or joined an Indian Housing Authority (IHA), and this IHA has obtained housing assistance from HUD, the performance of the applicant in meeting its obligations and responsibilities to the IHA in the development and operation of housing units assisted under the United States Housing Act of 1937 will be taken into consideration in evaluating its housing assistance performance. This evaluation will include a review of the applicant's compliance with the provisions of the documents which created its relationship with the IHA and the requirements of the Native American Housing and Self-Determination Act of 1996 (42 U.S.C. 4101 *et seq.*). In addition, if the applicant has designated another entity (a tribally designated housing entity (TDHE) to be the recipient of Indian Housing Block Grant Assistance on its behalf, compliance of the applicant with its agreement with the TDHE will also be a consideration in HUD's evaluation.

(*b*) An applicant will not be held accountable for the poor performance of its IHA (or TDHE) *unless* this inadequate performance is found to be a direct result of the applicant's action or inaction. Applicants which are members of multi-tribal IHAs or associated with multi-tribal TDHEs will be judged only on their individual performance and will not be held accountable for the poor performance of other tribes that are members of the IHA or which are also associated with the TDHE.

(*c*) If an applicant has received ICDBG funds for the provision of new housing through a Community Based Development Organization (CBDO), the Area ONAP will consider the following in making its determination regarding housing assistance performance:

(*i*) Whether the proposed units were constructed;

(*ii*) Whether housing assistance was provided to the beneficiaries identified in the funded application, and if not, why not;

(*iii*) Whether the provisions of the applicant's housing plan and procedures have been followed; and

(*iv*) Whether there were sustained complaints from tribal members regarding provision and/or distribution of ICDBG housing assistance.

(*d*) *The Area ONAP will inform in writing any potential applicant which has been determined not to meet the housing assistance performance threshold no later than 30 days prior to the application deadline.*

(iv) *Audits.* The thresholds described in paragraphs (3)(b)(ii) and (3)(b)(iii) of this section III.(A) require the applicant to meet the following performance criteria:

(*1*) The applicant cannot have an outstanding ICDBG obligation to HUD or to an ICDBG program that is in arrears, or it must have agreed to a repayment schedule. An applicant that has an outstanding ICDBG obligation that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current competition and from subsequent competitions until the obligations are current. If a grantee that was current at the time of application submission becomes delinquent during the review period, the application may be rejected.

(*2*) The applicant cannot have an overdue or unsatisfactory response to an audit finding. If there is an overdue or unsatisfactory response to an audit finding, the applicant will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding. The Area ONAP administrator may provide exceptions to this disqualification in cases where the applicant has made a good faith effort to clear the audit finding. An exception may be granted when funds are due HUD or an ICDBG program as a result of a finding only when a satisfactory arrangement for repayment of the debt has been made and payments are current.

(c) *Community Development Appropriateness.* In order to rate and rank a project contained in an application that has passed the screening tests outlined in section III.(A) of this NOFA, Area ONAPs must determine that the proposed project meets the community development appropriateness thresholds set forth below:

(i) *Costs are reasonable.* The project must be described in sufficient detail so that the Area ONAP can determine:

(*1*) That costs are reasonable; and

(*2*) That the funds requested from the ICDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application.

(ii) *Project is Appropriate.* The project is appropriate for the intended use.

(iii) *Project is Usable or Achievable.* The project is usable or achievable in a timely manner, generally within a two year period. The timetable for project implementation and completion must be set forth on the form HUD 4125, Implementation Schedule, included in the application. A period of more than two years is acceptable in certain circumstances, if it is established that such circumstances are beyond the applicant's control.

(B) *Factors for Award Used To Evaluate and Rate Applications.*

The factors for rating and ranking applications and the points for each factor are provided below. The maximum number of points for a rating component is 100, which is the maximum any project can receive.

(1) *Summary of Rating Factors and Point Awards.*

	Maximum points
Housing	
Sec. III.(B)(3)	
(c) Rehabilitation	
(i) Project Need and Design	
(*1*) % of funds for standard rehab	20
(*2*) Applicant's selection criteria	5
(*3*) Housing survey	15
(ii) Planning and Implementation	
(*1*) Rehabilitation policies	
(*a*) Rehabilitation standards	10
(*b*) Selection policies and procedures	10
(*c*) Project implementation policies and procedures	10
(*2*) Post rehab maintenance	5
(*3*) Cost estimates	15
(*4*) Cost effectiveness	5
(iii) Leveraging	5
Total points	100
(e) Land to Support New Housing	
(i) Project Need	40
(ii) Planning and Implementation	
(*1*) Suitability of the land	20
(*2*) Housing resources	10
(*3*) Supportive services	5
(*4*) Commitment of households	5
(*5*) Land to trust status	5
(*6*) Infrastructure commitment	10
(*7*) Land meets need and is reasonably priced	5
Total points	100
(g) New Housing Construction	
(i) Project Need and Design	
(*1*) IHA member/assistance	15
(*2*) Housing policies and plan	25
(*3*) Beneficiary identification	5
(ii) Planning and Implementation	
(*1*) Occupancy standards	10
(*2*) Site acceptability	15
(*3*) Energy conservation design	5
(*4*) Housing survey	10
(*5*) Cost effectiveness	5
(iii) Leveraging	10
Total points	100
Community Facilities	
Sec. III.(B)(4)	
(a) Infrastructure	
(i) Project Need and Design	
(*1*) Meets an essential need	20
(*2*) Benefits the neediest	15
(*3*) Provides infrastructure/health and safety	25
(ii) Planning and Implementation.	

	Maximum points
(*1*) Maintenance and operation plan	15
(*2*) Appropriate and effective design scale and cost	15
(iii) Leveraging	10
Total Points	100
(c) Buildings	
(i) Project Need and Design	
(*1*) Meets an essential need	20
(*2*) Benefits the neediest	15
(*3*) Provides building/health and safety	25
(ii) Planning and Implementation	
(*1*) Maintenance and operation plan	15
(*2*) Appropriate and effective design scale and cost	15
(iii) Leveraging	10
Total points	100

Economic Development

Sec. III.(B)(5)	
(b) Economic Development	
(i) Organization	8
(ii) Project Success	
(*1*) Market analysis	15
(*2*) Management capacity	15
(*3*) Financial analysis	15
(iii) Leveraging	12
(iv) Jobs	
(*2*) ICDBG cost/job	15
(*3*) Quality of jobs/training	5
(v) Additional considerations	15
Total points	100

(2) *Definitions.*

Adopt means to approve by formal tribal resolution.

Assure means to comply with a specific NOFA requirement. The applicant should state its compliance or its intent to comply in its application.

Document means to supply supporting written information and/or data in the application which satisfies the NOFA requirement.

Leverage means resources the grantee will use in conjunction with ICDBG funds to achieve the objectives of the project. Resources include, but are not limited to:

(1) Tribal trust funds;

(2) Loans from individuals or organizations;

(3) State or Federal loans or guarantees;

(4) Other grants; and

(5) Noncash contributions and donated services.

(See section IV.(E) of this NOFA for documentation requirements for point award for leveraged resources.)

Project Cost means the total cost to implement the project. Project cost includes both ICDBG and non ICDBG funds and resources.

Section 8 standards means housing quality standards contained in 24 CFR 982.401 (Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance Under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program).

Standard Housing/Standard Condition means housing which meets the housing quality standards (HQS) adopted by the applicant.

(1) The HQS adopted by the applicant must be at least as stringent as the Section 8 standards unless the Area ONAP approves less stringent standards based on a determination that local conditions make the use of Section 8 standards infeasible.

(2) Applicants may submit their request for the approval of standards less stringent than Section 8 standards prior to the application due date. If the request is submitted with the application, applicants should not assume automatic approval by the Area ONAP.

(3) The adopted standards must provide for the following:

(i) That the house is safe, in a physically sound condition with all systems performing their intended design functions;

(ii) A livable home environment;

(iii) An energy efficient building and systems which incorporate energy conservation measures; and

(iv) Adequate space and privacy for all intended household members.

Housing

(3) *Project Specific Thresholds and Rating Factors for Housing.*

(a) *Specific thresholds for housing category projects.* (i) The applicant shall provide an assurance that households that have been evicted from HUD assisted housing within the past five years will not be assisted by the proposed project except in emergency situations. The Area ONAP Administrator will review each emergency situation proposed by an applicant on a case-by-case basis to determine whether an exception is warranted.

(ii) *Consistency with Indian Housing Plan (IHP).* The applicant shall provide an assurance that the housing category project proposed is consistent with, and to the extent possible, identified in, the Indian Housing Plan (IHP) submitted by or on behalf of the applicant under the provisions of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). (If the IHP has not been submitted, the applicant shall provide an assurance that if submitted, the IHP will specifically reference the proposed housing category project.)

(b) *Rehabilitation Thresholds and Grant Limits.*—(i) *Thresholds.* All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies prior to submitting an application. *These standards and policies must be submitted with the application.* The applicant shall provide an assurance that:

(*1*) Any house to be rehabilitated will be the permanent non-seasonal residence of the occupants; the residents will live in the unit at least nine months per year.

(*2*) Houses designated for eventual replacement will only receive repairs essential for the health and safety of the occupants.

(*3*) Project funds will be used to rehabilitate HUD assisted houses only when the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. In emergency situations the Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(*4*) Houses that have received comprehensive rehabilitation assistance from any ICDBG or other Federal grant program within the past 8 years will not be assisted with ICDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

(ii) *Grant limits.* Rehabilitation grant limits for each Area ONAP jurisdiction are as follows:

(1) Eastern/Woodlands	$20,000
(2) Southern Plains	15,000
(3) Northern Plains	33,500
(4) Southwest	40,000
(5) Northwest	25,000
(6) Alaska	50,000

(c) *Rating Factors for Rehabilitation Projects.*

(i) *Rating Factor 1: Project Need and Design.* (40 points)

(*1*) The percentage of ICDBG funds committed to bring the houses to be assisted up to a standard condition as defined by the applicant. Administrative, planning, and technical assistance expenditures are excluded in computing the percentage of ICDBG funds committed to bring the houses up to a standard condition. The percentage of ICDBG funds not used to bring the houses up to a standard condition must be used for emergency repairs, demolition of substandard units or another purpose closely related to the housing rehabilitation project.

Percentage of ICDBG funds committed to bring houses to be assisted up to a standard condition:

91–100%—20 points
81–90.9%—15 points
80.9 and less—0 points

(*2*) The applicant's selection criteria which are included in the application give first priority to the neediest households. *Neediest* is defined as households whose houses are in the greatest disrepair (but still suitable for rehabilitation treatment) in the project area, or very low-income households.

YES—5 points
NO—0 points

(*3*)(*a*) Documentation of project need with a housing survey of all of the houses to be rehabilitated with ICDBG funds. This survey should include standard housing data on each house surveyed (e.g., age, size, type, number of rooms, number of habitable rooms, number of bedrooms/sleeping rooms, type of heating). The survey should indicate the deficiencies for each house. *A definition of ''suitable for rehabilitation'' must be included.* At a minimum, this definition must not include houses that need only minor repairs, or houses that need such major repairs that rehabilitation is structurally or financially infeasible.

(*b*) The application contains all the required survey data and the required definition of ''suitable for rehabilitation.'' (15 points)

(*c*) The application does not contain the required definition of ''suitable for rehabilitation'' and/or all the survey data, but does contain sufficient data to enable the project to proceed effectively. (10 points)

(*d*) The application does not contain survey data *or* the survey data it does contain is not sufficient to enable the project to proceed effectively. (0 points)

(ii) *Rating Factor 2: Planning and Implementation.* (55 points)

(*1*) *Rehabilitation Policies and Procedures including*:

(*a*) *Adopted rehabilitation standards.* The rehabilitation standards adopted by the applicant will ensure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA. In addition, these standards include specific requirements which address child safety measures to be incorporated in all appropriate rehabilitation work. Such measures may include, but are not limited to, child safety latches on cabinets, hot water protection devices, and window guards to prevent children from falling.

The standards adopted by the applicant will ensure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA and that, where applicable, a safer living environment for children has been created. (10 points)

The standards adopted by the applicant will ensure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA but they do not address applicable specific child safety measures. (5 points)

The standards do not meet requirements for point award. (0 points)

(*b*) *Rehabilitation selection policies and procedures.* (*i*) The rehabilitation selection policies and procedures contained in the application include:

(*A*) Property selection standards;

(*B*) Cost limits;

(*C*) Type of financing (e.g., loan or grant);

(*D*) Homeowner costs and responsibilities;

(*E*) Procedures for selecting households to be assisted; and,

(F) Income verification procedures.

(*ii*) The application contains all the rehabilitation selection policies and procedures listed above. (10 points)

(*iii*) The application does not contain all the rehabilitation selection policies and procedures listed above, but contains sufficient data to enable the project to proceed effectively *or* the application contains all the rehabilitation selection policies and procedures listed above, but in insufficient detail. (5 points)

(*iv*) The application does not contain the rehabilitation selection policies and procedures listed above *or* if it does contain policies and procedures, they are not sufficient to enable the project to proceed effectively. (0 points)

(*c*) *Project implementation policies and procedures.* (*i*) These policies and procedures must include a description of the following items:

(*A*) The qualifications which will be required of the inspector;

(*B*) The inspection procedures to be used;

(*C*) The procedures to be used to select the contractor or contractors;

(*D*) The manner in which the households to be assisted will be involved in the rehabilitation process;

(*E*) How disputes between the households to be assisted, the contractors and the applicant will be resolved; and, if applicable;

(*i*) The repayment provisions which will be required if sale of the assisted house occurs prior to 5 years after the rehabilitation work has been completed.

(*ii*) The application contains all the policies and procedures listed above, and they will enable the project to be effectively implemented. (10 points)

(*iii*) The application contains some but not all of the policies and procedures listed above and these policies and procedures are sufficient for the project to proceed effectively. (5 points)

(*iv*) The application does not contain the policies and procedures listed above. (0 points)

(*2*) *Post rehabilitation maintenance policies that address counseling and training assisted households on maintenance.* (*a*) The policies included in the application contain a well-planned counseling and training program. Training will be provided for assisted households, and provision is made for households unable to do their own maintenance (e.g., elderly and persons with disabilities).

(*b*) The policies include follow-up inspections after rehabilitation is completed to ensure the house is being maintained. (5 points)

(*c*) The policies contain a well-planned home maintenance training and counseling program but fail to adequately address all of the items listed above. (3 points)

(*d*) The application does not contain a well-planned home maintenance training and counseling program. (0 points)

(*3*) *Quality of cost estimates.* (*a*) Cost estimates have been prepared by a qualified individual. (Qualifications of the estimator must be included in the application). Costs of rehabilitation are documented on a per house basis and are supported by a work write-up for each house to be assisted. The work write-ups are based upon making those repairs necessary to bring the houses to a standard condition in a manner consistent with adopted construction codes and requirements. The write-ups must be submitted with the application. If national standards (e.g., the Uniform Building Code) have been locally adopted as the construction codes and requirements, they must be referenced. If locally developed and adopted codes and requirements are used, they must be submitted. (15 points)

(*b*) Cost estimates have been prepared for each house to be rehabilitated to determine the total rehabilitation cost. The cost estimates are included in the application. Costs to rehabilitate each house are documented by a deficiency list. (12 points)

(*c*) Cost estimates have been prepared and are included in the application but the estimates are based on surveys and not on individual house deficiency lists. (5 points)

(*d*) Cost estimates are not included in the application *or* the basis for the cost

estimates included is inappropriate or not provided. (0 points)

(*4*) *Cost effectiveness of the rehabilitation program*. (*a*) This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed rehabilitation will bring the houses to be assisted to a standard condition in an efficient and cost effective manner.

(*b*) Rehabilitation project is cost effective. (5 points)

(*c*) Rehabilitation project is not cost effective. (0 points)

(*iii*) *Rating Factor 3: Leveraging.* (5 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage' included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
25 and over	5
20–24.9	4
15–19.9	3
10–14.9	2
5–9.9	1
0–4.9	0

(d) *Thresholds for Land to Support New Housing.* (i) The application contains information and documentation which establishes that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low and moderate income households with documented housing needs.

(ii) Housing assistance needs must be clearly demonstrated and documented with either a survey that identifies the households to be served, their size, income levels and the condition of current housing or an IHA, or if applicable, TDHE approved waiting list. *The survey or waiting list must be submitted with the application*.

(e) *Rating Factors for Land to Support New Housing.*

(i) *Rating Factor 1: Project Need and Design*. (40 Points)

Information included in the application establishes that:

(*1*) The applicant has no suitable land for the construction of new housing and the necessary infrastructure and amenities for this housing. (40 points); or

(*2*) The applicant has land suitable for housing construction and needed infrastructure and amenities, but the land is officially dedicated to another purpose. (30 points); or

(*3*) The applicant will be acquiring land for housing construction and the construction of needed infrastructure and amenities for both new and existing housing. (25 points); or

(*4*) The applicant will be acquiring land for the construction of amenities for existing housing. (15 points); or

(*5*) The reason for the land acquisition does not meet any of the criteria listed above. (0 points)

(ii) *Planning and Implementation*. (60 points)

(*1*) *Suitability of land to be acquired*. A preliminary investigation has been conducted by a qualified entity independent of the applicant. Based on this investigation (*which must be submitted with the application*), the land appears to meet all applicable requirements:

(*a*) Soil conditions appear to be suitable for individual and/or community septic systems or other acceptable methods for waste water collection and treatment have been identified.

(*b*) The land has adequate:

(*i*) Availability of drinking water;

(*ii*) Access to utilities;

(*iii*) Vehicular access;

(*iv*) Drainage.

(*e*) The land appears to comply with environmental requirements. Future development costs are expected to be consistent with other subdivision development costs in the area (subdivision development costs include the costs of the land, housing construction, water and sewer, electrical service, roads, and drainage facilities if required).

YES—20 points
NO—0 points

(*2*) Commitment and availability of housing resources.

(*a*) The application includes evidence of a commitment and an ability to construct at least 25 percent of the housing units to be built on the land proposed for acquisition. This evidence consists of one (or more) of the following.

(*i*) a firm or conditional commitment to construct (or to finance the construction of) the units; or

(*ii*) documentation that an approvable application for the construction of these units has been submitted to a funding source or entity; or

(*iii*) documentation that these units are specifically identified in the Indian Housing Plan submitted on or on behalf of the applicant as an affordable housing resource with a commensurate commitment of Indian Housing Block Grant (IHBG) resources. (10 points)

(*b*) The evidence required for the award of 10 points has not been included in the application. (0 points)

(*3*) *Availability/accessibility of supportive services and employment opportunities*. Documentation is provided in the application to indicate that upon completion of construction of the housing to be built on the land to be acquired, fire and police protection will be available to the site and medical and social services, schools, shopping, and employment opportunities will be accessible from the site according to the community's established norms.

YES—5 points
NO—0 points

(*4*) *Commitment that households will move into the new housing.* Documented commitment from households that they will move into the new housing to be built on the land to be acquired is included in the application.

YES—5 points
NO—0 points

(*5*) *Land to trust status*. (*a*) Land can be taken into trust or provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust or the applicant must demonstrate the financial capability and commitment to pay the property taxes and fees on the land for any period of time during which it anticipates it will own the property in fee. This commitment must be in the form of a resolution by the governing body of the applicant which indicates that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

(*b*) Documentation from the BIA that land can be taken into trust or the required governing body resolution is included in the application. (5 points)

(*c*) Either the assurance or the resolution are missing from the application or they are inadequate. (0 points)

(*6*) *Infrastructure commitment*. (*a*) A plan or commitment for any infrastructure needed to support the housing to be built on the land to be acquired has been included in the application. The plan or commitment must address water, waste water collection and treatment, electricity, roads, and drainage facilities necessary to support the housing to be developed.

(*b*) Financial commitments for all necessary infrastructure have been included in the application or documentation is included which demonstrates that all necessary infrastructure is in place. (10 points)

(*c*) A plan for the provision of all necessary infrastructure is included in the application but all financial commitments required to implement the plan have not been submitted. (5 points)

(*d*) Neither a financial commitment or plan are included in the application. (0 points)

(*7*) *The extent to which the site proposed for acquisition meets the housing needs of the applicant and is reasonably priced.* The application includes documentation which indicates that the applicant has examined and assessed the appropriateness of alternative sites and which demonstrates that the site proposed for acquisition best meets the documented housing needs of tribal households. The application must include comparable sales data which shows that the cost of the land proposed for acquisition is reasonable.

Yes—5 points
No—0 points

(*f*) *Thresholds for New Housing Construction.* The following thresholds and the rating factors set forth in paragraph (g) of this section apply to new housing construction to be implemented through a Community-Based Development Organization (CBDO) as provided for under 24 CFR 1003.204. *Please note that all households to be assisted under a new housing construction project must be of low or moderate income status.*

(i) New housing construction can only be implemented through a Community-Based Development Organization (CBDO). Eligible CBDOs are described in 24 CFR 1003.204(c). The applicant must provide an assurance that it understands this requirement.

(ii) *Documentation which supports the following determinations must be included in the application:*

(*1*) No other housing is available in the immediate reservation area that is suitable for the households to be assisted;

(*2*) No other funding sources including an Indian Housing Block Grant can meet the needs of the household(s) to be served.

(*3*) The house occupied by the household to be assisted is not in standard condition and rehabilitation is not economically feasible, or the household is currently in an overcrowded house (sharing house with another household(s)), or the household to be assisted has no current residence.

(iii) All applicants for new housing construction projects shall adopt construction standards and construction policies prior to submitting an application. Applicants must identify the building code to be used when constructing the houses and must document that this code has been adopted. The building code may be a tribal building code or a nationally recognized model code. If it is a tribal code it must regulate all of the areas and sub-areas identified in 24 CFR 200.925b, and it must be reviewed and approved by the Area ONAP. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925c.

(iv) The applicant must provide an assurance that any house to be constructed will be the permanent non-seasonal residence of the household to be assisted; this household must live in the house at least nine months per year.

(g) *Rating Factors for New Housing Construction.*

(i) *Rating Factor 1: Project Need and Design.* (45 points)

(*1*) *IHA member/assistance.* (*a*) The application includes documentation which establishes that the applicant was not served by an Indian Housing Authority (IHA), or if it was a member of an umbrella IHA, this IHA had not provided assistance to the applicant in a substantial period of time, or the IHA which served the applicant had not received HUD Public and Indian Housing new construction assistance in a substantial period of time due to limited HUD appropriations. The period of time during which the IHA serving the applicant had not received funding for inadequate or poor performance by the applicant does not count towards the period of time that no assistance has been provided by HUD.

(*b*) No assistance from IHA for 10 years or longer. (15 points)

(*c*) No assistance from IHA for 6–9 years, 11 months. (10 points)

(*d*) No assistance from IHA for 0–5 years, 11 months. (0 points)

(*2*) *Adopted housing construction policies and plan.* (*a*) The plan must include a description of the proposed CBDO and its relationship (or proposed relationship) to the applicant. In addition, the policies and plan must include:

(*i*) A selection system that gives priority to the neediest households. Neediest shall be defined as households whose current residences are in the greatest disrepair, or very low-income households, or households without permanent housing.

(*ii*) A system effectively addressing long-term maintenance of the constructed houses.

(*iii*) Estimated costs and identification of the entity responsible for paying utilities, fire hazard insurance and other normal maintenance costs.

(*iv*) Policies governing ownership of the houses, including the status of the land.

(*v*) Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.

(*vi*) Policies governing disposition or conversion to non-dwelling uses of substandard houses that will be vacated when a replacement house is provided.

(*b*) The policies and plan include all of the information listed above and, in addition, they specifically address the incorporation of child safety measures in the housing to be constructed. Such measures may include, but are not limited to, child safety latches on cabinets, hot water protection devices, and window guards to prevent children from falling. (25 points)

(*c*) The policies and plan include all of the information listed above but do not specifically address the incorporation of child safety measures. (20 points)

(*d*) The policies and plan do not include all of the information listed above, but do include sufficient information to allow the project to proceed effectively *or,* all of the information is included, but in insufficient detail. (10 points)

(*e*) The information included in the application is not sufficient to meet the requirements for the award of 10 points. (0 points)

(*3*) *Beneficiary identification.* (*a*) Households to be assisted are identified in the application and their income eligibility and household size are documented. (5 points)

(*b*) Households to be assisted are not identified or, if identified, their income eligibility and household size are not documented. (0 points)

(*ii*) *Rating Factor 2: Planning and Implementation.* (45 points)

(*1*) *Occupancy Standards.* (*a*) The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying household (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room). *The standards must be submitted with the application.*

(*b*) Applicant has adopted reasonable occupancy standards which are included in the application. (10 points)

(*c*) Applicant has not adopted reasonable occupancy standards or the standards were not included in the application. (0 points)

(*2*) *Site Acceptability.* (*a*) The applicant (or the proposed beneficiary household) has control of the land upon which the houses will be built. The application includes documentation that all housing sites are in trust or documentation from the BIA that the sites will be taken into trust within one

year of the date of the ICDBG approval notification. If the sites are not in trust by the date of ICDBG approval notification, documentation that they are in trust must be provided to the Area ONAP before ICDBG funds may be obligated for construction.

(*b*) A preliminary investigation of the site(s) has been conducted by a qualified entity independent of the applicant. Based on this investigation (*which must be included in the application*) the site(s) appear to meet all applicable requirements:

Soil conditions appear to be suitable for individual or community septic systems or other acceptable methods for waste water collection and treatment have been identified.

(*i*) Each site has adequate:

(*ii*) Availability of drinking water;

(*iii*) Access to utilities;

(*iv*) Vehicular access;

(*v*) Drainage;

(*vi*) Each site appears to comply with environmental requirements.

YES—15 points
NO—0 points

(*3*) *Energy Conservation Design*. The application includes documentation which demonstrates that the proposed houses have been designed in a manner which will ensure that energy use will be no greater than that for comparable houses in the same general geographic area that have been constructed in accordance with applicable state energy conservation standards for residential construction. Any special design features, materials, or construction techniques which enhance energy conservation must be described.

YES—5 points
NO—0 points

(*4*) *Housing Survey*. (*a*) The applicant has completed a survey of housing conditions and housing needs of its tribal members. This survey was completed within the twelve month period prior to the application submission deadline (or if an earlier survey, it was updated during this time period).

The survey must be submitted with the application. The following descriptive data is included for each household surveyed:

(*i*) Size of the household, including age and gender of any children.

(*ii*) Is the household occupying permanent housing or is it homeless?

(*iii*) Annual household income.

(*iv*) Owner or renter.

(*v*) Number of habitable rooms and number of sleeping rooms.

(*vi*) Physical condition of the house—standard/substandard. If substandard, is it suitable for rehabilitation? *A definition of ''suitable for rehabilitation'' must be included*.

(*vii*) Number of distinct households occupying the house/degree of overcrowding.

(*viii*) If there is a need for a replacement house, what are the housing preferences of the household, e.g. ownership or rental; location; manufactured or stick-built.

(*b*) An acceptable survey was submitted. (10 points)

(*c*) The survey submitted was not acceptable or no survey was submitted. (0 points)

(*5*) *Cost effectiveness of new housing construction*. (*a*) This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed housing activities will be accomplished in an efficient and cost effective manner.

(*b*) The applicant has demonstrated that the proposed activities are cost effective. (5 points)

(*c*) The applicant has not demonstrated that the proposed activities are cost effective. (0 points)

(iii) *Rating Factor 3: Leveraging*. (10 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
25 and over	10
20–24.9	8
15–19.9	16
10–14.9	4
5–9.9	2
0–4.9	0

Community Facilities

(4) *Project Specific Thresholds and Rating Factors for Community Facilities*.

(a) *Rating Factors for Infrastructure*.

(*i*) *Rating Factor 1: Project Need and Design*. (60 points)

(*1*) *Meets an essential need*. (*a*) The application includes documentation which demonstrates that the proposed project meets an essential community development need by fulfilling a function that is critical to the continued existence or orderly development of the community.

(*b*) The proposed project will fulfill a function which is critical to the continued existence or orderly development of the community. (20 points)

(*c*) The proposed project will fulfill a function which is not critical to the continued existence or orderly development of the community. (0 points)

(*2*) *Benefits the neediest*. (*a*) The proposed project benefits the neediest segment of the population, as identified below. Applications must include information which demonstrates that income data was collected in a statistically reliable and independently verifiable manner and that:

(*b*) 85 percent or more of the beneficiaries are low and moderate income. (15 points)

(*c*) Between 75–84.9 percent of the beneficiaries are low and moderate income. (10 points)

(*d*) Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

(*e*) Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(*3*) *Provides infrastructure/health and safety*.

(*a*) The application includes documentation which demonstrates that the proposed project will provide infrastructure that does not currently exist for the area to be served *or* it will eliminate or substantially reduce a health or safety threat or problem *or* it will replace existing infrastructure that no longer functions adequately to meet current needs.

(*b*) The infrastructure does not exist *or* the existing infrastructure no longer functions *or* the existing infrastructure does not contribute to the elimination of, or causes, a verified health or safety threat or problem. (25 points)

(*c*) The existing infrastructure no longer functions adequately to meet current needs *or* is unreliable. (20 points)

(*d*) The proposed project will replace or supplement existing infrastructure which is adequate for current needs but which will not meet acknowledged future needs. (12 points)

(*e*) The proposed project will replace or supplement existing infrastructure which is adequate to meet current needs and future needs have not been acknowledged or documented. (0 points)

(*f*) If the project is intended to address a health or safety threat or problem, the applicant must provide documentation consisting of a signed study or letter from a qualified independent authority which verifies that:

(*i*) A threat to health or safety (or a health or safety problem) exists which has caused or has the potential to cause serious illness, injury, disease, or death; and

(*ii*) The threat or problem can be completely or substantially eliminated if the proposed project is undertaken.

(ii) *Rating Factor 2: Planning and Implementation*. (30 points)

(*1*) *A viable plan for maintenance and operation*. (*a*) If the applicant is to assume responsibility for maintenance and operation of the proposed facility, the applicant must adopt a maintenance and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and which clearly identifies operating responsibilities and resources. *This plan and the adopting resolution must be included in the application*. The plan must identify a funding source to ensure that the facility will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

(*b*) If an entity other than the applicant commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume and which documents its financial ability to assume these responsibilities must be included in the application; submission of a maintenance and operation plan is not required. Points will only be awarded if the Area ONAP is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(*c*) An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

(*d*) The plan, resolution or the commitment letter have not been included in the application or if included they are not acceptable. (0 points)

(*2*) *An appropriate and effective design, scale and cost*. (*a*) The application includes information which demonstrates that the proposed project is the most appropriate and cost effective approach to address the identified need. This information demonstrates that the use of existing facilities and resources, and alternatives, including method of implementation and cost, have been considered. If only one approach is feasible (there are no alternatives to the proposed project), the application must include an explanation.

(*b*) The required information is included in the application. (15 points)

(*c*) The required information is not included in the application or, if included, it is unacceptable. (0 points)

(iii) *Rating Factor 3: Leveraging*. (10 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

(b) *Threshold for Buildings*. An applicant proposing a facility which would provide health care services funded by the Indian Health Service (IHS) must assure that the facility meets all applicable IHS facility requirements. It is recognized that tribes that are contracting services from the IHS may establish other facility standards. These tribes must assure that these standards at least compare to nationally accepted minimum standards.

(c) *Rating Factors for Buildings*.

(i) *Rating Factor 1: Project Need and Design*. (60 points)

(*1*) *Meets an essential need*. (*a*) The application includes documentation that the proposed building meets an essential community development need by providing space so that a service or function which is critical to the continued existence or orderly development of the community can be provided.

(*b*) The proposed building will provide space for a service or function which is essential to the continued existence or orderly development of the community. (20 points)

(*c*) The proposed building will provide space for a service or function which is not critical to the continued existence or orderly development of the community. (0 points)

(*2*) *Benefits the neediest*. The proposed project benefits the neediest segment of the population, as identified below. Applications must include information which demonstrates that income data was collected in a statistically reliable and independently verifiable manner and that:

(*a*) 85 percent or more of the beneficiaries are low and moderate income. (15 points)

(*b*) Between 75–84.9 percent of the beneficiaries are low and moderate income. (10 points)

(*c*) Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

(*d*) Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(*3*) *Provides building/health and safety*. (*a*) The application includes documentation which demonstrates that the proposed building will be used to provide services or functions which are not currently being provided to service area beneficiaries *or* it will replace a building which does not meet health or safety standards which is currently being used to provide the service or function *or* it will replace a building which is no longer able to provide the space or amenities to meet the current need for the services or functions.

(*b*) The services or functions to be provided in the proposed building do not exist for the service area population *or* the building currently being used does not meet health or safety standards. (25 points)

(*c*) The building to be replaced by the proposed building is not able to provide the space or amenities for the services or functions so that current needs cannot be entirely met. (20 points)

(*d*) The building to be replaced is able to provide adequate space and current needs are being met but it cannot provide space for acknowledged future needs. (10 points)

(*e*) The proposed building is not necessary since current needs and acknowledged future needs can be met through the use of existing facilities. (0 points)

(*f*) If the proposed building is intended to replace an existing building which does not meet health or safety standards, the application must include documentation consisting of a signed letter from a qualified independent authority which specifically identifies the standard or standards which are not being met by the existing building.

(ii) *Rating Factor 2: Planning and Implementation*. (30 points)

(*1*) *A viable plan for maintenance and operation*. (*a*) If the applicant is to assume responsibility for the maintenance and operation of the proposed building, the applicant must adopt a maintenance and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and which clearly identifies operating responsibilities and resources. *This plan and the adopting resolution must be included in the application*. The plan must identify a funding source to ensure that the building will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

(*b*) If an entity other than the applicant commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume and which documents its financial ability to meet these responsibilities must be included in the application;

submission of a maintenance and operation plan is not required. Points will only be awarded if the Area ONAP is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(*c*) An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

(*d*) The plan, resolution or the commitment letter have not been included in the application, or if included, they are not acceptable. (0 points)

(*2*) *An appropriate and effective design, scale and cost.* (*a*) The application includes information which demonstrates that the proposed building is the most appropriate and cost effective approach to address the identified need(s). This information demonstrates that the use of existing facilities and resources and alternatives, including method of implementation and cost, have been considered. If only one approach is feasible (there are no alternatives to the proposed building), the application must include an explanation.

(*b*) The required information is included in the application. (15 points)

(*c*) The required information is not included in the application or, if included, it is unacceptable. (0 points)

(iii) *Rating Factor 3: Leveraging.* (10 points)

Points under this component will be awarded based on the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
25 or more	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

Economic Development

(5) *Project Specific Thresholds and Rating Factors for Economic Development.*

(a) *Thresholds for Economic Development.* (i) Economic development assistance may be provided only when a financial analysis is provided which shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project.

(ii) The analysis should also establish that to the extent practicable: Reasonable financial support will be committed from non-Federal sources prior to disbursement of Federal funds; any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and, that grant funds used for the project will be disbursed on a pro-rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and has a reasonable chance of success.

(b) *Rating Factors for Economic Development.*

(i) *Rating Factor 1: Organization.* (8 points)

(*1*) The application contains information and documentation which addresses all of the following three elements (Maximum: 8 points):

(*a*) The applicant (or entity to be assisted) has an established organization system for operation of a business, (e.g., adopted tribal ordinances, articles of incorporation, Board of Directors in place, tribal department).

(*b*) Formal provisions exist for separation of government functions from business operating decisions. An operating plan has been established and is submitted.

(*c*) The Board of Directors consists of persons who have prior business experience. A staffing plan has been developed and is submitted.

(*2*) The application contains all of the first element listed above, and some of the items in the second and third elements *OR*, the application contains all of the elements listed above, but in insufficient detail. The business should be able to operate effectively. (Moderate: 5 Points)

(*3*) The application does not meet the criteria for the award of moderate points. (Unsatisfactory: 0 Points)

(ii) *Rating Factor 2: Project Success.* (45 points)

The project will be rated on the adequacy and quality of the information included in the application which addresses the following criteria: *ANY PROJECT NOT RECEIVING AT LEAST MODERATE POINTS IN EACH OF THE FOLLOWING THREE RATING FACTORS WILL NOT BE CONSIDERED FOR FUNDING.*

(1) *Market analysis.* (*a*) A feasibility/market analysis, generally not older than two years, which identifies the market and demonstrates that the proposed activities are highly likely to capture a fair share of the market. *The analysis must be submitted with the application.* (Maximum: 15 points)

(*b*) A feasibility/market analysis which identifies the market and demonstrates that the proposed activities are reasonably likely to capture a fair share of the market. *The analysis must be submitted with the application.* (Moderate: 10 points)

(*c*) The submission does not meet the criteria for the award of moderate points. (Unsatisfactory: 0 points)

(*2*) *Management capacity.* (*a*) A management team with qualifying specialized training or technical/managerial experience in the operation of a similar business has been identified. *Job descriptions of key management positions as well as résumés showing qualifying specialized technical/managerial training or experience of the identified management team must be submitted with the application.* (Maximum: 15 points)

(*b*) A management team with qualifying general business training or experience will be hired if the grant is approved. *Job descriptions of key management positions must be submitted with the application.* (Moderate: 12 points)

(*c*) The submission does not meet the criteria for the award of 12 points. (Unsatisfactory: 0 points)

(*3*) *Financial Analysis of the Business.* (*a*) The financial viability of a project will be determined by an analysis of financial and other project related information. *For all proposed projects, the following must be submitted:*

(*i*) A detailed cost summary for the project;

(*ii*) Evidence of funding sources;

(iii) Five year operating or cash flow financial projections. If the project involves the expansion of an existing business, financial statements for the most recent three year period for the business must also be submitted with the application (financial statements include the balance sheet, income statement and statement of retained earnings). For start-up businesses that will not be owned by the grantee, current financial or net worth statements of principal business owners or officers must also be submitted with the application.

(*b*) The information derived from the analysis will be reviewed and compared to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall financial viability. In determining whether a project is financially viable, the Area ONAP will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert

Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. Local standards may also be used. *If one of these standards is cited by the applicant, the appropriate data must be submitted with the application.*

(*c*) Based on the analysis:

(*i*) The project has an excellent chance of achieving financial success. (Maximum: 15 points)

(*ii*) The project has an average chance of achieving financial success. (Moderate: 8 points)

(*iii*) The project has a minimal prospect of achieving financial success. (Unsatisfactory: 0 points)

(iii) *Rating Factor 3: Leveraging.* Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
30% or more	12
20–29.9%	8
10–19.9%	4
Less than 10%	0

(iv) *Rating Factor 4: Permanent Full-Time Equivalent Job Creation and Training.* (20 points). (*1*) The total number of permanent full-time equivalent jobs expected to be created and/or retained as a result of the project as well as a summary of job descriptions must be identified or included in the application. Retained jobs will not be counted unless clear evidence is provided that these jobs would be lost without the project. The number and kind(s) of jobs expected to be available to low and moderate income persons must be identified.

(*2*) *ICDBG cost per job:*

$30,000 or less	15 points.
$30,001–40,000	12 points.
$40,001–45,000	8 points.
$45,001+	0 points.

(*3*) *Quality of jobs and/or training targeted to low and moderate income persons:*

(*a*) The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferable skill; *OR*

(*b*) The employer commits to provide training opportunities. *A description of the planned training program must be submitted with the application.*

YES—5 points
NO—0 points

(v) *Rating Factor 5: Additional Considerations.* (15 points)

A project must meet three of the following factors to receive 15 points. (Maximum: 15 points)

(*1*) Use, improve or expand members' special skills. Special skills are those that members have developed through education, training or traditional cultural experiences.

YES—5 points
NO—0 points

(*2*) Provide spin-off benefits beyond the initial economic development benefits to employees or to the community.

YES—5 points
NO—0 points

(*3*) Provide special opportunities for residents of federally-assisted housing.

YES—5 points
NO—0 points

(4) Provide benefits to other businesses owned by Indians or Alaska natives.

YES—5 points
NO—0 points

(5) Loan Repayment/Reuse of ICDBG funds. If the business is not tribally owned, at least 50% of the ICDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees (by submission of a tribal resolution) within a 10 year period to use funds equal to 50% of the ICDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business.

YES—5 points
NO—0 points

IV. Application Submission Requirements and Checklist

(A) *General.* Completed applications *(one originally signed and two copies)* must be submitted to the appropriate Area ONAP listed above. All telephone numbers listed may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. To be eligible for consideration, applications must be received by or be submitted to the appropriate Area ONAP in accordance with the requirements set forth under APPLICATION DUE DATE above. An applicant shall submit only one application. The ICDBG grant amount requested shall not total more than the grant ceiling. An application may include an unlimited number of eligible projects (e.g., housing or public facilities). Each project within an application will be rated separately.

(B) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations, when applicable.

(C) *Publication of Community Development Statement.* Applicants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 1003.604.

(D) *Application Submission.* The application shall include:

(1) Standard Form 424—Application for Federal Assistance;

(2) Community Development Statement which includes:

(a) Components that address the relevant selection criteria;

(b) A brief description or an updated description of community development needs;

(c) A brief description of projects proposed to address needs, including scope, magnitude, and method of implementing the project;

(d) A schedule for implementing the project (form HUD–4125, Implementation Schedule); and

(e) Cost information for each separate project, including specific activity costs, administration, planning, and technical assistance, total HUD share (form HUD–4123, Cost Summary);

(3) Certifications—form HUD 4126;

(4) Drug-free Workplace Certification (24 CFR part 24, subpart F);

(5) Certification regarding lobbying (24 CFR part 87) and SF–LLL (if applicable);

(6) Applicant/Recipient Disclosure/Update Report—form HUD 2880, as required under subpart A of 24 CFR part 4, Accountability in the Provision of HUD Assistance;

(7) A map showing project location, if appropriate;

(8) If the proposed project will result in displacement or temporary relocation, a statement that identifies:

(a) The number of persons (families, individuals, businesses and nonprofit organizations) occupying the property on the date of the submission of the application (or date of initial site control, if later);

(b) The number to be displaced or temporarily relocated;

(c) The estimated cost of relocation payments and other services;

(d) The source of funds for relocation; and

(e) The organization that will carry out the relocation activities;

(9) If applicable, evidence of the disclosure required by 24 CFR 1003.606(e) regarding conflict of interest.

(E) Documentation requirements for point award for leveraged resources.

(1) *General.* For the applicant's own resources, a council resolution (or legal equivalent) which identifies and commits the resources must be included in the application. For resources to be provided by another entity, written verification of an application or request for the leveraged resources must be included in the application.

(2) *Resources contributed by a public agency, foundation, or other private party.* (a) In addition to the requirement described in above in this section, for grants or other contributed resources from a public agency, foundation, or other private party, a *written commitment* which may be contingent on approval of the ICDBG award must be *received* by the Area ONAP no later than 30 days after the application deadline. This commitment must specifically identify or indicate:

(i) The dollar amount committed (or dollar value of the noncash resource and the basis for the valuation);

(ii) That the resources are currently available or will be available when necessary for successful project implementation; and

(iii) The project.

(b) If the nature of the funding cycle of the contributing entity precludes the entity from making a firm funding commitment in the 30 days, such resources will be considered in the award of points if the entity provides a written statement indicating that the application or request for assistance has been received from the ICDBG applicant and stating the date by which its funding determination will be made. This date cannot be more than six months from the anticipated date of grant approval notification by HUD.

(c) If the proposed project rates high enough for funding consideration, a special condition will be established in the grant agreement for the project. This condition will indicate that if a firm funding commitment for the leveraged resources is not provided within six months of the date of grant approval, the grant funds approved will be recaptured by HUD and will be used in accordance with the requirements of § 1003.102.

(d) The statement described in paragraph (c)(2)(ii) of this section must be received by the Area ONAP no later than *30 days* after the application deadline. If the commitment or statement is not received in the required timeframe or if the required information is not included, points will not be awarded for the proposed contribution.

(e) If the proposed project still rates high enough to be approved, a pre-award condition will be established which will require the applicant to provide evidence of firmly committed resources to cover the entire non-ICDBG project cost. If this condition is not met, the grant will not be awarded.

(3) *Contributions of goods and services.* In addition to the above requirements for point award, special documentation must be included in the application for certain contributions. The contribution of goods and services will be considered for point award if the applicable requirements listed above are met; if the items or services are demonstrated and determined necessary to the actual development of the project; and comparable cost and/or time estimates are submitted which support the donation.

(4) *Contributions of land.* Land to be contributed will only be considered for point award when its use and area are integral to the development of the project. In addition, the value of the land must be verified by any of the following means or methods and this documentation must be included in the application:

(a) A site specific appraisal no more than two years old;

(b) An appraisal of a nearby comparable site also no more than two years old; and

(c) A reasonable extrapolation of land value based on current area realtors value guides.

(5) *Indirect costs.* The contribution of indirect administrative costs as identified in OMB Circular A–87, attachment A, section F, will not be considered as a leveraged resource for purposes of point award.

(6) *Operations and maintenance expenditures.* The contribution of resources to pay for the anticipated operations and maintenance costs of any proposed project will not be considered leveraged resources for purposes of point award.

V. Corrections to Deficient Applications and Supplemental Information

After the application due date, Area ONAP may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. The Area ONAP may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that the Area ONAP may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, the Area ONAP will notify the applicant in writing by describing the clarification or technical deficiency. The Area ONAP will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the Area ONAP within 14 calendar days of the date of receipt of the Area ONAP notification. If the deficiency is not corrected within this time period, the Area ONAP will reject the application as incomplete.

VI. Error and Appeals

Rating panel judgments made within the provisions of this NOFA and the program regulations (24 CFR part 1003) are not subject to claims of error. Applicants may bring arithmetic errors in the rating and ranking of applications to the attention of an Area ONAP within 30 days of being informed of their score. If an Area ONAP makes an arithmetic error in the application review and rating process which, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the Area ONAP may fund that project in the next funding round without further competition.

VII. Findings and Certifications

(A) *Paperwork Reduction Act Statement.* The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0191. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(B) *Environmental Impact.* This NOFA provides funding under, and does not alter environmental requirements of regulations in 24 CFR part 1003. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(C) *Recipient Compliance with Environmental Requirements.* In accordance with 24 CFR 1003.605, a

recipient must comply with the environmental review requirements of 24 CFR part 58, including limitations on the commitment of project funds before submission of a request for release of funds.

(D) *Federalism, Executive Order 12612.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this NOFA will not have substantial, direct effects on states, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to Indian tribes and Alaska native villages, none of its provisions will have an effect on the relationship between the Federal Government and the states or their political subdivisions.

(E) *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(F) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(G) *Section 103—HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact HUD's Ethics Law Division (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate Area ONAP or Headquarters counsel.

(H) *Catalog of Federal Domestic Assistance Number.* The Catalog of Federal Domestic Assistance Number for the ICDBG Program is 14.862.

Dated: May 20, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–14368 Filed 5–29–98; 8:45 am]

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federal register

Monday
June 1, 1998

Part VII

Department of Housing and Urban Development

Fiscal Year 1998 Notice of Funding Availability for the Demolition of Severely Distressed Public Housing (HOPE VI Demolition); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4350–N–01]

Fiscal Year 1998 Notice of Funding Availability for the Demolition of Severely Distressed Public Housing (HOPE VI Demolition)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for Fiscal Year (FY) 1998.

SUMMARY: This notice announces the availability of funding for FY 1998 for the demolition of obsolete and/or severely distressed public housing units without revitalization, hereafter referred to as HOPE VI Demolition, as provided in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998. The 1998 Appropriations Act continued funding of the HOPE VI program, including funding to assist in the demolition of obsolete and/or severely distressed public housing projects or portions thereof.

Purpose. HOPE VI Demolition grants will fund demolition, minimal site restoration, and related relocation and administrative costs.

Available funding. Up to $60 million is available to fund HOPE VI Demolition grants.

Eligible Applicants. PHAs that own public housing units are eligible to apply. Indian Housing Authorities, Tribes, and Tribally Designated Entities are not eligible to apply.

This NOFA contains information on eligible applicants, program requirements, and application submission requirements, solely for the funding of demolition of public housing. Information about the funding for Section 8 tenant-based assistance and for HOPE VI Revitalization, with or without demolition, has been provided by separate Federal Register Notice and NOFA.

APPLICATION DUE DATE: Completed applications must be submitted to HUD no later than *September 3, 1998* at the times described in the following section. Applications may not be sent by e-mail or facsimile (FAX).

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Addresses. For Applications to HUD Headquarters.* One copy of the completed application must be submitted to HUD Headquarters, 451 Seventh Street, SW, Room 4138, Washington, DC 20410, Attention: Deputy Assistant Secretary for Public Housing Investments. *For Applications to HUD Field Offices.* In addition, 2 copies of the application must be submitted to the appropriate HUD Field Office. Please see Appendix A to this NOFA for a listing of addresses and hours of operation for the HUD Field Offices. HUD requests additional copies in order to expeditiously review your application and appreciates your assistance in providing the copies. Please note that for those applications for which copies are being submitted to the Field Offices and HUD Headquarters, timeliness of submission will be based on the time the application is received at HUD Headquarters.

Application Procedures. Mailed Applications. Applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by HUD Headquarters on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand-Carried Applications. For applications submitted to HUD Headquarters, hand-carried applications must be brought to the specified location and room number between the hours of 8:45 am to 5:15 pm, Eastern time. For applications submitted to the HUD Field Offices, hand carried applications will be accepted during normal business hours before the application due date.

FOR APPLICATION KITS, FURTHER INFORMATION AND TECHNICAL ASSISTANCE: *For Application Kits.* A HOPE VI Demolition Application Kit will be mailed to each eligible applicant. The HOPE VI Demolition NOFA and Application Kit are also available through the HUD web site on the Internet at http://www.HUD.gov.

For Further Information and Technical Assistance. For answers to your questions, you may call Mr. Milan Ozdinec, Director, Office of Urban Revitalization, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4142, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. HUD staff will be available to provide general guidance and technical assistance about this NOFA before the application due date. Current law does not permit HUD staff to assist in preparing the application. Following selection of applicants, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or Annual Contributions Contract (ACC) by HUD.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned approval number is 2577–0075. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Authority; Purpose; Amount Allocated; and Eligibility

(A) Authority

The funding for HOPE VI Demolition grants made available under this NOFA is provided by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub.L. 105–65; approved October 27, 1997) (the 1998 Appropriations Act), under the heading ''Revitalization of Severely Distressed Public Housing (HOPE VI).''

(B) Purpose of HOPE VI Demolition

The Demolition component of the HOPE VI Program has as its purpose to expedite the demolition of obsolete and/or severely distressed public housing units without subsequent new construction or revitalization of any remaining units.

(C) Amount Allocated

Up to $60 million in HOPE VI funding is available for grants to Public Housing Authorities (PHAs) for the demolition of obsolete and/or severely distressed public housing *without* subsequent new construction or revitalization of any remaining units.

(D) Eligible Applicants

PHAs that own public housing units are eligible to apply. Indian Housing Authorities, Tribes, and Tribally Designated Entities are not eligible to apply.

(E) Eligible Units

PHAs may request funds for the demolition of units that:

(1) Are approved by HUD for demolition in accordance with 24 CFR part 970, but the approved units have not yet been demolished, including those funded for demolition by an FY 1996 or FY 1997 HOPE VI Demolition grant but require supplemental funds to cover unanticipated costs related to the activities funded under the previous grant; or

(2) Are covered by a conversion plan (i.e., a plan for removal of the obsolete and/or severely distressed development from the public housing inventory in accordance with the requirements at 24 CFR 971.7(b)) that is either approved by or submitted to HUD on or before the HOPE VI demolition application due date.

(F) Eligible Activities

Eligible activities and costs include:

(1) Demolition, including any required asbestos and/or lead-based paint abatement, of dwelling units and nondwelling facilities;

(2) Minimal site restoration after demolition and subsequent site improvements to benefit the remaining portion of the project to provide project accessibility, or to make the site more saleable;

(3) Demolition of nondwelling facilities, only where related to the demolition of dwelling units;

(4) Necessary administrative costs; and

(5) Relocation and other assistance related to the permanent relocation of families under the approved demolition, conducted in accordance with 24 CFR 970.5.

(G) Grant Limitations

(1) *Per Unit Limitations.* Applicants may receive no more than:

(a) $5,000 per vacant unit; and

(b) $6,500 per unit occupied as of the date of HOPE VI demolition application submission. This amount includes relocation costs.

(2) *Total Grant Amount.*

(a) A PHA may submit multiple applications. However, the *total* amount requested by a single PHA for all applications may not exceed $7.5 million.

(b) Notwithstanding the fact that a PHA may submit multiple applications, each individual application may include a request for funds for only one public housing development. Developments immediately adjacent to one another or in the same neighborhood will be considered one development for the purposes of this NOFA. There is no minimum or maximum number of housing units for which funds may be requested in a single application. However, there is a limit of $7.5 million total for all applications from a PHA.

(3) *Reductions in Grant Amount.* HUD may select an application for funding but make an award in an amount lower than the amount requested by the applicant, or adjust line items in the proposed budget within the amount requested (or both), if HUD determines that partial funding is a viable option, and:

(a) The amount requested for one or more eligible activities is not supported in the application or is not reasonably related to the service or activity to be carried out;

(b) An activity proposed for funding does not qualify as an eligible activity and can be separated from the budget;

(c) The amount requested exceeds the grant limitations established in this NOFA; or

(d) Insufficient funds are available to fund the full amount.

(4) *Program Income.* Where a plan contemplates the receipt of program-related income prior to grant closeout (e.g., the disposition of improved land), such income must be reflected in the budget and used for program purposes.

II. Application Selection Process

(A) Threshold Criteria for Funding Consideration

(1) The applicant must be an eligible PHA;

(2) The targeted public housing development or portion thereof must have either:

(a) An approved demolition application in conformance with the requirements specified in Section I.(E) of this NOFA; or

(b) A conversion plan (i.e., a plan for removal of the obsolete and/or severely distressed development from the public housing inventory), approved by or submitted to HUD on or before the HOPE VI demolition application due date, in accordance with the requirements at 24 CFR 971.7(b));

(3) The application must include all required certifications and assurances, properly signed and executed;

(4) Except for applications submitted in accordance with Section I.E above, the applicant must not have an executed demolition contract or have demolished the targeted units.

(5) The applicant must be in compliance with all Fair Housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a) and Section IV (C), (D), (E), and (F) of this NOFA. Until the applicant has resolved any charge, lawsuit, or letter of finding to the satisfaction of the Department, an applicant is ineligible to apply for funding if it:

(a) Has been charged with a violation of the Fair Housing Act by the Secretary of HUD;

(b) Is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or

(c) Has received a letter of noncompliance finding under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act.

(B) Application Evaluation

(1) Applications will be funded on a first-come, first-served basis within the three priority groups listed in section 2 below.

(a) Upon receipt, each application will be assigned an ordinal (i.e., ranking number), based on the date received at HUD Headquarters. All applications received on the same date will be considered received at the same time on that date and therefore will receive the same ordinal.

(b) Each application in Priority Group 1 will be screened for eligibility and completeness.

(c) Applications found to be ineligible for consideration will be rejected and the applicant will be notified in writing of the reason for rejection.

(d) If an eligible application in Priority Group 1 is found to be incomplete, HUD will contact the applicant in writing to request the missing information. In such case, the application's ordinal will be changed to the date the requested information is received by HUD. Applicants whose applications have been assigned the same ordinal will be notified of all incomplete applications with that ordinal on the same day.

(e) Based on fund availability, all eligible applications receiving the same ordinal will be funded. If there are insufficient funds to fund all applications with the same ordinal, HUD will conduct a lottery among those applications to determine funding.

(f) If funds remain after all eligible applications in Priority Group 1 have been funded, each application in Priority Group 2 will be processed in accordance with the procedures in subsections (b) through (e) above.

(g) If funds remain after all eligible applications in Priority Group 2 have been funded, each application in Priority Group 3 will be processed in

accordance with the procedures in subsections (b) through (e) above.

(h) If funds remain after all eligible applications in Priority Group 3 have been funded, HUD may publish a subsequent NOFA for this program to allow submission of additional applications.

(2) *Priority Groups.*

(a) *Priority Group 1.*

(i) Applications targeting sites for which HOPE VI Revitalization applications were submitted in FY 1996 but not funded, and for which demolition applications have been approved by HUD; or

(ii) Applications targeting sites for which a conversion plan (i.e., plan for removal of the obsolete and/or severely distressed development from the public housing inventory) has been approved by HUD on or before the HOPE VI demolition application due date under this NOFA, in accordance with the requirements at 24 CFR 971.7(d)); or

(iii) Applications targeting sites for which HOPE VI Demolition grants were received in the FY 1996 or FY 1997 funding round and which request supplemental funds to cover unanticipated costs related to the activities funded under the previous grants in conformance with the grant limitations provided in this NOFA.

(b) *Priority Group 2.* (i) Applications targeting sites for which HOPE VI Demolition applications were submitted in FY 1997 but not funded, and for which demolition applications have been approved by HUD.

(ii) Applications targeting sites for which a conversion plan (i.e., plan for removal of the obsolete and/or severely distressed development from the public housing inventory), has been submitted to HUD on or before the HOPE VI demolition application due date under this NOFA, in accordance with the requirements at 24 CFR 971.7(b)).

(c) *Priority Group 3.* All other applications targeting sites for which a demolition application has been approved by HUD.

(C) Applicant Notification and Award Procedures

(1) *Written Notification.* In accordance with the HUD Reform Act, HUD may not notify applicants as to whether or not they have been selected to participate until the announcement of the selection of all recipients under this NOFA. HUD will provide written notification to all applicants.

(2) *Environmental Review.* Selection for participation (preliminary approval) does not constitute approval of the proposed site(s). Each proposed site will be subject to a HUD environmental review, in accordance with 24 CFR part 50. Except to the extent that HUD approval has already been given in connection with previous HOPE VI funding for a demolition proposal, the PHA must not demolish or convert a property, or commit HUD or local funds to fund these activities, until written approval is received from the appropriate HUD Environmental Clearance Officer in its area, certifying that the proposed activities have been approved and the PHA is released from all environmental conditions. The results of the environmental review may require that proposed activities be modified or the proposed site(s) rejected.

(3) *ACC Amendment.* Because the HOPE VI Program does not have Federal Regulations, upon selection HUD and the recipient will execute an ACC Amendment setting forth the amount of the grant. The ACC Amendment will provide that the recipient agrees that:

(a) The demolition and relocation work shall be carried out in accordance with the funding NOFA, applicable law including all HUD regulations, the approved HOPE VI Demolition Application and Demolition Application approval, and all other applicable requirements. In addition, the PHA agrees to comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner.

(b) Subject to the provisions of Part A of the ACC, and to assist in the demolition and relocation, HUD agrees to disburse to the PHA from time to time as needed, up to the amount of funding assistance specified above.

(4) *Failure to Proceed.* In the event that an applicant selected to receive HOPE VI demolition funding does not proceed in a manner consistent with its application or as required by the ACC Amendment, HUD may withdraw any unobligated balances of funding and make this funding available, subject to applicable law, in HUD's discretion, to a subsequent applicant, in conformance with the priorities set forth in Section II.(B)(2) of this NOFA. Failure to proceed with respect to obligated funds will be governed by the terms of the ACC amendment.

(D) No funds provided under this NOFA shall be used directly or indirectly to provide competitive advantage in awards to settle litigation or pay judgments. (E) Duplicative funding is prohibited for any demolition activity previously funded by HOPE VI funds.

III. Application Submission Requirements

Each HOPE VI Demolition application must conform to the requirements of the HOPE VI Demolition Application Kit, both in format and content. Each application must include the following, as directed by the application kit:

(A) *OMB Standard Form 424.* Standard Form 424, Request for Federal Assistance, signed by a person legally authorized to enter into an agreement with the Department;

(B) *Site Information and Proposed Activities.* Information and description of the proposed demolition and related activities.

(C) *Documentation of Eligibility.* Evidence of HUD approval of a demolition/disposition application (approval letter) or approval by HUD or submission to HUD by the HOPE VI demolition application due date of an obsolete and/or severely distressed public housing conversion plan in conformance with the requirements of 24 CFR part 971;

(D) *Program Financing.* A description of program financing, including a program budget submitted on Form HUD–52825–A and third-party certification of reasonable and accurate costs; and

(E) *Required Certifications and Assurances.* Required certifications and assurances as provided in the HOPE VI Demolition application kit.

IV. Applicability of Other Federal Requirements

(A) *Fair Housing Requirements.* Recipients must comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and the regulations in 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and the regulations in 24 CFR part 107; the fair housing poster regulations in 24 CFR part 110; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the regulations in 24 CFR part 1.

(B) *Nondiscrimination on the Basis of Age or Disability.* Recipients must comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the regulations in 24 CFR part 146; the prohibitions against discrimination against, and reasonable, accommodation and accessibility requirements for, persons with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations in 24 CFR part 8; Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and regulations issued pursuant thereto (28 CFR part 35); and

the Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations in 24 CFR part 40.

(C) *Section 3 Employment Opportunities.* Recipients must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Recipients must ensure that training, employment and other economic opportunities are directed, to the greatest extent feasible, toward low and very low income persons, particularly those who are recipients of government assistance for housing and to business concerns that provide economic opportunities to low and very low income persons. Recipients must comply with the reporting and recordkeeping requirements found at 24 CFR part 135, subpart E.

(D) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11246, 11625, 12432, and 12138 apply to this program. Consistent with HUD's responsibilities under these orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(E) *OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally-Recognized Indian Tribal Governments), apply to the award, acceptance, and use of assistance under the program by PHAs, and to the remedies for noncompliance, except when inconsistent with the provisions of the 1998 Appropriations Act, other Federal statutes, or this NOFA. Recipients are also subject to the audit requirements of OMB Circular A–133. Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies. OMB circulars are also available on the WEB at www.whitehouse.gov/WH/EOP/OMB/Grants/.

(F) *Drug-Free Workplace.* Applicants must certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

(G) *Debarred or Suspended Contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

(H) *Conflict of Interest.* In addition to the conflict of interest requirements in 24 CFR part 85 and Section 19 of the ACC, no person who is an employee, agent, consultant, officer, or elected or appointed official and who exercises or has exercised any functions or responsibilities with respect to activities assisted by HOPE VI funds, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(I) *Labor Standards.* Davis-Bacon wage rates apply to demolition followed by construction on the site. HUD-determined wage rates apply to demolition followed only by filling in the site and establishing a lawn.

(J) *Lead-Based Paint Testing and Abatement.* PHAs shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*) and 24 CFR part 35; 24 CFR part 965, subpart H; and 24 CFR 968.110(k). Tenant-based assistance provided to PHAs under this program will be subject to 24 CFR 982.401 and 24 CFR part 35. Unless otherwise provided, PHAs shall be responsible for testing and abatement activities before demolition as appropriate to meet state and Federal requirements.

V. Findings and Certifications

(A) *Environmental Impact.* This NOFA provides funding under, and does not alter the environmental provisions of, regulations in 24 CFR part 970, which have been published previously in the **Federal Register**. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). The environmental review provisions of 24 CFR part 970 are found in § 970.4.

(B) *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. Where this NOFA offers financial assistance to PHAs that are units of general local government, none of its provisions will have an effect on the relationship between the Federal Government and the States, or the States' political subdivisions.

(C) *Accountability in the Provision of HUD Assistance.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(D) *Section 103 of the HUD Reform Act.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development

Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(E) *Prohibition Against Lobbying Activities.* The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations in 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

(F) *Catalog of Federal Domestic Assistance Number.* The Catalog of Federal Domestic Assistance number for the HOPE VI Program is 14.866.

Dated: May 19, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A—HUD Field Office Contact Information

Not all Field Offices listed handle all of the programs contained in the SuperNOFAs. Applicants should look to the SuperNOFAs for contact numbers for information on specific programs. Office hour listings are local time. Persons with hearing or speech impediments may access any of these numbers via TTY by calling the Federal Relay Service at 1–800–877–8339.

New England

Connecticut State Office, One Corporate Center, 19th Floor, Hartford, CT 06103–3220, 860–240–4800, Office Hours: 8:00–4:30 PM

Maine State Office, 99 Franklin Street, Third Floor, Suite 302, Bangor, ME 04401–4925, 207–945–0467, Office Hours: 8:00 AM–4:30 PM

Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, 617–565–5234, Office Hours: 8:30 AM–5:00 PM

New Hampshire State Office, Norris Cotton Federal Building 275 Chestnut Street, Manchester, NH 03101–2487, 603–666–7681, Office Hours: 8:00 AM–4:30 PM

Rhode Island State Office, Sixth Floor, 10 Weybosset Street, 6th floor, Providence, RI 02903–2808, 401–528–5230, Office Hours: 8:00 AM–4:30 PM

Vermont State Office, U.S. Federal Building, Room 237, 11 Elmwood Avenue, P.O. Box 879, Burlington, VT 05402–0879, 802–951–6290, Office Hours: 8:00 AM–4:30 PM

New York/New England

Albany Area Office, 52 Corporate Circle, Albany, NY 12203–5121, 518–464–4200, Office Hours: 7:30 AM–4:00 PM

Buffalo Area Office, Lafayette Court, 465 Main Street, Fifth Floor, Buffalo, NY 14203–1780, 716–551–5755, Office Hours: 8:00 AM–4:30 PM

Camden Area Office, Hudson Building, 800 Hudson Square, Second Floor, Camden, NJ 08102–1156, 609–757–5081, Office Hours: 8:00 AM–4:30 PM

New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, 973–622–7900, Office Hours: 8:00 AM–4:30 PM

New York State Office 26 Federal Plaza, New York, NY 10278–0068, 212–264–6500, Office Hours: 8:30 AM–5:00 PM

Mid Atlantic

Delaware State Office, 824 Market Street, Suite 850, Wilmington, DE 19801–3016, 302–573–6300, Office Hours: 8:00 AM–4:30 PM

District of Columbia Office, 820 First Street, N.E., Suite 450, Washington, DC 20002–4205, 202–275–9200, Office Hours: 8:30 AM–4:30 PM

Maryland State Office, City Crescent Building, 10 South Howard Street, Fifth Floor, Baltimore, MD 21201–2505, 410–962–2520, Office Hours: 8:30 AM–4:30 PM

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0600, Office Hours: 8:30 AM–4:30 PM

Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–6428, Office Hours: 8:30 AM–4:30 PM

Virginia State Office, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539, Office Hours: 8:30 AM–4:30 PM

West Virginia State Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, 304–347–7000, Office Hours: 8:00 AM–4:30 PM

Southeast/Caribbean

Alabama State Office, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7617, Office Hours: 8:00 AM–4:30 PM

Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5201, Office Hours: 8:00 AM–4:30 PM

Florida State Office, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4500, Office Hours: 8:30 AM–5 PM

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, 404–331–5136, Office Hours: 8:00 AM–4:30 PM

Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–2627, Office Hours: 8:00 AM–4:30 PM

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, 502–582–5251, Office Hours: 8:00 AM–4:45 PM

Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street, 3rd Floor, Knoxville, TN 37902–2526, 423–545–4384, Office Hours: 7:30 AM–4:15 PM

Memphis Area Office, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, TN 38103–2335, 901–544–3367, Office Hours: 8:00 AM–4:30 PM

Mississippi State Office, Doctor A. H. McCoy Federal Building, 100 West Capital Street, Room 910, Jackson, MS 39269–1096, 601–965–4738, Office Hours: 8:00 AM–4:45 PM

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4000, Office Hours: 8:00 AM–4:45 PM

Orlando Area Office, Langley Building, 3751 Maguire Blvd, Suite 270, Orlando, FL 32803–3032, 407–648–6441, Office Hours: 8:00 AM–4:30 PM

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5592, Office Hours: 8:00 AM–4:45 PM

Tampa Area Office, Timberlake Federal Building Annex, 501 East Polk Street, Suite 700, Tampa, FL 33602–3945, 813–228–2501, Office Hours: 8:00 AM–4:30 PM

Tennessee State Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, 615–736–5213, Office Hours: 8:00 AM–4:30 PM

Midwest

Cincinnati Area Office, 525 Vine Street, 7th Floor, Cincinnati, OH 45202–3188, 513–684–3451, Office Hours: 8:00 AM–4:45 PM

Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, 216–522–4065, Office Hours: 8:00 AM–4:40 PM

Flint Area Office, The Federal Building, 605 North Saginaw, Suite 200, Flint, MI 48502–2043, 810–766–5108, Office Hours: 8:00 AM–4:30 PM

Grand Rapids Area Office, Trade Center Building, 50 Louis Street, NW, 3rd Floor, Grand Rapids, MI 49503–2648, 616–456–2100, Office Hours: 8:00 AM –4:30 PM

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd, Chicago, IL 60604–3507, 312–353–5680, Office Hours: 8:15 AM–4:45 PM

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, 317–226–6303, Office Hours: 8:00 AM–4:45 PM

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–7900, Office Hours: 8:00 AM –4:30 PM

Minnesota State Office, 220 Second St., South, Minneapolis, MN 55401–2195, 612–370–3000, Office Hours: 8:00 AM–4:30 PM

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, 614–469–5737, Office Hours: 8:00 AM–4:45 PM

Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, 414–297–3214, Office Hours: 8:00 AM–4:30 PM

Southwest

Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–5931, Office Hours: 8:00 AM–4:30 PM

Dallas Area Office, Maceo Smith Federal Building, 525 Griffin Street, Room 860, Dallas, TX 75202–5007, 214–767–8359, Office Hours: 8:00 AM–4:30 PM

Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098–4096, 713–313–2274, Office Hours: 7:45 AM–4:30 PM

Louisiana State Office, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7201, Office Hours: 8:00 AM–4:30 PM

Lubbock Area Office, George H. Mahon Federal Building and United States Courthouse, 1205 Texas Avenue, Lubbock, TX 79401–4093, 806–472–7265, Office Hours: 8:00 AM–4:45 PM

New Mexico State Office, 625 Truman Street, N.E., Albuquerque, NM 87110–6472, 505–262–6463, Office Hours: 7:45 AM–4:30 PM

Oklahoma State Office, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7401, Office Hours: 8:00 AM–4:30 PM

San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–472–6800, Office Hours: 8:00 AM–4:30 PM

Shreveport Area Office, 401 Edwards Street, Suite 1510, Shreveport, LA 71101–3289, 318–676–3385, Office Hours: 7:45 AM–4:30 PM

Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, 817–978–9000, Office Hours: 8:00 AM–4:30 PM

Tulsa Area Office, 50 East 15th Street, Tulsa, OK 74119–4030, 918–581–7434, Office Hours: 8:00 AM–4:30 PM

Great Plains

Iowa State Office, Federal Building, 210 Walnut Street, Room 239, Des Moines, IA 50309–2155, 515–284–4512, Office Hours: 8:00 AM–4:30 PM

Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, 913–551–5462, Office Hours: 8:00 AM–4:30 PM

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, 402–492–3100, Office Hours: 8:00 AM–4:30 PM

St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, 3rd Floor, St. Louis, MO 63103–2836, 314–539–6583, Office Hours: 8:00 AM–4:30 PM

Rocky Mountains

Colorado State Office, 633—17th Street, Denver, CO 80202–3607, 303–672–5440, Office Hours: 8:00 AM–4:30 PM

Montana State Office, Federal Office Building, 301 South Park, Room 340, Drawer 10095, Helena, MT 59626–0095, 406–441–1298, Office Hours: 8:00 AM–4:30 PM

North Dakota State Office, Federal Building, P. O. Box 2483, Fargo, ND 58108–2483, 701–239–5136, Office Hours: 8:00 AM–4:30 PM

South Dakota State Office, 2400 West 49th Street, Suite I–201, Sioux Falls, SD 57105–6558, 605–330–4223, Office Hours: 8:00 AM–4:30 PM

Utah State Office, 257 Tower Building, 257 East–200 South, Suite 550, Salt Lake City, UT 84111–2048, 801–524–3323, Office Hours: 8:00 AM–4:30 PM

Wyoming State Office, Federal Office Building, 100 East B Street, Room 4229, Casper, WY 82601–1918, 307–261–6250, Office Hours: 8:00 AM–4:30 PM

Pacific/Hawaii

Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, AZ 85004, 602–379–4434, Office Hours: 8:00 AM–4:30 PM

California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102–3448, 415–436–6550, Office Hours: 8:15 AM–4:45 PM

Fresno Area Office, 2135 Fresno Street, Suite 100, Fresno, CA 93721–1718, 209–487–5033, Office Hours: 8:00 AM–4:30 PM

Hawaii State Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, HI 96813–4918, 808–522–8175, Office Hours: 8:00 AM–4:00 PM

Los Angeles Area Office, 611 West 6th Street, Suite 800, Los Angeles, CA 90017–3127, 213–894–8000, Office Hours: 8:00 AM–4:30 PM

Nevada State Office, 333 North Rancho Drive, Suite 700, Las Vegas, NV 89106–3714, 702–388–6525, Office Hours: 8:00 AM–4:30 PM

Reno Area Office, 1575 Delucchi Lane, Suite 114, Reno, NV 89502–6581, 702–784–5356, Office Hours: 8:00 AM–4:30 PM

Sacramento Area Office, 777 12th Street, Suite 200, Sacramento, CA 95814–1997, 916–498–5220, Office Hours: 8:00 AM–4:30 PM

San Diego Area Office, Mission City Corporate Center, 2365 Northside Drive, Suite 300, San Diego, CA 92108–2712, 619–557–5310, Office Hours: 8:00 AM–4:30 PM

Santa Ana Area Office, 3 Hutton Centre Drive, Suite 500, Santa Ana, CA 92707–5764, 714–957–3745, Office Hours: 8:00 AM–4:30 PM

Tucson Area Office, Security Pacific Bank Plaza, 33 North Stone Avenue, Suite 700, Tucson, AZ 85701–1467, 520–670–6237, Office Hours: 8:00 AM–4:30 PM

Northwest/Alaska

Alaska State Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4135, 907–271–4170, Office Hours: 8:00 AM–4:30 PM

Idaho State Office, Plaza IV, 800 Park Boulevard, Suite 220, Boise, ID 83712–7743, 208–334–1990, Office Hours: 8:00 AM–4:30 PM

Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, 503–326–2561, Office Hours: 8:00 AM–4:30 PM

Spokane Area Office, Farm Credit Bank Building, Eighth Floor East, West 601 First Avenue, Spokane, WA 99204–0317, 509–353–2510, Office Hours: 8:00 AM–4:30 PM

Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, 206–220–5101, Office Hours: 8:00 AM–4:30 PM

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federal register

Monday
June 1, 1998

Part VIII

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4358–N–01]

Notice of Funding Availability (NOFA) for Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 1998 for Section 8 Family Self-Sufficiency Program Coordinators.

SUMMARY: This NOFA announces the availability of up to $25.2 million in Fiscal Year (FY) 1998 to fund Section 8 Family Self-Sufficiency (FSS) program coordinators. The Section 8 FSS program is intended to promote the development of local strategies to coordinate the use of assistance under the Section 8 rental certificate and rental voucher programs with public and private resources to enable participating families to achieve economic independence and self-sufficiency. An FSS program coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

Public housing agencies (HAs) eligible to receive funding under this NOFA are only those which administer FSS programs of at least 25 FSS slots. Under this NOFA, both the voluntary FSS slots reflected in the HA's HUD-approved FSS Action Plan and its mandatory FSS slots are counted in determining the HA's FSS program size. HAs with FSS programs of fewer than 25 slots also may receive funding under this NOFA, if they previously applied jointly and were awarded FSS coordinator funding with other eligible HAs, so that between or among the HAs they administer at least 25 slots or if they are now applying jointly with one or more HAs, so that between or among the HAs they administer at least 25 slots.

DATES: The application deadline for the FSS Programs Coordinators is *July 24, 1998,* at the time described in the *Applications Procedures* section of this NOFA.

The application deadline is firm as to date and hour. In the interest of fairness to all competing HAs, HUD will treat as ineligible for consideration any application that is not received before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Addresses and Application Submission Procedures

The original completed application should be submitted to the HA's local HUD Field Office HUB (Attention: HUB, Director of Public Housing) or local HUD Field Office Program Center (Attention: Program Center Coordinator). Throughout this NOFA, the Field Office HUBs and Program Centers will be referred to as the local HUD Field offices. Applicants should not submit any copies of their applications to HUD Headquarters.

Applications Procedures. Mailed Applications. Applications will be considered timely filed if postmarked on or before 6:00 pm on the application due date and received by the HA's local HUD Field Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received by the appropriate local HUD Field Office before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. Applications must be delivered to the appropriate local HUD Field Office by 6:00 pm local time on the due date.

Hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm.

FOR FURTHER INFORMATION AND TECHNICAL ASSISTANCE:

For Further Information: For answers to your questions, you may contact the Public and Indian Housing Resource Center at 1–800–955–2232 or the Director of Public Housing or the Program Center Coordinator in the local HUD Field Office. You may also contact Kathryn Greenspan, Housing Programs Specialist, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4216, 451 Seventh Street, SW, Washington DC 20410–8000; telephone number (202) 708–3887. Hearing- or speech-impaired individuals may call HUD's TTY number (202) 708–0770 or 1–800–877–8339 (the Federal Information Relay Service TTY). (Other than the ''800'' number, these numbers are not toll-free.) Information can be accessed via the Internet at http://www.hud.gov.

For Technical Assistance. Prior to the application deadline, staff at the numbers given above will be available to provide general guidance, but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0198. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, the Department in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan.

Applicants should see the SuperNOFA for Housing and Community Development Programs published on March 31, 1998, the SuperNOFA for Economic Development and Empowerment Programs and the SuperNOFA for Targeted Housing and

Homeless Assistance Programs that were published on April 30 1998.

To foster comprehensive, coordinated approaches to communities, the Department intends for the remainder of FY 1998 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

ADDITIONAL INFORMATION:

I. Background, Authority, Amount Allocated, Purpose, Eligibility of HAs and Eligible Activity, Exceptions to Minimum Program Size and Other Requirements

(A) Background

In recent years, HUD provided funding for FSS program coordinators to HAs with Section 8 programs of fewer than 1,000 units. The FY 1994 and FY 1995 funds were awarded to these HAs based on a request for funding and all complete applications were funded. The FY 1996 funds were awarded based on a competitive NOFA. In FY 1996, state and regional HAs that administered more than 1,000 rental vouchers and certificates, but fewer than 1,000 mandatory FSS slots, were also eligible to apply and some received funding. In FY 1997, HUD allocated funds for FSS program coordinators to allow HAs that were previously funded to continue to pay an FSS coordinator. Since funding for FSS service coordinators was limited, HUD did not accept applications from HAs that were not previously funded. In FY 1998 HUD has allocated funds to allow HAs that were previously funded for FSS program coordinators to continue to pay for an FSS coordinator for another year. In FY 1998, the Department will also accept applications to fund additional small HAs and state and regional HAs meeting the requirements of this NOFA that did not receive FSS service coordinator funding in previous years.

(B) Authority and Amount Allocated

The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) allows funding for program coordinators under the Section 8 FSS program. As a result, the Department determined to make a sufficient amount available under this NOFA, under part 984, in accordance with § 984.302(b), to enable smaller HAs to hire up to one FSS program coordinator for one year at a reasonable cost as determined by the HA and HUD, based on salaries for similar positions in the locality.

For FY 1998, $25.2 million is available for HA administrative fees for Section 8 FSS program coordinators. This amount includes approximately $1.2 million in FY 97 carryover authority from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204) for funding for program coordinators under the Section 8 FSS program. Of the $25.2 million being made available in FY 1998, approximately $15 million will be provided to those HAs that received funds in response to the FY 97 NOFA. This is the fifth fiscal year of funding for FSS program coordinators.

(C) Purpose

HUD determined to make a sufficient amount available under this NOFA to enable smaller HAs (i.e, those with programs of less than 1,500 total rental vouchers and certificates with FSS programs of at least 25 slots) and state and regional HAs with FSS programs of at least 25 but fewer than 1,500 FSS slots, to hire up to one FSS program coordinator for one year at a reasonable cost, as determined by the HA and HUD based on salaries for similar positions in the locality. Each eligible HA is limited to an award of $45,000 under this NOFA.

(D) Eligibility of HAs

All HAs that received funding under the FY 97 NOFA for FSS program coordinators will be funded in FY 1998, except those HAs submitting applications that are ineligible under Section IV.(C) of this NOFA, provided the HA certifies on the required Attachment A certification of this NOFA, subject to HUD verification, that it has hired an FSS program coordinator with funding previously awarded for that purpose and has made progress in implementing the FSS program demonstrated by progress by completing activities in each of the categories in section 2 of the required Attachment A certification. The HAs funded in FY 97 will receive 103 percent of FY 97 funding (not to exceed $45,000) unless the HA submits a request for a different amount. HUD will not provide FY 98 funding to any HA that received FSS Program Coordinator funding in FY 97 that does not comply with all of the above requirements.

All HAs that did not receive FSS coordinator funding in FY 97 and that currently administer a rental voucher and certificate program of less than 1,500 total rental vouchers and certificates and administer FSS programs of at least 25 FSS slots and state and regional HAs with programs of at least 25 but fewer than 1,500 FSS slots are also eligible to apply under this NOFA. HAs with less than 1,500 total rental vouchers and certificates and with FSS programs of fewer than 25 slots may also apply if they apply jointly with one or more eligible HA so that between or among the HAs they administer at least 25 FSS slots. If eligible applicants apply jointly, their combined total program size may exceed 1,500 total rental vouchers and certificates, but the $45,000 maximum amount that may be requested still applies. Joint applicants must specify a lead co-applicant which will receive and administer the FSS program coordinator funding. A state or regional (i.e., multi-county jurisdiction) HA that administers a program of more than 1,500 rental vouchers and certificates may apply if it administers an FSS program of at least 25 but fewer than 1,500 slots.

HUD has limited eligibility under this NOFA to HAs with less than 1,500 total Section 8 rental vouchers and certificates and to state and multi-county regional HAs that administer FSS programs of at least 25 but fewer than 1,500 FSS slots, because the $25.2 million available for FSS program coordinators is insufficient to fund all HAs administering FSS programs. HUD determined that HAs administering large Section 8 programs are more likely than smaller HAs to have access to other resources for FSS program administration. HUD has also decided to allow a state or multi-county regional HA that administers an FSS program in more than one location to submit an application if the state or multi-county regional HA administers an FSS program of at least 25 but fewer than 1,500 slots.

HUD is requiring that applicants under this NOFA administer FSS programs of at least 25 FSS slots to ensure that the limited program coordinator funds are used in a cost-effective manner. The Department expects that FSS programs of less than 25 FSS slots can be managed within HA resources.

(E) Eligible Activity

Funds are available under this NOFA to employ or otherwise retain the services of up to one FSS program coordinator for one year. A part-time

FSS program coordinator may be retained where appropriate. Under the FSS program, HAs are required to use Section 8 rental assistance together with public and private resources to provide supportive services to enable participating families to achieve economic independence and self-sufficiency. Effective delivery of supportive services is a critical element in a successful program.

(1) Program Coordinator Role

HAs administering the FSS program use program coordinating committees (PCCs) to assist them to secure resources for and implement the FSS program. The PCC is made up of representatives of local government, job training and employment agencies, local welfare agencies, educational institutions, child care providers, nonprofit service providers, and businesses.

An FSS program coordinator works with the PCC and with local service providers to assure that program participants are linked to the supportive services they need to achieve self-sufficiency. The FSS program coordinator may ensure, through case management, that the services included in participants' contracts of participation are provided on a regular, ongoing and satisfactory basis, and that participants are fulfilling their responsibilities under the contracts.

(2) Staffing Guidelines

Under normal circumstances, a full-time FSS program coordinator should be able to serve approximately 50 FSS participants, depending on the coordinator's case management functions.

(F) Eligible Applicants With HUD-Approved Exceptions to Mandatory Minimum Program Size

If HUD has approved either a full or partial exception to implementing an FSS program of the mandatory minimum size for an eligible HA, solely because of lack of funds for reasonable administrative costs, the approval of the exception is hereby rescinded after funding for an FSS program coordinator is awarded under this NOFA.

(G.) Other Requirements

(1) Multifamily Tenant Characteristics System (MTCS) Reporting

To qualify for funding under this NOFA, HAs must have adequately reported on their FSS participants through the MTCS system. Adequate reporting means that the MTCS system shows tenant records for at least 75 percent of currently enrolled FSS families.

(2) Compliance With Fair Housing and Civil Rights Laws

All applicants, with the exception of Federally recognized Indian tribes, must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act. If an applicant: (1) Has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(3) Additional Nondiscrimination Requirements

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972. In addition to compliance with the civil rights requirements listed at 24 CFR 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964, U.S.C. sections 2000e *et seq.*; the Equal Pay Act, 29 U.S.C. section 206(d); the Age Discrimination in Employment Act of 1967, 29 U.S.C. sections 621 *et seq.*, and Titles I and V of the Americans with Disabilities Act, 42 U.S.C. sections 12101 *et seq.*

(4) Affirmatively Furthering Fair Housing

Each successful applicant will have a duty to affirmatively further fair housing. After the application is approved, applicants will be required to identify the specific steps that they will take to (1) address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (2) remedy discrimination in housing; or (3) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses in a manner which will affirmatively further fair housing.

II. Application Selection Process for FSS Program Coordinator Funding

The funds available under this NOFA are not being awarded on a competitive basis. The Department anticipates that there may be sufficient funds available under the NOFA to fund all applications that meet the NOFA requirements. Applications will be reviewed by the local HUD Field Office to determine whether or not they are technically adequate based on the NOFA requirements.

Upon completion of its review, each local HUD field office will prepare a listing of all technically adequate letters and certifications, which includes each applicant's total program size and FSS program size, and the amount approved for each applicant. This listing will be forwarded to the Office of Public and Assisted Housing Delivery in HUD Headquarters which will then allocate the available funding among approvable applications. For new applicants, the listing should be in rank order by program size from the smallest HA to the largest. All technically adequate applications will be funded to the extent funds are available. If HUD receives applications for funding greater than the amount made available under this NOFA, HUD will first fund applications from the HAs that received FSS program coordinator funding under the FY 97 NOFA. If funding remains, HUD will then fund new applicants in size order from the smallest HAs first (i.e., those HAs with the smallest combined rental voucher and certificate programs, or, in the case of state and multi-county regional HAs, smallest FSS program size). The size of a State or multi-county regional HA's program will be determined based on the number of FSS slots it plans to administer with the funds for the FSS Coordinator.

III. FSS Program Coordinators Application Submission Requirements

(A) Application Requirement for HAs That Received FY 97 FSS Program Coordinator Funding

(1) Applications for Funding at 103 Percent of FY 97 Funding

All HAs that received funding for FSS program coordinators under the FY 97 NOFA and that wish to receive funding under this NOFA at 103 percent of the FY 97 funding, must complete a certification in the format shown as ''Attachment A'' of this NOFA and submit it to the appropriate local HUD field office by the due date. The completed Attachment A certification along with the Fair Housing Certification (Attachment C of this

NOFA) constitute the entire HA application for funding under this section.

(2) Application for Funding Other than 103 Percent of FY 97 Funding

HAs that received FSS Program Coordinator funding in FY 97 that wish to receive funding for FY 98 at an amount other than 103 percent of the FY 97 funding must submit the completed Attachment A certification, the Attachment C Fair Housing Certification, and the Attachment B letter required under III. (B) of this NOFA.

(B) Request for FSS Program Coordinator Funds by Eligible HAs That Were Not Funded in FY 97

The applications of all HAs that have not received funding under the FY 97 NOFA must contain the following information stated in a letter from the Executive Director of the HA to the HUB, Director of Public Housing or the Program Center Coordinator in the local HUD field office (see sample letter format, Attachment B). That letter plus the Fair Housing and Equal Opportunity certification which is Attachment C of this NOFA constitute the entire HA application for funding under this section. The HA letter must state:

(1) The total number of budgeted Section 8 rental certificates and rental vouchers from the most recent HUD-approved form HUD–52672.

(2) The total number of currently enrolled FSS families.

(3) The total number of FSS slots in the HUD approved FSS Action Plan of the HA.

(4) The annual salary proposed for the FSS program coordinator, plus any fringe benefits. Do not include costs of training, transportation, clerical support, equipment, supplies, or other administrative costs or overhead. The program coordinator salary should be set as follows:

(a) Determine the salary level, taking into consideration salaries for comparable jobs, modified by the hours worked.

(b) Set the annual salary, including any fringe benefits that pertain to the job.

(5) Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

(6) Joint applicants must indicate which HA will be the lead applicant and will receive and administer the FSS program coordinator funding.

(C) Fair Housing Certification

All HAs must submit the Certification Regarding Fair Housing and Equal Opportunity which is included as Attachment C of this NOFA.

IV. Corrections to Deficient FSS Program Coordinators Applications

(A) Acceptable Applications

To be eligible for processing, an application must be received by the appropriate local HUD field office no later than the date and time specified in this NOFA. The local HUD field office will initially screen all applications and notify HAs of technical deficiencies by letter.

(B) Correction of Deficient Applications.

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

(C) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the local HUD field office will disapprove HA applications that it determines are not acceptable for processing. The HUD notification of rejection letter must state the basis for the decision.

(2) Applications from HAs that fall into any of the following categories will not be processed:

(a) An HA application submitted after the deadline date for this NOFA will be rejected from processing.

(b) An HA application that does not comply with the requirements of III.(A) and (B) of this NOFA.

(c) Applications from HAs that do not meet the requirements of I.G.(2) of this NOFA, Compliance with Fair Housing and Civil Rights Laws.

(d) The HA has serious unaddressed, outstanding Inspector General audit findings, or HUD Office management review findings for one or more of its Rental Voucher, Rental Certificate or Moderate Rehabilitation Program.

(e) An HA that has not adequately reported on its FSS participants through the MTCS system. Adequate reporting means that the MTCS system shows tenant records for at least 75 percent of currently enrolled FSS families.

V. Other Matters

(A) Environmental Requirements

This NOFA provides funding under 24 CFR Part 984, which does not contain environmental review provisions because it concerns activities that are listed in 24 CFR 50.19(b) as categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 C.F.R. 4321) (''NEPA''). Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under NEPA. No environmental review is required in connection with the award of assistance under this NOFA, because the NOFA only provides funds for employing a coordinator that provides public and supportive services, which are categorically excluded under 24 CFR 50.19(c)(4) and (12).

(B) Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have ''federalism implications'' within the meaning of the Order. The NOFA makes funds available for HAs to employ or otherwise retain the services of up to one FSS program coordinator for one year. As such, there are no direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

(C) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides

information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate that basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(D) Catalog of Federal Domestic Assistance Numbers

The catalog of Federal Domestic Assistance number for the Section 8 rental certificate program is 14.855. The number for the Section 8 rental voucher program is 14.857.

Dated: May 20, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing

Attachment A—Required Certification Format for HAs That Received FY 97 FSS Program Coordinator Funding*

Dear HUD Field Office HUB Director of Public Housing or Field Office Program Center Coordinator:

In connection with the FY 98 NOFA for FSS program coordinators, I hereby certify for the _____ (enter name) HA that:

(1) The HA has hired an FSS program coordinator using HUD funds provided for that purpose on _____ (enter the ACC effective date of FY 97 FSS program coordinator funding increment), and

(2) The HA has (check all that apply):

(a) Formed and convened an FSS program coordinating committee _____,

(b) Developed an FSS action plan and submitted it to HUD for approval _____,

(c) Executed contracts of participation with FSS participants _____.

(3) The HA has an FSS program size of _____ (enter number) in its approved FSS action plan. The HA has _____ (enter number) Section 8 families currently enrolled in the FSS program.

Sincerely,

Executive Director

***Note:** To qualify for funding under this NOFA, HAs that received Section 8 FSS Program Coordinator funding in FY 97 must have hired an FSS program coordinator and demonstrate activities in each of the categories in section 2.(a), 2.(b) and 2(c) of this Attachment A certification.

Attachment B—New Requests for FSS Program Coordinator Funds Sample Letter Format

Dear HUD Field Office HUB Director of Public Housing or Field Office Program Center Coordinator:

This is to request funds to pay the salary of a Family Self-Sufficiency (FSS) program coordinator for one year, for the _____ housing agency (HA) FSS program.

1. Total number of budgeted Section 8 rental certificates and rental vouchers from the most recent HUD-approved form HUD–52672:_____.

2. Total number of currently enrolled FSS families: _____

3. Total number of FSS program slots (based on number identified in the HA's HUD-approved Action Plan or, when HAs are applying jointly, the combined total of FSS program slots approved for the HAs) oR for State or multi-county regional HAs state the number of FSS slots that will be administered with funding under this NOFA:_____.

4. Service Coordinator Salary:

a. *Salary level,* based on salaries for comparable jobs (modified by number of hours worked) _____

b. *Annual Salary* plus Fringe Benefits:

_____ Hours/Week; _____ $/Hour;

_____ Fringe Rate(%)

Annual Salary _____

5. Attachment: Evidence demonstrating salary comparability to similar positions in the local jurisdiction.

6. For joint applications: The lead applicant HA that will receive and administer the FSS program coordinator funding is:_____.

If there are any questions, please contact _____ at _____.

Sincerely,

Executive Director

Attachments

Attachment C—Fair Housing and Equal Opportunity Certifications

The housing agency (HA) certifies that in administering the funding for the Family Self-Sufficiency program coordinators it will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act. Federally recognized Indian tribes must certify that they will comply with the requirements of the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

_____

Name of HA

_____

Signature and Title of HA Representative

_____

Date

[FR Doc. 98–14361 Filed 5–29–98; 8:45 am]

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federal register

Monday
June 1, 1998

Part IX

Department of Housing and Urban Development

Notice of Funding Availability Family Unification Program Fiscal Year 1998; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4360–N–01]

Notice of Funding Availability, Family Unification Program, Fiscal Year 1998

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of approximately $15 million in one-year budget authority for Section 8 rental certificates under the Family Unification Program, which will provide rental assistance for approximately 2,200 families. The purpose of the Family Unification Program is to provide housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation, of children from their families.

Public Housing Agencies (PHAs) are invited to submit applications for housing assistance. (Indian Housing Authorities are not eligible.) In the event there are insufficient funds to fund all approvable applications received in response to this NOFA, a lottery will be held to select approvable applications for funding.

Application Due Dates

(A) Delivered Applications

The application deadline for delivered applications for the Family Unification program NOFA is July 24, 1998, 6:00 p.m., local HUD Field Office HUB and local HUD Field Office Program Center time.

This application deadline is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

(B) Mailed Applications

Applications for the Family Unification Program will be considered timely filed if postmarked before midnight on the application due date and received by the local HUD Field Office HUB or local HUD Field Office Program Center within ten (10) days of that date.

(C) Applications Sent By Overnight Delivery

Overnight delivery items will be considered timely filed for the Family Unification Program if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Address and Application Submission Procedures

The original and a copy of the application for the Family Unification Program should be submitted to the local HUD Field Office HUB, Attention: Director, Office of Public Housing; or to the local HUD Field Office Program Center, Attention: Program Center Coordinator. The local HUD Field Office HUB or local HUD Field Office Program Center is the official place of receipt for all applications received in response to this NOFA.

For ease of reference, the term ''local HUD Field Office'' will be used throughout this NOFA to mean the local HUD Field Office HUB or local HUD Field Office Program Center.

For Further Information and Technical Assistance

(A) For Further Information

For answers to your questions, you have several options. You may contact the local HUD Field Office. You may also contact George C. Hendrickson, Housing Program Specialist, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. (This number is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll free number).

(B) For Technical Assistance

Prior to the application due date, HUD staff will be available to provide general guidance and technical assistance about this NOFA. Current law does not permit HUD staff to assist in preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

Additional Information

I. Authority, Purpose, Amount Allocated, and Eligibility

(A) Authority

The Family Unification Program is authorized by section 8(x) of the United States Housing Act of 1937 (42 U.S.C. 1437f(x)). The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65; approved October 27, 1997) provides funding for the Family Unification Program. Of the approximately $15 million available under this NOFA, approximately $1.3 million are carryover amounts from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204; approved September 26, 1996), for prevention of resident displacement.

(B) Purpose

The Family Unification Program is a program under which Section 8 rental assistance is provided to families for whom the lack of adequate housing is a primary factor which would result in:

(1) The imminent placement of the family's child, or children, in out-of-home care; or

(2) The delay in the discharge of the child, or children, to the family from out-of-home care.

The purpose of the Family Unification Program is to promote family unification by providing rental assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families.

Rental certificates awarded under the Family Unification Program are administered by PHAs under HUD's regulations for the Section 8 rental certificate program (24 CFR parts 882 and 982). If the family requests a rental voucher, the PHA may issue a rental voucher (24 CFR parts 887 and 982) if it has one to a family selected for participation in the Family Unification Program.

(C) Amount Allocated

This NOFA announces the availability of approximately $15 million for the Family Unification Program which will provide assistance for about 2,200 families. PHAs with a current Section 8 rental voucher and certificate program of more than 500 units as shown in the most recent HUD-approved program budget may apply for funding for a maximum of 100 units. PHAs with a current Section 8 rental voucher or

certificate program of 500 units or less as shown in the most recent HUD-approved program budget may apply for a maximum of 50 units. PHAs not currently administering either a Section 8 rental voucher or certificate program may apply for a maximum of 50 units.

The amounts allocated under this NOFA will be awarded under a national competition based on the threshold criteria. A national lottery will be conducted to select approvable applications for funding if approvable applications are submitted by PHAs for more funding than HUD has available under this NOFA. In the event a lottery is necessary, any approvable applications that are not selected for funding will be funded in FY 1999 to the extent appropriations are available in FY 1999 for the Family Unification Program.

The Family Unification Program is exempt from the fair share allocation requirements of section 213(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(d)) and the implementing regulations at 24 CFR part 791, subpart D.

(D) Eligible Applicants

(1) Family Unification Program Eligibility. Any PHA established pursuant to State law, including regional (multicounty) or State PHAs, may apply for funding under this NOFA. Indian Housing Authorities are no longer eligible.

(2) Eligibility for HUD-Designated Housing Agencies with Major Program Findings. Some PHAs currently administering the Section 8 rental voucher and certificate programs have, at the time of publication of this NOFA, major program management findings that are open and unresolved or other significant program compliance problems (e.g., PHA has not implemented mandatory FSS program). HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application deadline date, the findings are not closed to HUD's satisfaction. If any of these PHAs want to apply for the Family Unification Program, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor that is acceptable to HUD. The PHA application must include an agreement by the other housing agency or contractor to administer the program for the new funding increment on behalf of the PHA and a statement that outlines the steps the PHA is taking to resolve the program findings. Immediately after the publication of this NOFA, the Office of Public Housing in the local HUD Office will notify, in writing, those PHAs that are not eligible to apply because of outstanding management or compliance problems. The PHA may appeal the decision, if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error (i.e, documentation showing that the finding has been cleared) and must be received prior to the application deadline. Applications submitted by these PHAs without an agreement from another housing agency or contractor, approved by HUD, to administer the program on behalf of the PHA will be rejected.

II. General Requirements and Requirements Specific To The Family Unification Program

(A) General Requirements

(1) Compliance with Fair Housing and Civil Rights Laws. All applicants must comply with all Fair Housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) has been charged with a violation of the Fair Housing Act by the Secretary; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge, lawsuit, or letter of findings to HUD's satisfaction.

(2) Additional Nondiscrimination Requirements. Applicants must comply with the Americans with Disabilities Act and Title IX of the Education Amendments Act of 1972. In addition to compliance with the civil rights requirements listed at 24 CFR 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), and Titles I and V of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

(3) Affirmatively Furthering Fair Housing. Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to: (a) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (b) remedy discrimination in housing; or (c) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their response to the rating factors that address affirmatively furthering fair housing in this NOFA.

(4) Certifications and Assurances. Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(5) Family Self-Sufficiency (FSS) Program Requirement. Unless specifically exempted by HUD, all rental voucher or rental certificate funding reserved in FY 1998 (except funding for renewals or amendments) will be used to establish the minimum size of an PHA's FSS program.

(B) Requirements Specific to the Family Unification Program

(1) Eligibility.

(a) Family Unification eligible families. Each PHA must modify its selection preference system to permit the selection of Family Unification eligible families for the program with available funding provided by HUD for this purpose. The term ''Family Unification eligible family'' means a family that:

(i) The public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care; and

(ii) The PHA has determined is eligible for Section 8 rental assistance.

(b) Lack of Adequate Housing. The lack of adequate housing means:

(i) A family is living in substandard or dilapidated housing; or

(ii) A family is homeless; or

(iii) A family is displaced by domestic violence; or

(iv) A family is living in an overcrowded unit.

(c) Substandard Housing. A family is living in substandard housing if the unit where the family lives:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or (viii) Has been declared unfit for habitation by an agency or unit or government.

(d) Dilapidated Housing. A family is living in a housing unit that is dilapidated if the unit where the family lives does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or the unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may result from original construction, from continued neglect or lack of repair or from serious damage to the structure.

(e) Homeless. A homeless family includes any person or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

2. An institution that provides a temporary residence for persons intended to be institutionalized; or

3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(f) Displaced by Domestic Violence. A family is displaced by domestic violence if:

(i) The applicant has vacated a housing unit because of domestic violence; or

(ii) The applicant lives in a housing unit with a person who engages in domestic violence.

(iii) ''Domestic violence'' means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(g) Involuntarily Displaced. For a family to qualify as involuntarily displaced because of domestic violence:

(i) The PHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(ii) The applicant must certify that the person who engaged in such violence will not reside with the family unless the HA has given advance written approval. If the family is admitted, the PHA may terminate assistance to the family for breach of this certification.

(h) Living in Overcrowded Housing. A family is considered to be living in an overcrowded unit if:

(i) The family is separated from its child (or children) and the parent(s) are living in an otherwise standard housing unit, but, after the family is re-united, the parents' housing unit would be overcrowded for the entire family and would be considered substandard; or

(ii) The family is living with its child (or children) in a unit that is overcrowded for the entire family and this overcrowded condition may result in the imminent placement of its child (or children) in out-of-home care.

For purpose of this paragraph (h), the PHA may determine whether the unit is ''overcrowded'' in accordance with PHA subsidy standards.

(i) Detained Family. A Family Unification eligible family may not include any person imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(j) Public child welfare agency (PCWA) means the public agency that is responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(2) PHA Responsibilities. PHAs must:

(a) Accept families certified by the PCWA as eligible for the Family Unification Program. The PHA, upon receipt of the PCWA list of families currently in the PCWA caseload, must compare the names with those of families already on the PHA's Section 8 waiting list. Any family on the PHA's Section 8 waiting list that matches with the PCWA's list must be assisted in order of their position on the waiting list in accordance with PHA admission policies. Any family certified by the PCWA as eligible and not on the Section 8 waiting list must be placed on the waiting list. If the PHA has a closed Section 8 waiting list, it must reopen the waiting list to accept a Family Unification Program applicant family who is not currently on the PHA's Section 8 waiting list;

(b) Determine if any families with children on its waiting list are living in temporary shelters or on the street and may qualify for the Family Unification Program, and refer such applicants to the PCWA;

(c) Determine if families referred by the PCWA are eligible for Section 8 assistance and place eligible families on the Section 8 waiting list;

(d) Amend the administrative plan in accordance with applicable program regulations and requirements;

(e) Administer the rental assistance in accordance with applicable program regulations and requirements; and

(f) Assure the quality of the evaluation that HUD intends to conduct on the Family Unification Program and cooperate with and provide requested data to the HUD office or HUD-approved contractor responsible for program evaluation.

(3) Public Child Welfare Agency (PCWA) Responsibilities. A public child welfare agency that has agreed to participate in the Family Unification Program must:

(a) Establish and implement a system to identify Family Unification eligible families within the agency's caseload and to review referrals from the PHA;

(b) Provide written certification to the PHA that a family qualifies as a Family Unification eligible family based upon the criteria established in section 8(x) of the United States Housing Act of 1937, and this notice;

(c) Commit sufficient staff resources to ensure that Family Unification eligible families are identified and determined eligible in a timely manner and to provide follow-up supportive services after the families lease units; and

(d) Cooperate with the evaluation that HUD intends to conduct on the Family Unification Program, and submit a certification with the PHA's application for Family Unification funding that the PCWA will agree to cooperate with and provide requested data to the HUD office or HUD-approved contractor having responsibility for program evaluation.

(4) Section 8 Rental Certificate Assistance. The Family Unification Program provides funding for rental assistance under the Section 8 rental certificate program. Although HUD is providing a special allocation of rental certificates, the PHA may use both rental vouchers and certificates to assist families under this program.

PHAs must administer this program in accordance with HUD's regulations governing the Section 8 rental certificate and rental voucher programs. The PHA may issue a rental voucher to a family selected to participate in the Family Unification Program if the family requests a rental voucher and the PHA has one available. If Section 8 rental assistance for a family under this program is terminated, the rental assistance must be reissued to another Family Unification eligible family for 5 years from the initial date of execution of the Annual Contributions Contract

subject to the availability of renewal funding.

III. Application Selection Process for Funding

(A) Rating and Ranking

HUD's local HUD Field Offices are responsible for rating the applications for the selection criteria established in this NOFA, and are responsible for selection of applications that will receive assistance under the Family Unification Program. The local HUD Field Offices will initially screen all applications and determine any technical deficiencies based on the application submission requirements.

Each eligible application submitted in response to the NOFA, in order to be eligible for funding, must receive at least 20 points for Threshold Criterion 2, Efforts of HA to Provide Area-Wide Housing Opportunities for Families. Each application must also meet the requirements for Threshold Criterion 1, Unmet Housing Needs; Threshold Criterion 3, Coordination between HA and Public Child Welfare Agency to Identify and Assist Eligible Families; and Threshold Criterion 4, Public Child Welfare Agency Statement of Need for Family Unification Program.

(B) Threshold Criteria

(1) THRESHOLD CRITERION 1: UNMET HOUSING NEEDS.

This criterion requires the PHA to demonstrate the need for an equal or greater number of Section 8 rental certificates than it is requesting under this NOFA. The PHA must assess and document the unmet housing need for its geographic jurisdiction of families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care, or in a delay of discharge of a child or children to the family from out-of-home care. The results of the assessment must include a comparison of the estimated unmet housing needs of such families to the Consolidated Plan covering the PHA's jurisdiction.

(2) THRESHOLD CRITERION 2: EFFORTS OF PHA TO PROVIDE AREA-WIDE HOUSING OPPORTUNITIES FOR FAMILIES (60 POINTS).

(a) Description: Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 rental voucher and certificate programs. PHAs in metropolitan and non-metropolitan areas are eligible for points under this criterion. The local HUD Field Office will assign points to PHAs that have established cooperative agreements with other PHAs or created a consortium of PHAs in order to facilitate the transfer of families and their rental assistance between PHA jurisdictions. In addition, the local HUD Field Office will assign points to PHAs that have established relationships with nonprofit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(b) Rating and Assessment: The local HUD Field Office will assign 10 points for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 60 points) to determine the total points for this Selection Criterion:

(i) 10 points—Assign 10 points if the PHA documents that it participates in an area-wide rental voucher and certificate exchange program where all PHAs absorb portable Section 8 families.

(ii) 10 Points—Assign 10 points if the PHA documents that its administrative plan does not include a ''residency preference'' for selection of families to participate in its rental voucher and certificate programs or the PHA states that it will eliminate immediately any ''residency preference'' currently in its administrative plan.

(iii) 10 Points—Assign 10 points if the PHA documents that PHA staff will provide housing counseling for families that want to move to low-poverty or non-minority areas, or if the PHA has established a contractual relationship with a nonprofit agency or a local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 1993 Moving to Opportunity (MTO) for Fair Housing Demonstration and any other PHAs that receive counseling funds from HUD (e.g., in settlement of litigation involving desegregation or demolition of public housing, regional opportunity counseling, or mixed population projects) may qualify for points under this assessment, but these PHAs must identify all activities undertaken, other than those funded by HUD, to expand housing opportunities.

(iv) 10 Points—Assign 10 points if the PHA documents that it requested from HUD, and HUD approved, the authority to utilize exceptions to the fair market rent limitations as allowed under 24 CFR 882.106(a)(4) to allow families to select units in low-poverty or non-minority areas.

(v) 10 Points—Assign 10 points if the PHA documents that it participates with other PHAs in using a metropolitan wide or combined waiting list for selecting participants in the program.

(vi) 10 Points—Assign 10 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

(3) THRESHOLD CRITERION 3: COORDINATION BETWEEN PHA AND PUBLIC CHILD WELFARE AGENCY TO IDENTIFY AND ASSIST ELIGIBLE FAMILIES.

The application must describe the method that the PHA and the PCWA will use to identify and assist Family Unification eligible families. The application must include a letter of intent from the PCWA stating its commitment to provide resources and support for the program. The PCWA letter of intent and other information must include an explanation of: the method for identifying Family Unification eligible families, the PCWA's certification process for determining Family Unification eligible families, the responsibilities of each agency, the assistance that the PCWA will provide to families in locating housing units, the PCWA staff resources committed to the program, the past PCWA experience administering a similar program, and the PCWA/PHA cooperation in administering a similar program.

(4) THRESHOLD CRITERION 4: PUBLIC CHILD WELFARE AGENCY STATEMENT OF NEED FOR FAMILY UNIFICATION PROGRAM.

The application must include a statement by the PCWA describing the need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency. The PCWA must adequately demonstrate that there is a need in the PHA's jurisdiction for the Family Unification program that is not being met through existing programs. The narrative must include specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed

discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families lacking adequate housing.

(C) Funding FY 1998 Applications

After the local HUD Field Office has screened HA applications and disapproved any applications unacceptable for further processing (See Section V(B) of this NOFA, below), the local HUD Field Office will review and rate all approvable applications, utilizing the Threshold Criteria and the point assignments listed in this NOFA. The local HUD Field Office will send to HUD Headquarters' Office of Funding and Financial Management the following information on each application that passes the Threshold Criteria:

(1) Name and address of the PHA;

(2) Name and address of the Public Child Welfare Agency;

(3) Local HUD Field Office contact person and telephone number;

(4) The requested number of rental certificates in the PHA application and the minimum number of rental certificates acceptable to the PHA; and

(5) A completed fund reservation worksheet for the number of rental certificates requested in the application and recommended for approval by the local HUD Field Office during the course of its review, and the corresponding budget authority.

HUD Headquarters' Office of Funding and Financial Management will select eligible PHAs to be funded based on a lottery in the event approvable applications are received for more funding than is available under this NOFA. All PHA applications identified by the local HUD Field Offices as meeting the Threshold Criteria identified in this NOFA will be eligible for the lottery selection process. If the cost of funding these applications exceeds available funds, HUD Headquarters will limit the number of FY 1998 applications selected for any State to no more than 10 percent of the budget authority made available under this NOFA in order to achieve geographic diversity. However, if establishing this geographic limit results in unspent budget authority, HUD may modify this limit to assure that all available funds are used.

Applications will be funded in full for the number of rental certificates requested by the PHA in accordance with the NOFA. However, if the remaining rental certificate funds are insufficient to fund the last PHA application in full, HUD Headquarters may fund that application to the extent of the funding available and the applicant's willingness to accept a reduced number of rental certificates. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

(D) Possibility of Subsequently Funding FY 1998 Approvable Applications Not Selected By Lottery For Funding

In the event a lottery is necessary during FY 1998, any approvable applications which are not selected for funding will be funded in FY 1999 to the extent that appropriations are available in FY 1999 for the Family Unification Program.

IV. Application Submission Requirements

(A) Form HUD–52515

Funding Application, form HUD–52515, must be completed and submitted for the Section 8 rental certificate program. This form includes all the necessary certifications for Fair Housing, Drug-Free Workplace and Lobbying Activities. An application must include the information in Section C, Average Monthly Adjusted Income, of form HUD–52515 in order for HUD to calculate the amount of Section 8 budget authority necessary to fund the requested number of certificate units. PHAs may obtain a copy of form HUD–52515 from the local HUD Field Office or may download it from the HUD Home page on the internet's world wide web (http://www.HUD.gov).

(B) Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The local HUD Field Office will obtain section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the PHA should encourage the chief executive officer of the unit of general local government to submit a letter with the PHA application commenting on the PHA application in accordance with section 213. Because HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

(C) Letter of Intent and Narrative

All the items in this section must be included with the application submitted to the local HUD Field Office. Funding is limited, and HUD may only have enough funds to approve a smaller amount than the number of rental certificates requested. The PHA must state in its cover letter to the application whether it will accept a smaller number of rental certificates and the minimum number of rental certificates it will accept. The cover letter must also include a statement by the PHA certifying that the PHA has consulted with the agency or agencies in the State responsible for the administration of welfare reform to provide for the successful implementation of the State's welfare reform for families receiving rental assistance under the family unification program. The application must include an explanation of how the application meets, or will meet, Threshold Criteria 1 through 4 in Section IV(D) of this NOFA, below.

The application must also include a letter of intent from the PCWA stating its commitment to provide resources and support for the Family Unification Program. The PCWA letter of intent must explain:

(1) The definition of eligible family unification program families;

(2) The method used to identify eligible family unification program families;

(3) The process to certify eligible family unification program families;

(4) The PCWA assistance to families to locate suitable housing;

(5) The PCWA staff resources committed to the program; and

(6) PCWA experience with the administration of similar programs including cooperation with a PHA.

The PCWA serving the jurisdiction of the PHA is responsible for providing the information for Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to the PHA for submission with the PHA application.

This should include a discussion of the case-load of the PCWA and information about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care as a result of inadequate housing, and the PCWA's experience in obtaining housing through HUD assisted housing programs and other sources for families lacking adequate housing. A State-wide Public Child Welfare Agency must provide information on Threshold Criterion 4, PCWA Statement of Need for Family Unification Program, to all PHAs that request such information; otherwise, HUD will not consider applications from any PHAs with the State-wide PCWA as a participant in its program.

(D) Evaluation Certifications

The PHA and the PCWA, in separate certifications, must state that the PHA and Public Child Welfare Agency agree to cooperate with HUD and provide requested data to the HUD office or HUD approved contractor delegated the responsibility for the program evaluation. No specific language for this certification is prescribed by HUD.

V. Corrections To Deficient Family Unification Applications

(A) Acceptable Applications

To be eligible for processing, an application must be received by local HUD Field Office no later than the date and time specified in this NOFA. The local HUD Field Office will initially screen all applications and notify PHAs of technical deficiencies by letter.

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. Examples of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

(B) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the local HUD Field Office will disapprove PHA applications that it determines are not acceptable for processing. The local HUD Field Office's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications from PHAs that do not meet the requirements of Section II(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, or HUD management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of a PHA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program. The only exception to this category is if the PHA has been identified under the policy established in Section I(D)(2) of this NOFA and the PHA makes application with another agency or contractor that will administer the family unification assistance on behalf of the PHA.

(c) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer an additional increment of rental vouchers or rental certificates.

(d) After the 14-calendar day technical deficiency correction period, a PHA application that does not comply with the requirements of 24 CFR 982.102 and this NOFA, will be rejected from processing.

(e) A PHA application submitted after the deadline date.

VI. Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, HUD has recently developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan.

Applicants should see the SuperNOFA for Housing and Community Development Programs published in the **Federal Register** on March 31, 1998 (62 FR 15490); the SuperNOFA for Economic Development and Empowerment Programs published on April 30, 1998 (62 FR 23876); and the SuperNOFA for Targeted Housing and Homeless Assistance Programs, that were both published on April 30, 1998 (62 FR 23988).

To foster comprehensive, coordinated approaches by communities, HUD intends for the remainder of FY 1998 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps on NOFA coordination may be considered for FY 1999.

To help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

VII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Requirements And Impact

In accordance with 24 CFR 50.19(b)(11), tenant-based activities assisted under this program are categorically excluded from the

requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities. In accordance with 24 CFR 50.19(c)(5), the approval for issuance of this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is: 14.857.

(D) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of HUD, the States, and local governments, including PHAs.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(F) Section 103 of the HUD Reform Act

HUD will comply with its regulations implementing section 103 of the HUD Reform Act, codified in 24 CFR part 4, for this funding competition. These requirements continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than persons authorized to receive such information) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics, (202) 708–3815 (voice), (202) 708–1112 (TTY). (These are not toll-free numbers.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations in 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included in the application package.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: May 22, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–14362 Filed 5–29–98; 8:45 am]

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federal register

Monday
June 1, 1998

Part X

Department of Housing and Urban Development

Notice of Funding Availability for Service Coordinator Funds for Fiscal Year 1998; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4366–N–01]

Notice of Funding Availability for Service Coordinator Funds for Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for Service Coordinators for Fiscal Year 1998.

SUMMARY: This notice announces the availability of $13 million for the Service Coordinator Program. This program provides funding for the employment and support of service coordinators in public and assisted housing developments (including conventional public housing, Rural Housing Service (RHS) Section 515/8, Section 8 existing project-based and moderate rehabilitation developments, Section 202 and 202/8, 221(d)(3) and 236 developments) designated for the elderly and persons with disabilities. Service coordinators help residents obtain supportive services from the community that are needed to enable independent living and aging in place.

Eligible applications will be funded through separate lotteries, one for Public Housing developments and one for assisted housing developments. Public Housing developments with expiring Fiscal Year (FY) 1995 Elderly Service Coordinator grants that have expended at least 80 percent (80%) of their grant funds by the application deadline date will be funded as an Office of Public and Indian Housing (PIH) priority prior to doing a general lottery. (One-year renewal funding for FY 1992 Section 202 and Section 202/8 projects is currently available under a December 5, 1997 memorandum from Albert Sullivan to the Field Office Multifamily Housing Directors.)

This NOFA contains information concerning: the purpose and background of the NOFA, and the funding level provided; eligible applicants and activities and award requirements; and the application requirements and steps involved in the application process.

APPLICATION DUE DATE: Completed applications (an *original and two copies*) must be submitted no later than 6:00 pm, local time, on August 4, 1998 to the addresses shown below. See below for specific procedures governing the form of application submissions (e.g., mailed applications, express mail, overnight delivery, or hand carried).

ADDRESSES: Applications must be submitted to the appropriate Multifamily HUB or Multifamily Program Center, or Public Housing Field Office (a list of these offices is found in Attachment A to this notice). Applicants should submit *one original and two copies* of the application to their HUD Field Office. Applicants should not submit any copies of their applications to HUD Headquarters.

Application Procedures. Mailed Applications. Applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the designated HUD Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. Hand carried applications to HUD Field offices will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6 pm.

FOR APPLICATION KITS, FURTHER INFORMATION, AND TECHNICAL ASSISTANCE:

For Application Kits. Application kits and any supplemental information may be obtained as follows: Multifamily assisted housing owners should contact the Multifamily Housing Clearinghouse at 1–800–MULT70 (1–800–685–8470); Public Housing Agencies (PHAs) should call the PIH Resource Center at 1–800–955–2232. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209 to obtain an application kit. The application kit will also be available on the Internet through the HUD web site at http://www.hud.gov. When requesting the application kit, please refer to the Service Coordinator Program. Please make sure to provide your name, address (including zip code), and telephone number (including area code).

For Further Information and Technical Assistance: Assisted housing owners should contact Multifamily HUB or Multifamily Program Center staff and PHAs should contact the PIH Resource Center at 1–800–955–2232. Owners of Section 515 developments funded through the Rural Housing Service should contact the Multifamily HUB or Multifamily Program Center in the HUD Field Office that normally provides asset management to that development. Additionally, all potential applicants may want to review Handbook 4381.5 REV–2, CHG–2, ''The Management Agent Handbook,'' for further guidance on service coordinators. While HUD staff may assist applicants in identifying those parts of their applications that need substantive improvement, HUD regulations forbid field office staff from advising applicants how to make such improvements (24 CFR 4.26).

All program documents referred to in this NOFA are accessible through HUDCLIPS on HUD's web site. The URL for the HUDCLIPS Database Selection Screen is http://www.hudclips.org/subscriber/cgi/legis.cgi. These notices are in the Handbooks and Notices—Housing Notices database. Enter only the number without the letter prefix (e.g., 94–99) in the ''Document Number'' to retrieve the program notice.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0198. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Authority; Purpose, Amount Allocated; and Eligibility

(A) Authority

(1) *For Multifamily Assisted Housing Developments.* Section 808 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by sections 671, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), provides authority for service coordinators in multifamily assisted housing developments.

(2) *For PHAs.* Section 673 of the Housing and Community Development Act of 1992 (42 U.S.C. 1437g) provides that PHAs may receive additional annual contributions for any development to cover the cost of employing or otherwise retaining the services of a service coordinator.

(B) Purpose

The Service Coordinator Program provides funding for the employment and support of service coordinators in public and assisted housing developments designated for the elderly and persons with disabilities. Service coordinators help residents obtain supportive services from the community that are needed to enable independent living and aging in place.

A service coordinator is a social service staff person hired or contracted by the development's owner/management company or the PHA. The coordinator is responsible for assuring that elderly residents, especially those who are frail or at risk, and those non-elderly residents with disabilities are linked to the supportive services they need to continue living independently in that development. The service coordinator, however, may not require any elderly or disabled family to accept the supportive services.

(C) Amounts Allocated

This NOFA makes available a total of $13,000,000 in FY 1998 funding from the $55,000,000 earmark in the Community Development Block Grants Fund account, 110 Stat. 2887, September 26, 1997. This $13,000,000, which will be equally allocated to programs administered by PIH and the Office of Housing is from the amount appropriated for public and assisted housing self-sufficiency programs. This $13,000,000 is being made available to provide service coordinators for conventional public housing, Section 8 existing project-based or moderate rehabilitation developments, and 202, 202/8, 221(d)(3) and 236 developments. All requests must be for eligible developments which are housing for the elderly and persons with disabilities.

(1) *Exhaustion of Public Housing Service Coordinator Program Funds.* When the funding for public housing developments under the Service Coordinator Program is exhausted, PHAs may use other eligible funds such as PIH grants (e.g., Comprehensive Grants, Economic Development and Supportive Services (EDSS) funds, or other operational funds) to employ a service coordinator.

(2) *Exhaustion of Multifamily Assisted Housing Service Coordinator Program Funds.* When the funding for multifamily assisted housing developments under the Service Coordinator Program is exhausted, owners may request processing under Housing's Management Agent Handbook 4381.5, REV–2, CHG–4, Chapter 8. This Handbook provides procedures for requesting funding for a coordinator using residual receipts, the budget-based rent increase process, contract rents adjusted by the Annual Adjustment Factor (AAF) or the Project Rental Assistance Contract (PRAC). Section 8 approvals must be consistent with current policy.

(3) *Renewal of Grants.* All grants funded under this NOFA are renewable, subject to the availability of funds.

(D) Eligibility

(1) *General.* PHAs and owners of eligible multifamily assisted housing developments may request Service Coordinator Program funding. To be eligible, a development must have frail or at-risk elderly residents and/or non-elderly residents with disabilities who together total at least 25 percent of the building's residents (not applicable to expiring FY 1995 Elderly Service Coordinator Grants).

(2) *Single applicants.* A PHA or an assisted housing owner may submit an application for one or more developments that it owns.

(3) *Joint Applications.*

(a) Two or more owners and/or PHAs may join together to share a service coordinator and so submit joint applications. In the past, joint applications have been used by small developments who joined together to meet the minimum number of units required for eligibility.

(b) A PHA and an assisted housing owner may submit a joint application and share a service coordinator among developments. The application will be entered into the program lottery corresponding to the organizational type of the designated lead applicant (i.e., if the lead applicant is a PHA, the joint application will be entered in the PIH lottery and all developments in that application will be funded through PIH's allotment of funds).

(4) *Public Housing Eligibility Criteria.*

(a) Eligible developments must be conventional public housing, including those with expiring FY 1995 Elderly Service Coordinator grants;

(b) An eligible development (or group of developments) having at least 50 units. A sole or joint application with two or more developments having at least 50 rental units together may also apply. (Not applicable to expiring FY 1995 Elderly Service Coordinator grants.)

(c) A PHA must have a passing Public Housing Management Assessment Program (PHMAP) score. In the case of a PHA that is designated as ''troubled,'' as a result of its PHMAP score, the PHA must provide certification that a Contract Administrator (or equivalent organization qualified to administer Federal grants) will be administering the proposed Service Coordinator Program grant. (A Contract Administrator is not needed to administer an extended FY 1995 Elderly Service Coordinator grant.)

(d) To renew an FY 1995 Elderly Service Coordinator Grant, the PHA must demonstrate that it has spent 80 percent (80%) of grant funds by the application deadline date, and has field office approval of satisfactory performance.

(e) By the date of execution of the grant agreement an applicant must have secured online access to the internet as a means to communicate with HUD on grant matters and shall have provided at least 75 percent (75%) of the required Multifamily Tenant Characteristics System (MTCS) occupancy data to HUD.

(f) An applicant may *not* have unresolved, outstanding Inspector General audit findings.

(5) *Multifamily Assisted Housing Eligibility Criteria.* Eligible developments are those that meet the following criteria:

(a) Are one of the following program types: Section 202 and 202/8, existing Section 8 project-based and moderate rehabilitation developments (including RHS Section 515/8), and Section 221(d)(3) and 236 developments which are insured or assisted.

(b) Are designated elderly only or housing for the elderly and persons with disabilities. This includes any building within a mixed-use development that was designated for occupancy by elderly persons or persons with disabilities at its inception or consistent with title VI, subtitle D of the Housing and Community Development Act of 1992. If not so designated, a development in which the owner gives preferences in tenant selection (with HUD approval) to eligible elderly persons or persons with disabilities, for all units in that development.

(c) Have at least 50 rental units. An eligible application with two or more developments having at least 50 rental units together may also apply.

(d) Be finally closed.

(e) Be current in mortgage payments or have a current workout agreement.

(f) Are *not* on the list of ''troubled'' developments, consistent with Notice H–97–50, ''Contract Non-Renewal Notice.'' Section 202 or Section 8 developments must meet housing quality standards, based on most recent physical inspection report and responses thereto. Section 221(d)(3) and Section 236 developments must be in good repair, based on most recent physical inspection report and responses thereto.

(g) An applicant may *not* have unresolved, outstanding Inspector General audit findings.

(E) Eligible Activities

Service Coordinator Program grant funds may be used to pay for the salary, fringe benefits, and related administrative costs for employing a service coordinator. Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities.

(F) Ineligible Developments

(1) A PHA may not apply for Service Coordinator Program funding if it has an expiring FY 1995 service coordinator grant, under which it has spent LESS THAN 80 percent (80%) of the grant's available funds by the application deadline date, and/or does NOT have field office approval of satisfactory performance.

(2) A PHA may not apply for Service Coordinator Program funding for any development that has a service coordinator funded by an EDSS grant.

(3) A PHA that has *not* met its obligations under the Annual Contributions Contract (ACC) to furnish required reports. Any PHA whose number of family reports in the MTCS has *not* reached 75 percent (75%) or more of the number of occupied low-income units.

(4) An Indian Housing Authority (IHA) development is not eligible for this program.

(5) Section 202/811 Supportive Housing Projects with PRAC developments may *not* receive funds under the Service Coordinator Program. Owners of Section 202 PRAC projects may obtain funding by requesting an amendment to their PRAC contract, if necessary, or approval within the existing budget.

(6) Assisted housing applicants with existing service coordinator grants may NOT apply for renewal or extension of such grants.

(7) Assisted housing applicants may NOT have outstanding contract violations of a contractual or regulatory nature.

(8) Any applicant must comply with all applicable statutory and regulatory fair housing and civil rights laws as enumerated in 24 CFR 5.105(a). If the applicant has been charged with a violation of the Fair Housing Act by the Department or the Department of Justice or if an applicant has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge or letter of findings to the satisfaction of the Department.

(G) Ineligible Activities

(1) PHAs and assisted housing owners cannot use funds available under this NOFA to extend or replace an expiring Service Coordinator Program grant or contract, except as provided under Section II(C) of this NOFA.

(2) Applicants may *not* use these monies to replace current funding from other sources for a service coordinator or for some other staff person who performs service coordinator functions.

(3) CHSP grantees may not use these funds to meet statutory program match requirements and may not use these funds to replace current CHSP program funds to continue the employment of a service coordinator.

(H) Grant Term

HUD will award new funds as three year grants, renewable subject to the availability of funds. Any renewals of existing FY 1995 PIH service coordinator grants will be for *ONE* year, consistent with existing renewal policy.

II. Application Selection Process

(A) General

Service Coordinator Program grant funds will not be awarded through a rating and ranking process. Instead, HUD will hold lotteries for all approvable applications forwarded from appropriate Multifamily HUB or Multifamily Program Center, or Public Housing Field Office (a list of these offices is found in Attachment A to this notice).

(B) Threshold Eligibility Review

(1) HUD Public Housing and Multifamily Field Office staff will review applications for completeness and compliance with the eligibility criteria set forth in Section I of this NOFA. Field Office staff will forward an application to Headquarters for entry into the lotteries if the application was received by the deadline date, meets all eligibility criteria, proposes reasonable costs for eligible activities, and includes all technical corrections by the designated deadline date.

(2) ''Reasonable costs'' are further discussed in the application kit, but are generally those that are consistent with salaries and administrative costs of similar programs in the jurisdiction of the HUD Field Office.

(C) Set-Aside

PIH will first fund any expiring FY 1995 Elderly Service Coordinator grants which meet the stipulations of Section I(D)(4) of this NOFA, except as otherwise specified. All remaining PIH funds will then go to the general PIH lottery (see Section II(D) of this NOFA, which follows).

(D) Lotteries

HUD will hold one separate lottery for each respective group of applicants. HUD staff will randomly select applications through these lotteries and will continue the process until each Office's allotment of approximately $6.5 million is exhausted.

(E) Pooling of Excess Funds

At the conclusion of the two lotteries, any remaining funds from both the PIH and assisted housing allocations will be pooled. Pooling these excess funds will allow HUD to determine if one or more additional grants are possible. In order to use as many of the residual funds as possible, HUD will conduct an additional lottery for any unfunded applicants (i.e., from both PIH and assisted housing) requesting a grant in an amount equal to or less than the pooled amount.

III. Application Submission Requirements

(A) General

Each application must be submitted in one original and two copies. Applications may not be sent by facsimile (FAX).

(B) Required Certifications, Assurances and Other Forms

All applications for funding under the Service Coordinator Program must contain the following documents and information:

(1) Transmittal letter and request, using the designated format;

(2) Service Coordinator Certifications;

(3) Evidence of comparable salaries in local area;

(4) If quality assurance is included in the proposed budget, a justification and explanation of how this work will be performed;

(5) Applicant checklist;

(6) For multifamily assisted housing owners, a bank statement showing the current residual receipts balance in the development's account;

(7) For multifamily assisted housing developments with AAF, a completed form HUD–9833B;

(8) For PHAs, the PHA's PHMAP Score;

(9) For PHAs with expiring FY 1995 Elderly Service Coordinator grants,

evidence of grant expenditures that total at least 80 percent (80%) of grant funds by the application deadline date;

(10) Lead agency letter format (if appropriate);

(11) For PHAs: Certification of Non-Duplication of Funding Request;

(12) Certification from an Independent Public Accountant or the cognizant government auditor stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by the pertinent OMB Circular.

(13) Each applicant must also submit signed copies of the following forms, assurances and certifications:

a. Standard form (SF) 424, Standard Form for Application for Federal Assistance;

b. Standard Form (SF) 424–B, Assurances for Non-construction Programs;

c. Drug-Free Workplace Certification (HUD–50070);

d. Certification and Disclosure Form Regarding Lobbying Activities (SF–LLL); and

e. Applicant/Recipient Disclosure Update Report (HUD–2880).

(C) Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. *Examples* of curable technical deficiencies include failure to submit proper certifications or failure to submit the application containing an original signature by an authorized official. In each case HUD will notify the applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

IV. Promoting Comprehensive Approaches to Housing and Community Development

HUD believes the best approach for addressing community problems is through a community-based process that provides a comprehensive response to identified needs. In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have been published or are expected to be published this fiscal year. On March 31, 1998 (63 FR 15490), HUD published in the **Federal Register** its SuperNOFA on Housing and Community Development Programs, which covered nineteen HUD Housing and Community Development programs. The second SuperNOFA and consolidated application process, which covered ten of HUD's Economic Development and Empowerment Programs, was published in the **Federal Register** on April 30, 1998 (63 FR 23876). The third SuperNOFA and consolidated application process, also published in the **Federal Register** on April 30, 1998 (63 FR 23988), covered six of HUD's Targeted Housing and Homeless Assistance Programs.

In addition to the three SuperNOFAs, HUD also published on April 30, 1998 (63 FR 23958) a consolidated NOFA and application process (the National SuperNOFA) for three national competition programs: the Fair Housing Initiatives Program national Competition; the National Lead Hazard Awareness Campaign; and the Housing Counseling national Competition.

By reviewing the SuperNOFAs and other individual NOFAs that HUD may publish with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to upcoming NOFAs and the community's Consolidated Plan and Analysis of Impediments to Fair Housing Choice. Applicants and interested parties may find out more about HUD's NOFAs through the HUD web site on the Internet.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

V. Findings and Certifications

Environmental Review

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This notice merely invites applications from existing PHAs and assisted housing developments for service coordinator grants. As a result, the notice is not subject to review under the Order.

Prohibition Against Lobbying Activities

Applicants for funding under this SuperNOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (TDHEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.)

Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the

provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Publication of Recipients of HUD Funding

HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

Section 103 HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

Catalog of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number for this program is: 14.191, Multifamily Service Coordinator Program.

Dated: May 20, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—Boston HUB

Hartford Office, First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523, TTY Number: (860) 240–4665

Boston Office, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234, TTY Number: (617) 565–5453

Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681, TTY Number: (603) 666–7518

Providence Office, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–3234, (401) 528–5351, TTY Number: (401) 528–5403

HUD—New York HUB

New York Office, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500, TTY Number: (212) 264–0927

HUD—Buffalo HUB

Buffalo Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755, TTY Number: (716) 551–5787

HUD—Philadelphia HUB

Philadelphia Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390, (215) 656–0600, TTY Number: (215) 656–3452

Charleston Office, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000, TTY Number: (304) 347–5332

Newark Office, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900, TTY Number: (201) 645–3298

Pittsburgh Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, (412) 644–6428, TTY Number: (412) 644–5747

HUD—Baltimore HUB

Baltimore Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520, TTY Number: (410) 962–0106

Washington Office, 820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–9200, TTY Number: (202) 275–0772

Richmond Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230—0331, (804) 278–4507, TTY Number: (804) 278–4501

HUD—Greensboro HUB

Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (919) 547–4001, TTY Number: (919) 547–4055

Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592, TTY Number: (803) 253–3071

HUD—Atlanta HUB

Atlanta Office, Richard B. Russell, Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–5136, TTY Number: (404) 730–2654

San Juan Office, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121, TTY Number: (809) 766–5909

Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251, TTY Number: 1–800–648–6056

Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (423) 545–4384, TTY Number: (423) 545–4559

Nashville Office, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5213, TTY Number: (615) 736–2886

HUD—Jacksonville HUB

Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626, TTY Number: (904) 232–1241

Birmingham Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617, TTY Number: (205) 290–7630

Jackson Office, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1096, (601) 965–5308, TTY Number: (601) 965–4171

HUD—Chicago HUB

Chicago Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680, TTY Number: (312) 353–5944

Indianapolis Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303, TTY Number: (317) 226–7081

HUD—Detroit

Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900, TTY Number: (313) 226–6899

HUD—Columbus HUB

Columbus Office, 200 North High Street, Columbus, OH 43215–2499, (614) 469–5737, TTY Number: (614) 469–6694

Cleveland Office, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–4065, TTY Number: (216) 522–2261

HUD—Minneapolis HUB

Minneapolis Office, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000, TTY Number: (612) 370–3186

Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214, TTY Number: (414) 297–3123

HUD—Ft. Worth HUB

Little Rock Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931, TTY Number: (501) 324–5931

New Orleans Office, Ninth Floor, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3099, (504) 589–7200, TTY Number: (504) 589–7279

Ft. Worth Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 978–9000, TTY Number: (817) 978–9273

Houston Office, Suite 200, Norfolk Tower 2211 Norfolk, Houston, TX 77098–4096, (713) 313–2274, TTY Number: (713) 834–3274

San Antonio Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 472–6800, TTY Number: (210) 472–6885

HUD—Great Plains

Des Moines Office, Room 239, Federal Building 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512, TTY Number: (515) 284–4728

Kansas City Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462, TTY Number: (913) 551–6972

Omaha Office, Executive Tower Centre 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100, TTY Number: (402) 492–3183

Saint Louis Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583, TTY Number: (314) 539–6331

Oklahoma City Office, 500 Main Plaza 500 West Main Street, Suite 400, Oklahoma City, OK 73102–2233, (405) 553–7400, TTY Number: (405) 553–7480

HUD—Denver HUB

Denver Office, 633 17th Street, Denver, CO 80202–3607, (303) 672–5440, TTY Number: (303) 672–5248

HUD—San Francisco HUB

Phoenix Office, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434, TTY Number: (602) 379–4464

San Francisco Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6532, TTY Number: (415) 436–6594

Honolulu Office, Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8175, TTY Number: (808) 522–8193

HUD—Los Angeles HUB

Los Angeles Offfice, 1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 894–8000, TTY Number: (213) 894–8133

HUD—Seattle HUB

Portland Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, (503) 326–2561, TTY Number: (503) 326–3656,

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Monday
June 1, 1998

Part XI

Department of Housing and Urban Development

Notice of Funding Availability for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4368–N–01]

Notice of Funding Availability for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Notice of funding availability (NOFA) for research to improve the evaluation and control of residential lead-based paint hazards for fiscal year 1998.

SUMMARY: This notice announces the availability of funding of up to approximately $2 million for grants or cooperative agreements for research on specified topics related to the evaluation and control of residential lead-based paint hazards. Approximately 5 to 10 grants or cooperative agreements of approximately $100,000 to $600,000 each will be awarded on a competitive basis. The application kit developed for this NOFA provides details to guide and assist applicants. In the body of this NOFA is information concerning: the purpose and background of the NOFA and the available amounts; eligible applicants; specific topics on which research grant applications will be accepted; selection criteria; and the application requirements and steps involved in the application process. An appendix to the NOFA identifies documents referenced in the NOFA.

APPLICATION DUE DATES: Completed applications must be submitted no later than 6:00 pm, local time, on July 21, 1998 to the addresses shown below. See below for specific procedures governing the form of application submissions (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Mailed applications. Mailed applications will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the Office of Lead Hazard Control on or within ten (10) days of July 21, 1998.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand carried applications. Hand carried applications will be accepted at the specified location and room number during normal business hours on or before the application due date. On the application due date, business hours will be extended to 6:00 PM.

All applications must include an original and two copies of the completed application. Section III.(A) of this NOFA provides further information on what constitutes proper submission of an application.

ADDRESSES AND APPLICATION SUBMISSION PROCEDURES: *Address-Mailed applications.* The address for mailed applications is: Office of Lead Hazard Control (LS), Department of Housing and Urban Development, Room B–133, 451 7th Street, S.W., Washington, DC 20410. *Address—Overnight/Express Mail or Hand carried applications.* Hand carried applications should be delivered to Suite 3206, 490 L'Enfant Plaza, SW Washington, DC 20024.

FOR APPLICATION KITS, FURTHER INFORMATION, AND TECHNICAL ASSISTANCE: *For Application Kits:* Application kits may be obtained from the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room B–133, Washington, DC 20410, or by calling Ms. Gail Ward at 202–755–1785, extension 111 (this is not a toll-free number), or by making an e-mail request to: Gail__N.__Ward@hud.gov (use underscore characters). The Department is also planning to make the NOFA and application kit accessible via the Internet World Wide Web (http://www.hud.gov/lea/leahome.html). Completed applications, however, must be submitted in paper copy to the mailing address; faxed or electronically transmitted applications will not be accepted. Hearing- and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

For Further Information: Dr. Peter Ashley, Office of Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 115, or Ms. Karen Williams, Grants Officer, extension 118 (these are not toll-free numbers). Hearing- and speech-impaired persons may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Authority; Purpose; Amounts Allocated; Background; Eligible Applicants and Eligible Activities

(A) Authority

These grants are authorized under sections 1051 and 1052 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992.

(B) Purpose

Research grants or cooperative agreements will be awarded, at HUD's discretion, to selected applicants in order to fund research activities that address critical gaps in our knowledge of residential lead hazard identification and control. The purposes of this program include:

(1) Funding research on topics identified in sections 1051 and 1052 of Title X.

(2) Funding research that will be used to update the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (Guidelines)* and which is anticipated to:

(a) Increase the accuracy and cost-effectiveness of lead hazard evaluation, and

(b) Increase the efficacy and cost-effectiveness of lead hazard reduction.

(C) Amounts Allocated

Up to approximately $2 million will be available to fund research proposals in FY 1998. Grants or cooperative agreements will be awarded on a competitive basis following evaluation of all proposals according to the Rating Factors described in section III.(B). HUD anticipates that individual awards will range from approximately $100,000 to approximately $600,000. HUD reserves the right to grant one or more awards, or no awards, for research in a given topic area, depending on the quality of applications received.

(D) Background

Lead is a potent toxicant that targets the central nervous system and is particularly damaging to the neurological development of young children and the developing fetus. Pregnant women can transfer lead through the placenta to the developing fetus. Lead-based paint is the most widespread and dangerous source of lead in the residential environment. Children can be exposed directly to this source of lead by ingesting paint chips or indirectly through exposure to paint-lead that has entered house dust and soil from the deterioration of interior and/or exterior lead-based paint. Studies have shown that the primary source of lead exposure for most young children is through the contact and subsequent incidental ingestion of house dust (i.e., through hand-to-mouth activity). The amount of lead found in the ambient air, food and public drinking water has decreased

significantly over the last two decades as a result of regulatory action and voluntary process changes.

Of all occupied housing units built before the ban of lead-based paint in 1978, approximately 83 percent, or 64 million housing units, are estimated to have lead-based paint somewhere on the exterior or interior of the building. Although intact lead-based paint poses little immediate risk to occupants, non-intact paint which is chipping, peeling, or otherwise deteriorating may present an immediate risk. Therefore, of particular concern are the housing units that contain deteriorated lead-based paint and/or lead-contaminated dust and are occupied by young children.

HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act (LBPPPA) of 1971, as amended, 42 U.S.C. 4801–4846. Sections 1051 and 1052 of Title X (42 U.S.C. 4854 and 4854a) call for the Secretary of HUD, in cooperation with other Federal agencies, to conduct research on specific topics related to the evaluation and subsequent mitigation of residential lead hazards. This research program also implements, in part, HUD's Departmental Strategy for Achieving Environmental Justice pursuant to Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations).

On November 27, 1996 (61 FR 60500), HUD published a NOFA announcing the availability of funds to support research to improve the evaluation and control of lead-based paint hazards. The Department made a total of 10 research grant awards to applicants to that NOFA, for a total of approximately $3.5 million. Research topic areas that were funded included: Cleaning leaded dust from smooth surfaces and carpets using low phosphate detergents and household vacuums; sampling leaded dust in carpets and upholstery; field validation of the approach to lead risk assessment suggested in the HUD *Guidelines;* the distribution of and exposure to dust in carpets; factors affecting the cleanability of carpets; comparison of composite and single dust-wipe sampling for clearance and risk assessment; analysis of lead-based paint inspection data for multifamily housing to develop a statistically based sampling scheme; penetration of fine particulate through household vacuum cleaner collection bags; development of a protocol to assess the use of portable XRF analyzers to test for lead in dust-wipe samples; development of a protocol for evaluating the performance of chemical spot-test-kits for detecting lead-based paint; and, the reaccumulation of leaded dust following professional dust cleaning.

In June 1995, HUD published *Guidelines for the Evaluation and Control of Lead-Based Paint in Housing (Guidelines)* (see Appendix A of this NOFA). The *Guidelines* are a report on state-of-the-art procedures for all aspects of lead-based paint hazard evaluation and control. The *Guidelines* reflect the Title X framework for lead hazard control, which distinguishes three types of control measures: Interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are designed to address hazards quickly, inexpensively, and temporarily, while abatement is intended to produce a permanent solution. While the *Guidelines* recommend procedures that are effective in identifying and controlling lead hazards while protecting the health of abatement workers and occupants, HUD recognizes that targeted research and field experience will result in future changes to the *Guidelines* that will improve the accuracy of lead hazard evaluation and increase the effectiveness, while possibly reducing costs, of lead hazard control measures. HUD anticipates that increasing the cost-effectiveness of procedures for lead hazard evaluation and control will reduce barriers to the widespread adoption of these measures.

In July 1995, the Task Force on Lead-Based Paint Hazard Reduction and Financing, which was established pursuant to section 1015 of Title X, presented its final report to HUD and the Environmental Protection Agency (EPA). The Task Force Report, entitled ''Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing'' (see Appendix A of this NOFA), recommended that research be conducted on a number of key topics in order to address significant gaps in our knowledge of lead exposure and hazard control.

(E) Eligible Applicants

Academic and not-for-profit institutions located in the U.S., and State and local governments are eligible under all existing authorizations. Non-profits must submit proof of their nonprofit status. For-profit firms also are eligible; however, they are not allowed to earn a fee (i.e., no profit can be made from the project). Federal agencies and Federal employees are not eligible to submit applications. All applicants must comply with all civil rights laws, statutes, regulations, and executive orders. If an applicant has: (1) An outstanding finding of civil rights violations by any Federal, state, or local agency; or (2) is the defendant in a civil rights lawsuit filed by the Department of Justice, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the oversight Agency.

(F) Eligible Activities.

The following types of research are eligible activities under this NOFA:

(1) General Goals and Objectives

The overall goal of this research is to gain knowledge that will lead to improvements in the efficacy and cost-effectiveness of methods used for lead-based paint hazard evaluation and control. It is anticipated that this will eventually result in a reduction in the magnitude of childhood lead exposure nationwide by reducing barriers to the implementation of widespread lead-based paint hazard reduction interventions and improving the effectiveness of such interventions.

Specific objectives for the individual research topics listed in section I.(F)(1) are provided separately in the expanded discussion of these individual topic areas that follows in section I.(F)(2). Although HUD is soliciting proposals for research on these specific topics, the Department will also consider funding applications for research on topics which, although not specifically listed in section I.(F)(2), are relevant under the overall goals and objectives of this research, as described above. In such instances, the applicant should describe how the proposed research activity addresses these overall goals and objectives. Key research topics that are to be addressed through this NOFA include the following (each of these topics is discussed in more detail in section I.(F)(2) of this NOFA):

(a) Treatment of lead-contaminated residential soils;

(b) Friction surfaces as a lead-based paint hazard;

(c) Effectiveness of State and local laws requiring periodic interventions to reduce lead hazards in rental housing;

(d) Efficacy of the current guidance on conducting risk assessments of multifamily housing; and,

(e) Other areas of research that are consistent with the overall goals of this NOFA.

(2) Background and Objectives for Specific Research Topic Areas

(a) *Treatment of Lead-Contaminated Soils.*

(i) *General.* Soils can become lead contaminated as a result of the shedding

of leaded paint from the exterior of structures and by the deposition of airborne particulate lead. Before the removal of lead from gasoline, vehicular emissions were a significant source of airborne lead, especially in urban areas. Children can be exposed to lead in soil and exterior dust through direct contact and incidental ingestion, and indirectly as a result of soil or dust being tracked or blown into the home and becoming incorporated into house dust. The degree to which soil-lead is a hazard depends upon the potential for contact and the lead concentration of the soil.

The HUD *Guidelines* (Chapter 5) indicate that bare soils should be considered hazardous if they exceed 400 ppm Pb in ''high contact'' areas (e.g., play areas) and if they exceed 2,000 ppm Pb in other areas of the yard. The *Guidelines* further indicate that outside of high contact areas, hazard control measures are not required unless the surface area for bare soils exceeds 9 ft2. The *Guidelines* are generally consistent with interim standards for lead in soil that have been published by the U.S. EPA (Guidance on the Identification of Lead-Based Paint Hazards, 60 FR 47247; September 11, 1995). The EPA is expected to publish proposed health based standards for lead in residential soil in 1998, as required by section 403 of Title X. These standards may differ from the current HUD and EPA guidance on lead-contaminated soils.

Soil-lead hazards can be mitigated using approaches that can be described as either temporary, interim controls, or long term abatement measures (i.e., interventions that remain effective for at least 20 years). Interim controls include various means of covering bare soil, such as with grass, gravel, or mulch. Land use controls can also be employed and include measures such as fencing and changing the location of play equipment. Interim controls are generally low cost and relatively easy to employ; however, they require frequent monitoring following implementation to ensure that they remain effective.

Current EPA and HUD guidance calls for residential soils to be abated if soil-lead levels exceed 5,000 ppm. Soil abatement includes such measures as covering soil with impervious materials like concrete or asphalt, or removing contaminated soils for off-site disposal. Another, more experimental approach, includes removing soil for on-site treatment that removes lead, followed by replacing the ''cleaned'' soil. Because of the high cost of soil abatement methods, in conjunction with other barriers to their implementation (e.g., disposing of lead-contaminated soils), these methods are impractical for widespread adoption.

Other approaches to reducing soil-lead hazards cannot be readily characterized as either interim controls or soil abatement. An example of such an approach, that has not been evaluated scientifically, is tilling the soil to reduce the lead concentration at the soil surface. Another example is the untested concept of treating soil with a substance (e.g., ground phosphate rock) that would reduce the biological availability (i.e., the degree to which the lead is absorbed into the bloodstream following ingestion) of the soil-lead to humans.

Relatively little research has been reported on the effectiveness of residential soil treatments in reducing children's lead exposures. There is at least one report of a study in which the use of interim soil hazard reduction measures combined with interior dust controls resulted in statistically significant reductions in the blood-lead (PbB) of children in the intervention group as compared to those in the control group (Mielke et al. 1992). The EPA-funded ''Three City Study'' assessed the impact of residential or neighborhood soil and dust abatement on children's blood lead levels (USEPA 1996). A small effect (a decline) on the mean blood lead of children was observed following soil abatement at one study site. The lack of an observed intervention-related effect at the other two study sites could have been related to a number of factors associated with the specific locations and study designs, and should not be considered conclusive regarding the relative importance of exterior dust and soil as lead exposure sources.

The major goals of this research are to improve methods for assessing potential risks from soil-lead exposure, to determine the long-term effectiveness of various methods of reducing residential soil-lead hazards, and to identify novel, cost-effective approaches to reducing or eliminating residential soil-lead hazards.

(ii) *Specific Research Objectives.* Specific research objectives include the following:

(*1*) Assess selected existing methods, and identify and assess novel, cost-effective methods for reducing or eliminating residential soil-lead hazards;

(*2*) Assess the adequacy of the current EPA (1994 interim guidelines and 1998 proposed rule) and HUD (1995) guidelines for estimating residential soil-lead hazards (e.g., area of bare soil for a hazardous condition, soil sampling guidelines); and

(*3*) Improve knowledge regarding the relative importance of exterior dust and soil as lead exposure sources for children in various residential environments.

(b) *Friction Surfaces as a Lead-Based Paint Hazard.*

(i) *General.* Friction surfaces are those surfaces covered with lead-based paint that are subject to abrasion, which may result in the generation of leaded dust. Because of this, friction surfaces are included in the definition of lead-based paint hazard in the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X). The portions of a window that rub together when the window is operated are generally considered the most critical of the friction surfaces within a residence, in terms of their ability to generate leaded dust. Other common residential friction surfaces include tight-fitting doors, cabinet doors and drawers, stairway treads, and floors painted with lead-based paint.

Addressing the hazard caused by windows and doors that generate leaded dust can represent the highest costs associated with a residential lead hazard control intervention. Because of this, it is important that we improve our understanding of the circumstances under which these friction surfaces pose an actual hazard because of leaded dust generation. It may generally be the case that windows and doors in good working condition and with intact lead-based paint, create relatively little leaded dust and thus can be managed in place with limited intervention.

Because there are often a number of different potential lead hazards in and around a dwelling (e.g., lead in exterior dust and soil, interior and exterior surfaces with deteriorated lead-based paint), it is often not possible to attribute dust-lead on a particular surface to the presence of a nearby friction surface painted with lead-based paint. For example, it has been reported by some researchers and lead hazard control practitioners that the lead loadings on window troughs are occasionally found to exceed the HUD/EPA standard of 800 μg Pb/ft^2 when sampled at various intervals following window treatment (e.g., wet-scraping and repainting surfaces, installing a trough liner). In such situations it is often difficult to determine the primary source (e.g., friction between window surfaces, exterior dust accumulation) of the reaccumulated dust-lead with reasonable certainty.

Research is needed to help improve our understanding of the situations in which friction surfaces are significant sources of the leaded dust that

accumulates on accessible surfaces within a dwelling. This knowledge is needed to improve existing guidance for evaluating and controlling lead-based paint hazards associated with friction surfaces, which would help to ensure the most cost effective use of scarce lead hazard control resources.

(ii) *Specific Research Objectives.* The primary goal of this research is improve our understanding of the situations in which friction between painted components is a significant source of dust-lead on accessible surfaces within a residence. Specific research objectives include:

(*1*) Identify circumstances under which painted friction surfaces (e.g., windows and doors) generate significant amounts of leaded dust within dwellings;

(*2*) Develop a cost effective method for identifying the likely source(s) of dust-lead on surfaces within a dwelling; and

(*3*) Identify and characterize situations in which it is preferable to replace friction-generating components, such as windows, because of the continued generation of leaded dust, and those situations in which it is preferable to manage these components in place.

(c) *The Effectiveness of Laws Requiring Periodic Interventions to Reduce Lead Hazards in Rental Housing*

(i) *General.* The Task Force on Lead-Based Paint Hazard Reduction and Financing was mandated by Title X for the purpose of providing consensus recommendations on methods to deal with the multifaceted problem of lead hazards in housing. One suggestion for preventing lead hazards in rental housing was that property owners perform ''essential maintenance practices'' on pre-1978 properties at regular intervals. Essential maintenance practices (EMPs) are relatively inexpensive actions intended to reduce the chance that lead hazards will develop and to prevent the inadvertent creation of lead hazards. EMPs can be completed by trained maintenance workers during the performance of standard maintenance. EMPs that were identified by the Task Force include the use of ''safe work practices'' when disturbing LBP, periodic inspection for and safe repair of deteriorated paint, providing LBP hazard information to tenants, and training maintenance staff.

The Task Force also identified ''standard treatments'' that can be implemented by property owners for the purpose of controlling lead hazards in high priority (e.g., pre-1950) housing. Standard treatments are routine interventions that can be performed by a trained maintenance crew, and include such practices as repair of deteriorated paint, creating smooth and cleanable horizontal surfaces, treating friction surfaces, preventing exposure to bare lead-contaminated soil, and conducting specialized cleaning upon completion of treatments.

Several states have passed, or are considering, legislation requiring the owners of rental property of a given age to perform specific actions (i.e., combinations of EMPs and/or standard treatments) on their properties at unit turnover or at a specified frequency. Vermont passed a law in 1996 (Act 165) that covers rental properties built before 1978. The law requires property owners to adopt a number of practices, including many of the EMPs identified by the Title X Task Force, such as periodic inspection and repair of painted surfaces and the periodic cleaning of window troughs and sills using specialized cleaning methods. Rental property owners or their representatives are also required to be trained in the proper application of EMPs.

In 1994, Maryland passed a law (House Bill 760) that applies to all privately owned rental housing built before 1950, and at the owner's option, to rental housing built after 1949. The law requires risk reduction treatments or lead dust tests in affected properties at change of occupancy. The required treatments include, but are not limited to, visual review and repair of painted surfaces, making floors and window wells smooth and cleanable, and conducting specialized dust cleaning of interior surfaces. Instead of conducting risk reduction treatments, property owners can opt to show that a lead hazard does not exist in a property by subjecting the unit to dust wipe testing. Property owners who comply with all aspects of the Maryland law are shielded from tort liability resulting from the lead poisoning of a tenant.

The Vermont and Maryland laws do not require dust-lead testing immediately following treatment of units or during the intervening period between treatments. Research is needed to assess the degree to which these or similar laws (e.g., requiring the implementation of EMPs and/or standard treatments) succeed in creating and maintaining lead-safe environments in the large variety of applicable rental housing units to which they apply. Any research on the effectiveness of these or similar (e.g., local) laws should also examine important programmatic factors such as the degree of compliance with the laws, costs and benefits of the legislation, public attitudes towards the laws, etc. The results of this research will be important in the identification of specific aspects of the laws (and implementing programs) that are effective in reducing the prevalence and severity of lead hazards in rental housing, as well as identifying those aspects that may require modification.

(ii) *Specific Research Objectives.* The primary goal of this research is to assess the effectiveness of current state or local laws requiring periodic implementation of essential maintenance practices and/or standard treatments in achieving and maintaining lead safe environments in targeted rental property, such as those implemented in Maryland and Vermont. Specific research objectives include:

(*1*) Identify the variables (e.g., housing characteristics) that are significant predictors of the success/failure of the required treatments in creating lead safe environments;

(*2*) Estimate the costs and benefits of the programs to various stakeholders (e.g., property owners, tenants, general public); and

(*3*) Identify both effective aspects of the evaluated programs as well as aspects where modifications are suggested.

(d) *Lead Hazard Risk Assessment of Multifamily Housing.*

(i) *General.* A lead-based paint hazard risk assessment is an on-site investigation of a dwelling for the purpose of identifying any lead-based paint hazards. Risk assessments include, but are not limited to, a visual assessment and limited environmental sampling, and creation of a written report with results and recommendations. It is also suggested that a risk assessor, to the extent feasible, conduct an investigation of the history and management of a dwelling and the age of the residents. Chapter 5 of the HUD Guidelines provides guidance on conducting risk assessments in single and multifamily housing. The described approaches for conducting lead hazard risk assessments in multifamily housing include methods that are based on targeted, worst case, and random sampling.

Targeted sampling involves the selection of dwellings deemed most likely to contain LBP hazards. These units are identified primarily through information that is supplied by the owner (i.e., verbally and/or through written records). Examples of criteria for selecting units to be sampled include condition (e.g., select if ''poor''), the presence of children under age 6, and recent preparation for reoccupancy. A limitation of condition-based targeting is that most owners have little knowledge of lead risk assessment, and may unintentionally fail to identify the

units most likely to have LBP hazards. The Guidelines also provide a minimum number of units to be sampled in conducting risk assessments of similar multifamily units in developments of various sizes. The values provided were in part derived from a public housing risk assessment/insurance program.

The other approaches discussed in the Guidelines for choosing units to be assessed, worst case and random sampling, are suggested for use when there is not adequate information on which to select a target sample. They would be more costly than the targeted approach in most cases. The worst-case sampling approach requires an initial visual inspection of all units with subsequent selection of those in poorest condition, while the random sampling method requires the random selection of a statistically based sample, as is required for conducting lead-based paint inspections. The statistically based random sample generally requires the selection of many more units than targeted sampling.

A focused research effort is needed to assess the adequacy of the current HUD guidance for conducting risk assessments of multifamily developments. Research efforts could include the analysis of existing data from past risk assessments of multifamily developments (e.g., public housing) and/or the generation and analysis of new data generated from the assessment of a limited number of multifamily developments. As part of an evaluation of multifamily risk assessment guidance, consideration should be given as to how an assessor should characterize the results of a multifamily risk assessment in a manner that would maximize its utility to the client. If no lead hazards are identified, or if a clear pattern in the occurrence of lead hazards emerges, the reporting of results is straightforward. Other findings, however, are more difficult to characterize, such as the situation in which some lead hazards are detected with no apparent pattern of occurrence.

(ii) *Specific Research Objectives.* The major objective is to assess the utility of the current HUD guidance on conducting lead-based paint hazard risk assessments in multifamily developments and to identify changes that could be made to improve this guidance. Specific research objectives include:

(*1*) Assess the utility of a ''targeted sampling'' approach in identifying lead hazards in multifamily housing in contrast to other approaches (e.g., random sampling); and

(*2*) Evaluate the current guidance on the minimum number of units to be assessed in targeted risk assessments of multifamily housing.

(e) *Other Relevant Research.* HUD will also consider funding applications for research on topics which, although not specifically identified in this NOFA, are relevant under the overall objective of improving the efficacy and cost-effectiveness of methods for the evaluation and control of lead-based paint hazards. At this time, the Department does not have an interest, however, in funding research on the development or evaluation of analytical methods (i.e., standard methods for processing and analyzing environmental lead samples) or the development of commercial products for lead hazard evaluation and control. All applications must comply with all requirements, including sections II. and IV., of this NOFA.

Other research topics that are of interest to HUD include, but are not limited to:

(i) Assessment of the level of worker protection required for typical lead hazard abatement and control activities (i.e., as determined by personal exposure monitoring) with respect to evaluations of the type of work, properties of the work surfaces, training and experience of workers and supervisors, etc.

(ii) The degree to which it is necessary to follow the approach recommended in the HUD *Guidelines* (Chapter 14) for clean-up (e.g., washing walls and ceilings, use of a HEPA vacuum and high phosphate detergents) following the completion of various lead hazard control interventions.

(3) *Future Research Solicitations.* If funding for research to improve the evaluation and control of residential lead-based paint hazards is available to HUD in future fiscal years, HUD will republish this NOFA and additional applications will be solicited under a new competition and applications will be due 45 days from the publishing date. Topic areas will include one or more of the following:

(a) *Research on lead exposure from other sources.* This research will focus on strategies to reduce the risk of lead exposure from other sources, including:

(i) Exterior soil as a source of lead contamination;

(ii) Interior lead dust as a source of lead contamination;

(iii) Lead contamination in carpets;

(iv) Lead contamination in furniture; and

(v) Lead contamination in forced air ducts.

(b) *Research on lead testing technologies.* This research will focus on improving evaluation and control methods and their application, including:

(i) Developing improved methods for evaluating lead-based paint hazards in housing.

(ii) Developing improved methods for reducing lead-based paint hazards in housing.

(iii) Developing improved methods for measuring lead in paint films, dust, and soil samples.

(iv) Establishing performance standards for various detection methods, including spot test kits.

(v) Establishing performance standards for lead-based paint hazard reduction methods, including the use of encapsulants.

(c) Establishing appropriate cleanup standards.

(d) Evaluating the efficacy of interim controls in various hazard situations.

(e) Evaluating the relative performance of various abatement techniques.

(f) Evaluating the long-term cost-effectiveness of interim control and abatement strategies.

(g) Assessing the effectiveness of hazard evaluation and reduction activities funded by Title X.

II. Program Requirements

(A) Threshold Requirements.

(1) Compliance With Fair Housing and Civil Rights Laws

All applicants must comply with all applicable Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). If an applicant (1) has been charged with a violation of the Fair Housing Act by the Secretary; (2) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or (3) has received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, the applicant is not eligible to apply for funding under this NOFA until the applicant resolves such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(2) Additional Nondiscrimination Requirements

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(B) Definitions

The following definitions apply to this grant program:

Abatement—Any set of measures designed to permanently eliminate lead-

based paint or lead-based paint hazards. For the purposes of this definition, ''permanent'' means at least 20 years effective life. Abatement includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

Cleaning—The process of using a HEPA vacuum and/or wet cleaning agents to remove leaded dust; the process includes the removing of bulk debris from work area.

Clearance examination—The visual examination and collection of environmental samples by an inspector or risk assessor upon completion of an abatement project or an interim control intervention. The clearance examination is conducted to ensure that lead exposure levels do not exceed HUD-recommended clearance standards. These recommended standards will be superseded by standards that are in the process of being established by the Environmental Protection Agency (EPA) Administrator pursuant to Title IV of the Toxic Substances Control Act, or other appropriate standards.

Encapsulation—The application of any covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers, and between the paint and the substrate.

Friction surface—Any painted interior or exterior surface, such as a window or stair tread, subject to abrasion or friction.

Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995)—HUD's manual of lead hazard control practices (commonly referred to as the *Guidelines*) which provide detailed, comprehensive, technical information on how to identify lead-based paint hazards in housing and how to control such hazards safely and efficiently. (The *Guidelines* replace the HUD ''Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing.'')

HEPA Vacuum—(High Efficiency Particulate Air)—A vacuum cleaner fitted with a filter capable of removing particles of 0.3 microns or larger at 99.97 percent or greater efficiency from the exhaust air stream.

Impact surface—An interior or exterior surface (such as surfaces on doors) subject to damage by repeated impact or contact.

Interim Controls—A set of measures designed to temporarily reduce human exposure or possible exposure to lead-based paint hazards. Such measures include specialized cleaning, repairs, maintenance, painting, temporary containment, and management and resident education programs. Interim controls include dust removal; paint film stabilization; treatment of friction and impact surfaces; installation of soil coverings, such as grass or sod; and restricting access to lead-contaminated soil.

Lead-Based Paint—Any paint, varnish, shellac, or other coating that contains lead equal to or greater than 1.0 $\mu g/cm^2$ as measured by XRF or laboratory analysis, or 0.5 percent by weight (5,000 μg/g, 5,000 ppm, or 5,000 mg/kg) as measured by laboratory analysis. (Local definitions may vary.)

Lead-Based Paint Hazard—Any condition which causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects (as established by the EPA Administrator under Title IV of the Toxic Substances Control Act).

Lead-Based Paint Hazard Control—Activities to control and eliminate lead-based hazards, including interim controls and abatement of lead-based paint hazards or lead-based paint.

Lead-Contaminated Dust—Surface dust in residences that contains an area or mass concentration of lead in excess of the standard to be established by the EPA Administrator, pursuant to Title IV of the Toxic Substances Control Act. Until the EPA standards are established, the HUD-recommended clearance and risk assessment standards for leaded dust are 100 $\mu g/ft^2$ on floors, 500 $\mu g/ft^2$ on interior window sills, and 800 $\mu g/ft^2$ on window troughs (wells), exterior concrete or other rough surfaces.

Lead-Contaminated Soil—Bare soil on residential property that contains lead in excess of the standard established by the EPA Administrator, pursuant to Title IV of the Toxic Substances Control Act. The HUD-recommended standard and interim EPA guidance is 400 μg/g for high-contact play areas and 2,000 μg/g in other bare areas of the yard. Soil contaminated with lead at levels greater than or equal to 5,000 μg/g should be abated by removal or paving.

Lead hazard screen—A means of determining whether a residence in relatively good condition should have a full risk assessment.

Replacement—A strategy of abatement that entails the removal of building components coated with lead-based paint (such as windows, doors, and trim) and the installation of new components free of lead-based paint.

Residential Dwelling—This term means either:

(1) A single-family dwelling, including attached structures, such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit and in which each unit is, or is intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk Assessment—An on-site investigation of a residential dwelling to discover any lead-based paint hazards. Risk assessments include an investigation of the age, history, management, maintenance of the dwelling, and the number of children under age 6 and women of child-bearing age who are residents; a visual assessment; limited environmental sampling (i.e., collection of dust wipe samples, soil samples, and deteriorated paint samples); and preparation of a report identifying acceptable abatement and interim control strategies based on specific conditions.

Substrate—A surface on which paint, varnish, or other coating has been applied or may be applied. Examples of substrates include wood, plaster, metal, and drywall.

Title X—The Residential Lead-Based Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550).

Window trough—For a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. Sometimes (incorrectly) called the window ''well''.

Wipe Sampling for Settled Lead-Contaminated Dust—The collection of settled dust samples from surfaces to measure for the presence of lead. Samples must be analyzed by a laboratory recognized by the EPA's National Lead Laboratory Accreditation Program (NLLAP).

III. Application Selection Process

(A) Submitting Applications for Grants

To be considered for a research grant award, an original and two copies of the

application must be postmarked on or before the due date specified at the front of this NOFA. Electronic (fax or Internet) transmittal of the application is not an acceptable transmittal mode.

Applications must conform to the formatting guidelines specified in the application kit. The kit specifies the sections to be included in the application and provides related formatting and content guidelines.

The above-stated application deadline is firm. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this factor into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays.

HUD will review each application to determine whether it meets the threshold criteria provided in section II.(A) of this NOFA. Applications that meet all of the threshold criteria will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors described below in section III.(B). For an application to remain in consideration for funding, it must receive a total score of at least 65 points (out of a total of 100).

HUD intends to make awards to qualifying applications in the following order:

STEP 1 An award will be made to the highest ranked application in each of the four topic areas listed at sections I.(F)(1)(a) through (d) of this NOFA, within the limits of funding availability. If there are insufficient funds to award in all topic areas, HUD will make awards in topics (a) through (d) in rank order;

STEP 2 If funding remains available, an award will be made to the highest rank application in the ''other'' topic category listed at section I.(F)(1)(e) of this NOFA;

STEP 3 If funding remains available, an award will be made to the second highest ranked application in each of the four topic areas listed at sections I.(F)(1) (a) through (e) of this NOFA in rank order, within the limits of funding availability;

STEP 4 If funding remains available, awards will be made in rank order regardless of topic area.

Applicants may address more than one of the research topic areas within their proposal; however, each topic area will be rated and ranked separately. Also, projects need not address all of the objectives within a given topic area. While applicants will not be penalized for not addressing all of the specific objectives for a given topic area, if two applications for research in a given topic have equal scores, HUD will select the applicant whose project addresses the most objectives.

HUD encourages applicants to plan projects that can be completed over a relatively short time period (e.g., 12 to 18 months from the date of award) so that any useful information that is generated from the research can be available for policy or program decisions and be disseminated to the public as quickly as possible.

(B) Rating Factors

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (35 Points)

This factor addresses the extent to which the applicant has the ability and organizational resources necessary to successfully implement the proposed activities in a timely manner. The rating of the ''applicant'' will include any sub-grantees, consultants, sub-recipients, and members of consortia which are firmly committed to the project (generally, ''subordinate organizations''). In rating this factor HUD will consider the extent to which the application demonstrates:

(1) *The capability and qualifications of the principal investigator and key personnel* (20 points). Qualifications to carry out the proposed study as evidenced by academic background, relevant publications, and recent (within the past 10 years), relevant research experience. Publications and research experience are considered relevant if they required the acquisition and use of knowledge and skills that can be applied in the planning and execution of the research that is proposed under this NOFA.

(2) *Past performance of the research team in managing similar research* (15 points). Demonstrated ability to successfully manage the various aspects of a complex research study in such areas as logistics, research personnel management, data management, quality control, community research involvement (if applicable), and report writing, as well as overall success in project completion (i.e., on time and within budget). Applicants should also demonstrate that the project would have adequate administrative support, including clerical and specialized support in areas such as accounting and equipment maintenance.

Rating Factor 2: Need/Extent of the Problem (10 Points)

(1) The applicant must demonstrate responsiveness to solicitation objectives. The applicant should explain in detail the likelihood that the research would make a significant contribution towards achieving some or all of HUD's stated goals and objectives for one or more of the topic areas described in sections I.(F)(2)(a)-(d) of this NOFA.

(b) If the applicant is seeking funding for ''other'' research, as is described in section I.(F)(2)(e), the applicant must provide an explanation which demonstrates the importance and need for the research with respect to addressing the overall goal of this NOFA (see section I.(F)(1)).

Rating Factor 3: Soundness of Approach (45 Points)

This factor addresses the quality of the applicant's proposed research plan. Specific components include the following:

(1) *Soundness of the study design* (24 points). The study design must be thorough and feasible, and reflect the applicant's knowledge of the relevant scientific literature. Applicants should include a plan for analyzing and archiving data.

(2) *Project management plan* (7 points). The proposal should include a management plan that provides a schedule for the completion of major tasks and deliverables, with an indication that there will be adequate resources (e.g., personnel, financial) to successfully meet the proposed schedule.

(3) *Quality assurance mechanisms* (10 points). The applicant must describe the quality assurance mechanisms which will be integrated into the research design to ensure the validity and quality of the results. Areas to be addressed include acceptance criteria for data quality, procedures for selection of samples/sample sites, sample handling, measurement and analysis, and any standard/nonstandard quality assurance/control procedures to be followed. Refereed documents (e.g., government reports, peer-reviewed academic literature) which provide the basis for the quality assurance mechanisms should be cited.

(d) *Budget Proposal* (4 Points). The budget proposal should be thorough in the estimation of all applicable direct and indirect costs, and should be presented in a clear and coherent format (see application kit for required budget components).

The application will not be rated on the proposed cost; however, if two applications for a given topic area have equal scores, HUD will select the lowest cost application.

Rating Factor 4: Leveraging Resources (5 Points)

The extent to which the applicant can demonstrate that the effectiveness of the HUD research grant funds is being increased by securing other public and/or private resources or by structuring the research in a cost-effective manner, such as integrating the project into an existing research effort. Resources may include funding or in-kind contributions (such as services, facilities or equipment) allocated to the purpose(s) of the research. Staff in-kind contributions should be given a monetary value.

Applicants must provide evidence of leveraging/partnerships by including in the application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the application. Each letter of commitment, memorandum of understanding, or agreement to participate should include the organization's name, proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (5 Points)

The applicant should describe how the results of the proposed research efforts can be applied by HUD or other programs to support planning, policy development, and/or public education in the area of residential lead hazard control.

(C) Court-Ordered Consideration

Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application by the City of Dallas, Texas, for HUD funds, HUD shall consider the extent to which the strategies or plans in an application or applications submitted by the City of Dallas will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's low income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low income housing programs have on potential participants in the program covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 points to the score for any program based on this consideration. (This requirement is limited to applications submitted by the City of Dallas).

IV. Application Submission Requirements

(A) Applicant Data

Applications must be submitted in accordance with the format and instructions contained in the application kit. Informal, incomplete, or unsigned applications will not be considered. The following is a checklist of the application contents that will be included in the application kit:

(1) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report; Certification Regarding Lobbying; and SF–LLL, Disclosure of Lobbying Activities, where applicable.

(2) Standard Forms SF–424, 424A, 424B, and other certifications and assurances listed in this NOFA.

(3) A detailed total budget with supporting cost justification for all budget categories of the Federal grant request (see application kit for details).

(4) An abstract containing the following information: The project title, the names and affiliations of all investigators, and a summary of the objectives, expected results, and study design described in the proposal. (See application kit for formatting instructions.)

(5) A description of the project. This description must not exceed fifteen (15) pages for each research topic area, including visual materials such as charts and graphs. A completed HUD Form 441.1 should also be submitted. (See application kit for format and required elements.)

(6) Any important attachments, appendices, references, or other relevant information may accompany the project description, but must not exceed ten (10) pages for the entire application.

(7) The resumes of the principal investigator and other key personnel. Resumes should be concise (i.e., no more than three pages) and limited to information that is relevant in assessing the qualifications of key personnel to conduct and/or manage the proposed research.

(8) Copy of State Clearing House Approval Notification (see application kit to determine if applicable).

(B) Certifications and Assurances

The following certifications and assurances are to be included in all applications:

(1) Compliance with all relevant State and Federal regulations regarding exposure to and proper disposal of hazardous materials .

(2) Compliance with relevant Federal civil rights laws and requirements (24 CFR 5.105(a)).

(3) Compliance with the Age Discrimination Act of 1975 and section 504 of the Rehabilitation Act of 1973;

(4) Assurance that financial management system meets the standards for fund control and accountability (24 CFR 84.21 or 24 CFR 85.20, as applicable);

(5) Assurance, to the extent possible and applicable, that any blood lead testing, blood lead level test results, and medical referral and follow-up will be conducted for children under six years of age according to the recommendations of the Centers for Disease Control and Prevention (CDC). (See Appendix A of this NOFA—*Preventing Lead Poisoning in Young Children*);

(6) Assurance that HUD research grant funds will not replace existing resources dedicated to any ongoing project; and

(7) Certification of compliance with the Drug-Free Workplace Act of 1988 in accordance with the requirements set forth at 24 CFR part 24.

(8) Assurance that laboratory analysis is conducted by a laboratory accredited through the National Lead Laboratory Accreditation Program (NLLAP).

(9) Assurance that human research subjects will be protected from research risks in conformance with the Common Rule (Federal Policy for the Protection of Human Subjects, codified by HUD at 24 CFR part 60).

V. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. *Examples* of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not

corrected within this time period, HUD will reject the application as incomplete.

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2539–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Review

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Executive Order

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Under this NOFA, grants or cooperative agreements will be made to support research activities which are anticipated to result in improvements in methods used to assess and mitigate residential lead hazards. Although the Department encourages States and local governments to conduct research in these areas, any such action by a State or local government is voluntary. Because action is not mandatory, the NOFA does not impinge upon the relationships between the Federal government and State and local governments, and the notice is not subject to review under the Order.

Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (TDHEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

Procurement Standards

State and local government grantees are governed by and should consult 24 CFR 85.36 and 85.37, which implement OMB Circular A–102 and detail the procedures for subcontracts and sub-grants by States and local governments. Non-profit organizations are governed by 24 CFR 84.40–84.48, which implement OMB Circular A–110. Under OMB A–102 and A–110, small purchase procedures can be used for subcontracts up to $100,000, and require price or rate quotations from several sources (three is acceptable); above that threshold, more formal procedures are required. If States or local governments have more restrictive standards for contracts and grants, the State or local government standards can be applied. All grantees should consult and become familiar with either OMB A–102 or A–110, as appropriate, before issuing subcontracts or sub-grants.

Davis-Bacon Act

The Davis-Bacon Act does not apply to this program. However, if grant funds are used in conjunction with other Federal programs in which Davis-Bacon prevailing wage rates apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

Prohibition Against Advance Information on Funding Decisions—Section 103 of the Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

Authority: 42 U.S.C. 4854 and 4854a.

Dated: May 20, 1998.

David E. Jacobs,

Director, Office of Lead Hazard Control.

Appendix A—Relevant Publications and Guidelines

To Secure Any Of The Documents Listed, Call The Listed Telephone Number (generally not toll-free).

Regulations

1. Worker Protection: OSHA publication—Telephone: 1–202–219–4667 (OSHA Regulations) (available for a charge)—Government Printing Office—Telephone: 202–512–1800 (not a toll-free number).

—General Industry Lead Standard, 29 CFR 1910.1025; (Document Number 869022001124)

—Lead Exposure in Construction, 29 CFR 1926.62, and appendices A, B, C, and D; (Document Number 869022001141)

2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations) (available for a charge)—Telephone 1–800–424–9346, or, from the Washington, DC, metropolitan area, 1–703–412–9810 (not a toll-free number).

3. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule: 40 CFR part 745, subparts L and Q (EPA) (State Certification and Accreditation Program for those engaged in lead-based paint activities)—Telephone: 1–202–554–1404 (Toxic Substances Control Act Hotline) (not a toll-free number).

4. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Proposed Rule: 24 CFR parts 35, 36 and 37 (HUD)—Telephone: 1–202–755–1785 (Office of Lead Hazard Control) (not a toll-free number).

Guidelines

1. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; HUD, June 1995 (available for a charge)—Telephone: 1–800–245–2691:

Post-lead hazard control clearance, no more than:

100 Micrograms/sq.ft. (Bare and carpeted floors)

500 Micrograms/sq.ft. (Window sills)

800 Micrograms/sq.ft. (Window troughs (wells), exterior concrete and other rough surfaces)

2. Preventing Lead Poisoning In Young Children; Centers for Disease Control, October 1991: Telephone: 1–770–488–7330 (not a toll-free number).

3. Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials, November 1997; Centers for Disease Control and Prevention (CDC): Telephone: 1–770–488–7330 (not a toll-free number).

Reports

1. Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing, (Summary and Full Report); HUD, July 1995 (available for a charge)—Telephone 1–800–245–2691.

2. Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress; HUD, December 7, 1990 (available for a charge)—Telephone 1–800–245–2691.

3. A Field Test of Lead-Based Paint Testing Technologies: Summary Report (Summary also available); U.S. Environmental Protection Agency, May 1995. EPA 747–R–95–002a (available at no charge)—Telephone 1–800–424–5323.

4. Urban Soil Lead Abatement Demonstration Project. EPA Integrated Report, U.S. Environmental Protection Agency, April, 1996. EPA/600/P–93–001AF (available from National Technical Information Service (NTIS) for a charge)—Telephone 1–800–553–6847.

[FR Doc. 98–14364 Filed 5–29–98; 8:45 am]

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federal register

Monday
June 1, 1998

Part XII

Department of Education

Office of Postsecondary Education; Notice of Revision of the Need Analysis Methodology for the 1999–2000 Award Year; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Notice of Revision of the Need Analysis Methodology for the 1999–2000 Award Year

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 1999–2000 for the Title IV, HEA student financial assistance programs (Title IV, HEA Programs). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs. The Title IV, HEA Programs include the Federal Pell Grant, campus based (Federal Perkins Loan, Federal Work Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, General Provisions Branch, Policy Development Division, U.S. Department of Education, 600 Independence Ave., S.W. (Room 3053, ROB–3), Washington, D.C. 20202–5444, telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this paragraph.

SUPPLEMENTARY INFORMATION: Part F of Title IV of the Higher Education Act of 1965, as amended (HEA), specifies the criteria, data elements, calculations and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 in Part F requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take inflation into account. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 1999–2000, the Secretary is charged with updating the income protection allowances, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 1997 and December 1998. However, since the Secretary must publish these tables before December 1998, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 1997. The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 1997 through December 1998 will be 2.5 percent. The updated tables are set forth in sections 1, 2, and 4.

The Secretary must also revise, for each award year, the table on asset protection allowance as provided for in section 478(d). The Education Savings and Asset Protection Allowance table for the award year 1999–2000 has been updated below in section 3.

Section 477(b)(5) of Part F also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described in section 5.

The HEA provides for the following annual updates:

1. Income Protection Allowance

This allowance is the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The allowance is offset against the family's income and varies by family size. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for award year 1999–2000 are:

Family size	Number in college				
	1	2	3	4	5
2	12,260	10,160	.....	.....	.....
3	15,260	13,180	11,080	.....	.....
4	18,850	16,750	14.670	12,570	.....
5	22,240	20,140	18,060	15,960	13,880
6	26,010	23,920	21,830	19,740	17,650

For each addiional family member add $2,940.
For each additional college student subtract 2,090.

2. Adjusted Net Worth (NW) of a Business or Farm

A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since: (1) the income produced from such assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is	Then the adjusted new worth is
Less than $1	0
$1 to $85,000	$0 + 40% of NW
$85,001 to $260,000	$34,000 + 50% of NW over $85,000
$260,001 to $435,000	$121,500 + 60% of NW over $266,00.
$435,001 or more	$226,500 + 100% of NW over $435,000

3. Education Savingss and Asset Protection Allowance

This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is	And there are	
	two parents one parent	then the education savings and asset protection allowance is
25 or less	0	0
26	2,500	1,600
27	5,000	3,200
28	7,500	4,800
29	10,000	6,400
30	12,500	8,000
31	15,000	9,600
32	17,500	11,200
33	19,900	12,900
34	22,400	14,500
35	24,900	16,100
36	27,400	17,700
37	29,900	19,300
38	32,400	20,900
39	34,900	22,500
40	37,400	24,100
41	38,400	24,500
42	39,400	25,100
43	40,400	25,600
44	41,400	26,200
45	42,500	26,800
46	43,500	27,400
47	44,600	28,000
48	45,800	28,700
49	46,900	29,400
50	48,400	30,100
51	49,600	30,700
52	50,900	31,600
53	52,500	32,300
54	53,800	33,100
55	55,400	33,900
56	57,100	34,700
57	58,900	35,700
58	60,700	36,500
59	62,500	37,600
60	64,400	38,700
61	66,600	39,700
62	69,000	40,900
63	71,000	42,000
64	73,400	43,200
65 and over	75,900	44,400

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And the student is	
	married single	then the education savings and asset protection allowance is
25 or less	0	0
26	2,500	1,600
27	5,000	3,200
28	7,500	4,800
29	10,000	6,400
30	12,500	8,000
31	15,000	9,600
32	17,500	11,200
33	19,900	12,900
34	22,400	14,500
35	24,900	16,100
36	27,400	17,700
37	29,900	19,300
38	32,400	20,900
39	34,900	22,500
40	37,400	24,100
41	38,400	24,500
42	39,400	25,100
43	40,400	25,600
44	41,400	26,200
45	42,500	26,800
46	43,500	27,400
47	44,600	28,000
48	45,800	28,700
49	46,900	29,400
50	48,400	30,100
51	49,600	30,700
52	50,900	31,600
53	52,500	32,300
54	53,800	33,100
55	55,400	33,900
56	57,100	34,700
57	58,900	35,700
58	60,700	36,500
59	62,500	37,600
60	64,400	38,700
61	66,600	39,700
62	69,000	40,900
63	71,000	42,000
64	73,400	43,200
65 and over	75,900	44,400

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And the student is	
	married single	then the education savings and asset protection allowance is
25 or less	0	0
26	2,500	1,600
27	5,000	3,200
28	7,500	4,800
29	10,000	6,400
30	12,500	8,000
31	15,000	9,600
32	17,500	11,200
33	19,900	12,900

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And the student is	
	married single	then the education savings and asset protection allowance is
34	22,400	14,500
35	24,900	16,100
36	27,400	17,700
37	29,900	19,300
38	32,400	20,900
39	34,900	22,500
40	37,400	24,100
41	38,400	24,500
42	39,400	25,100
43	40,400	26,600
44	41,400	26,200
45	42,500	26,800
46	43,500	27,400
47	44,600	28,000
48	45,800	28,700
49	46,900	29,400
50	48,400	30,100
51	49,600	30,700
52	50,900	31,600
53	52,500	32,300
54	53,800	33,200
55	55,400	33,900
56	57,100	34,700
57	58,900	35,700
59	62,500	37,600
60	64,400	38,700
61	66,600	39,700
62	69,000	40,900
63	71,000	42,000
64	73,400	43,200
65 and over	75,900	44,400

4. Assessment Schedules and Rates.

Two schedules, one for dependent students and one for independent students with dependents other than a spouse, are used to determine the expected contribution toward educational expenses from family financial resources. For dependent students, the expected parental contribution is derived from an assessment of the parents' adjusted available income (AAI). For independent students, with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI.

The AAI represents a measure of a family's financial strength which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is	Then the contribution is
Less than −$3,409 ($3,409)	$−750
($3,409) to $11,000	22% of AAI
$11,001 to $13,700	$2,420+ 25% of AAI over $11,000
$13,701 to $16,500	$3,095+ 29% of AAI over $13,700
$16,501 to $19,300	$3,907+ 34% of AAI over $16,500
$19,301 to $22,100	$4,859+ 40% of AAI over $19,300
$22,101 or more	$5,979+ 47% of AAI over $22,100

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is	Then the contribution is
Less than −$3,409 ($3,409)	−$750
($3,409) to $11,000	22% of AAI
$11,001 to $13,700	$2,420+25% of AAI over $11,000
$13,701 to $16,500	$3,095+29% of AAI over $13,700
$16,501 to $19,300	$3,907+34% of AAI over $16,500
$19,301 to $22,100	$4,859+40% of AAI over $19,300
$22,101 or more	$5,979+47% of AAI over $22,100

5. Employment Expense Allowance

This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $2,800 or 35 percent of earned income.

6. Allowance for State and Other Taxes

This allowance for State and other taxes protects a portion of the parents' and student's income from being considered available for postsecondary education expenses. There are four tables for state and other taxes, one each for parents of dependent students, dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If parents' State or territory of residence is	And parents' total income is	
	less than $15,000 or	$15,000 or more
	then the percentage is	then the percentage is
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is	And student's total income is	
	less than $15,000 or	$15,000 or more
	then the percentage is	then the percentage is
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

DEPENDENT STUDENTS

If student's State or territory of residence is	The percentage is
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is	The percentage is
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

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Program Authority: 20 U.S.C. 1087rr.

(CFDA Nos.: 84.063 Federal Pell Grant; 84.038 Federal Perkins Loan; 84.033 Federal Work-Study; 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan; and 84.268 William D. Ford Federal Direct Loan Programs)

Dated: May 27, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–14426 Filed 5–29–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
June 1, 1998

Part XIII

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 1999; Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 1999; Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of availability of program solicitation and request for proposals for fiscal year 1999 Small Business Innovation Research Grants Program.

SUMMARY: Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and Section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1987, and for other purposes, as made applicable by Section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through phase I of its Small Business Innovation Research (SBIR) Grants Program.

DATES: All phase I proposals must be received at USDA by September 3, 1998. Proposals not received by this date will be returned to the proposing organization without evaluation or consideration for an award, with the following exceptions. Proposals received after September 3, 1998, will be accepted provided they are postmarked before or on (1) September 2, 1998, if sent by overnight courier; (2) September 1, 1998, if sent by two-day priority mail; or (3) August 27, 1998, if sent by regular first class mail.

ADDRESSES: All proposals must be submitted to the following address: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

Note: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Telephone: (202) 401–5048.

FOR FURTHER INFORMATION CONTACT: Dr. Charles F. Cleland; Director, SBIR Program; Cooperative State Research, Education, and Extension Service; STOP 2243; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2243. Telephone: (202) 401–4002. Facsimile: (202) 401–6070.

SUPPLEMENTARY INFORMATION: This program will be administered by the Cooperative State Research, Education, and Extension Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for phase I of the SBIR Program in fiscal year (FY) 1999 is approximately $4,800,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 3, 1998. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications
9. Marketing and Trade

The award of any grants under the provisions of this program is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR Part 3402, as amended by 62 FR 26168, May 12, 1997. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations (7 CFR Part 3015, as amended), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) (7 CFR Part 3017), Restrictions on Lobbying (7 CFR Part 3018), and Managing Federal Credit Programs (7 CFR Part 3) apply to this program. Copies of 7 CFR Part 3403, 7 CFR Part 3015, 7 CFR Part 3017, 7 CFR part 3018, and 7 CFR Part 3 may be obtained by writing or calling the office indicated below.

The program solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 1999 Small Business Innovation Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible. Please note that applicants who submitted SBIR proposals for FY 1998 or who have recently requested placement on the list for FY 1999 will automatically receive a copy of the FY 1999 program solicitation.

Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. Telephone: (202) 401–5048.

Done at Washington, D.C., this 21st day of May, 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–14323 Filed 5–29–98; 8:45 am]

BILLING CODE 3410–22–P

federal register

Monday
June 1, 1998

Part XIV

Department of Education

Safe and Drug-Free Schools Program; Notice

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools Program

AGENCY: Department of Education.

ACTION: Notice of Final Principles of Effectiveness.

SUMMARY: The Secretary announces final Principles of Effectiveness for recipients' use of funds under the Safe and Drug-Free Schools (SDFC) Program. The Secretary takes this action to promote the most effective use of limited resources. The Principles of Effectiveness will govern recipients' use of funds under the State and Local Grants Program of the Safe and Drug-Free Schools and Communities Act (SDFSCA) for fiscal year 1998 and future years.

EFFECTIVE DATE: These Principles of Effectiveness take effect on July 1, 1998.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, U.S. Department of Education, Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program, 600 Independence Avenue, SW, room 604, The Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. The E-mail address is bill__modzeleski@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800 877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

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SUPPLEMENTARY INFORMATION: The SDFSCA, as reauthorized in 1994 by the Improving America's Schools Act (Public Law 103–382), offers States, school districts, schools, and other recipients wide latitude in using SDFSCA State and Local Grants Program funds to implement the kinds of drug and violence prevention programs that they believe best serve their needs. While the Administration favors local discretion over Federal prescription in the use of SDFSCA State and local grant funds, the Administration also has a responsibility to promote the most effective use possible of these limited resources. In many instances these funds are the only financial assistance available to help local schools address their youth drug and violence problems. With the increasing availability of information about promising and successful drug and violence prevention programs, State and local decisions about which prevention programs to implement should be guided by research on best practices. Furthermore, schools and community organizations that initiate programs designed to prevent youth drug use or violence without conducting a high-quality needs assessment or establishing clear and objective measurable expectations about program outcomes have difficulty determining whether their programs are successful.

Therefore, as one of a series of activities designed to improve the quality of drug and violence prevention programming implemented with SDFSCA funds, the Secretary is adopting these final SDFS Principles of Effectiveness. The Principles will require grant recipients to use SDFSCA State and Local Grants Program funds to support research-based drug and violence prevention programs for youth. These SDFS Principles of Effectiveness, in conjunction with existing statutory and regulatory provisions, will ensure that State and local educational agencies, Governors' offices, and community-based organizations plan and implement effective drug and violence prevention programs.

On July 16, 1997, the Secretary published the draft SDFS Principles of Effectiveness in a Notice of Request for Public Comment in the **Federal Register** (62 FR 38072). In response to comments received, the Secretary made minor modifications, as noted in the following section—Analysis of Comments and Changes—of this notice of final Principles.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the proposed SDFS Principles of Effectiveness, the Department received letters from 19 commenters. These included State and local educational agencies, other State agencies, non-profit organizations, and individuals. An analysis of the comments follows. Comments are grouped according to each of the four SDFS Principles of Effectiveness; a section on general comments is also included. Minor editorial changes—and comments recommending changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Principle 1—A grant recipient shall base its program on a thorough assessment of objective data about the drug and violence problems in the schools and communities served.

Comments: Several commenters expressed concerns about difficulties associated with collecting assessment data. One difficulty mentioned included the provisions of the Protection of Pupil Rights Amendment (PPRA), which require parental permission before administering a student survey regarding the use of alcohol, tobacco, or other drugs. Another difficulty cited was the problem of developing scientific and rigorous sampling methods.

Discussion: PPRA establishes requirements that must be met when students participate in surveys, analyses, or evaluations that (1) reveal information about several subjects, including illegal, anti-social, self-incriminating, and demeaning behavior; and (2) are conducted using U.S. Department of Education funds. Although meeting the PPRA requirements may add an additional step to the collection of survey data, grantees are encouraged to consider using student surveys as part of their needs assessment efforts.

Changes: None.

Comment: One commenter suggested that the definition of ''objective data'' include information other than ''archival data'' because it would cost some small LEAs more than the SDFSCA allocation they receive to conduct a thorough assessment.

Discussion: Grantees are encouraged to develop the broadest possible needs assessment that will provide a comprehensive picture of drug and violence problems among local youth. Grantees may want to complement objective data with subjective measures, such as perceptions of teachers,

students, or administrators about the youth drug and violence problem. However, grantees should not limit needs assessment to such subjective measures, because they need such hard data as rates of student drug use or numbers of violent incidents to guide program selection and measure fully the effectiveness of their programs.

Changes: None.

Comment: One commenter suggested that LEAs be encouraged to present the results of their needs assessments in terms of prevention needs.

Discussion: Currently, many needs assessments prepared by grantees focus on short-term interventions rather than long-term preventive strategies. For example, grantee needs assessments may focus on increased disciplinary sanctions to prevent current conflicts among middle school students, rather than on introducing conflict resolution strategies to the students in an earlier grade. Although the latter is perhaps more desirable, the former approach is acceptable.

Changes: None.

Principle 2—A grant recipient shall, with the assistance of a local or regional advisory council, which includes community representatives, establish a set of measurable goals and objectives, and design its activities to meet those goals and objectives.

Comment: One commenter suggested that LEAs adopt multi-year objectives with annual milestones to support a prevention perspective in planning strategies.

Discussion: The establishment of multi-year objectives is desirable, and States certainly may encourage their LEAs to adopt them. As their implementation proceeds, local grantees may become increasingly comfortable with designing multi-year objectives for their prevention programming. However, it is important for grantees to have the flexibility to adopt objectives on an annual, as well as multi-year, basis.

Changes: None.

Comments: Several commenters suggested that ''program outcomes'' be defined. One commenter suggested including in the definition improvements in youth knowledge, attitudes, skills, and behaviors related to drug use or violence prevention; another recommended including attitudes and behaviors that research has shown to be precursors to or predictors of drug use.

Discussion: The SDFS Principles of Effectiveness require that program outcomes include information about changed behaviors or attitudes about violence or drug use. Although information about knowledge and skills is an important part of assessing implementation quality, that information is not sufficient to measure program outcomes.

Changes: Based on these comments, the Secretary has modified explanatory language accompanying this principle to clarify the meaning of the term ''program outcomes''.

Comment: One commenter urged the Secretary to recognize that it will take as much as two or three years for many LEAs to adopt outcome-related measurable goals and objectives even with the support of an appropriate measurement instrument.

Discussion: While it may take several years for LEAs to perfect the identification of outcome-related measurable goals and objectives, the Department expects that by July 1, 1998, when the SDFS Principles of Effectiveness take effect, LEAs will be able to develop satisfactory goals and objectives that will help improve accountability for their drug and violence prevention programs. In addition, the Department intends to provide technical assistance and guidance to help grantees develop their goals and objectives.

Changes: None.

Principle 3—A grant recipient shall design and implement its activities based on research or evaluation that provides evidence that the strategies used prevent or reduce drug use, violence, or disruptive behavior.

Comments: Several commenters noted a lack of available research-based programs in drug and violence prevention that meet local needs. One of those commenters stated that the high standard imposed by the SDFS Principles of Effectiveness would create a ''cartel'' or monopoly since very few programs can meet the standard established.

Discussion: While a significant body of research about effective programs that prevent youth drug use and violence exists, even more needs to be done to identify a broader group of programs and practices that respond to varied needs.

Changes: Based on these concerns, the Secretary has modified the explanatory language accompanying this Principle. These modifications broaden the scope of the term ''research-based'' approach to include programs that show promise of being effective in preventing or reducing drug use or violence.

Comments: Several commenters expressed a concern that the SDFS Principles of Effectiveness do not address intervention services, staff development, parent training, and other activities supported with SDFSCA funds by many LEAs.

Discussion: Grantees that choose to implement the kinds of interventions mentioned by the commenters must take care to observe the requirements embodied in the principles. It may be difficult to find research-based programs in the areas mentioned by the commenters that link directly to changes in rates of youth drug use or violence.

Changes: A change has been made to this principle to clarify that the ''research-based'' requirement is limited to programs for youth.

Comment: One commenter requested that the Secretary provide guidance about how LEAs may structure a program that is both comprehensive and research based.

Discussion: The comment identifies two separate requirements. First, by statute, an LEA must use all SDFSCA funds to support a comprehensive drug and violence prevention program. The program may also receive funding from other State and local sources. Second, under the SDFS Principles of Effectiveness, all specific programs for youth funded by the SDFSCA must be research based. The Secretary believes that these two requirements are consistent and compatible, and the Department will provide guidance on how local programs may be structured to meet both requirements.

Changes: None.

Comment: One commenter noted that effective approaches to preventing youth drug use and violence may not always be able to show results for a wide variety of reasons, including missed lessons, inconsistent application, and insufficient time given to the program.

Discussion: Research-based programs that have demonstrated success in reducing drug use and violence are dependent upon strong, consistent implementation with sufficient time provided. The implementation problems cited in the comment would undermine any program, research-based or otherwise, and limit its ability to produce results.

Changes: None.

Comment: One commenter expressed concern that implementation of the SDFS Principles of Effectiveness may force rural LEAs to replace ''old favorite'' programs that they feel have been working for them with prevention programs that have been proven to work in other socio-economic areas—such as high-population urban LEAs—but may not be appropriate to their needs.

Discussion: The Department plans to provide technical assistance to help

LEAs obtain information about effective, research-based programs appropriate for an LEA's demographics. The purpose of SDFS Principles of Effectiveness is to ensure that funds available to grantees under the SDFSCA are used in the most effective way. This allows LEAs to continue ''old favorite'' programs if they are effective or show promise of effectiveness.

Changes: None.

Comment: One commenter expressed concern about being required to implement a research-based program with fidelity, preferring to take the best components from many programs without duplicating any one program exactly.

Discussion: Replication with fidelity is crucial to implementing a research-based program and producing the desired outcomes. If an LEA takes the best elements from many programs without replicating one program with fidelity, the resulting mix of activities is not a research-based program that has been proven to be effective. Grantees are cautioned not to assume that components of research-based programs can be extracted and implemented, alone or in combination, to produce effective results.

Changes: None.

Comment: One commenter suggested that the SDFS Principles of Effectiveness should ensure that the program to be implemented is applicable or transferable to the cultural or other characteristics of the target population.

Discussion: A grantee is not prohibited from making minor modifications in a research-based program, but should ensure modifications to address cultural or other characteristics of the target population will not prevent the grantee from replicating the program in a manner consistent with the original design.

Changes: None.

Principle 4—A grant recipient shall evaluate its program periodically to assess its progress toward achieving its goals and objectives and use its evaluation results to refine, improve, and strengthen its program and to refine its goals and objectives as appropriate.

Comment: One commenter suggested that every school system not be required to conduct an evaluation of its prevention programs, and rather that the Department concentrate on seeking separate funding for research that supports primary prevention through the re-enforcement of protective factors.

Discussion: The SDFS Principles of Effectiveness do not require a recipient that replicates with fidelity a research-based program to pursue an outcomes-based evaluations of this prevention program.

Changes: None.

Comment: One commenter recommended inclusion of ''fidelity evaluation language'' in the principle concerning evaluation.

Discussion: Grantees cannot hope to reproduce the results of an effective, research-based drug or violence prevention program unless that program is replicated with fidelity.

Changes: Based on this comment, the Secretary has modified the explanatory language accompanying this principle to require assessment of fidelity of replication.

Comments: Several commenters raised a concern about the difficulties—including the establishment of a control group—associated with collecting data to evaluate an intervention designed to prevent youth drug use and violence.

Discussion: Grantees need not evaluate for behavioral or attitudinal outcomes if they select and implement with fidelity a research-based prevention program that has already demonstrated through rigorous evaluation that it has reduced youth drug use or violence or changed attitudes that have been demonstrated to be precursors to or predictors of drug use or violence. If grantees wish to select a program that shows promise of effectiveness, those grantees must conduct an evaluation of outcomes in terms of youth behavior and attitudes. While a control group design would be excellent from a technical point of view, such a design can be complicated and expensive. There are other less rigorous but still valid options. The Department intends to offer technical assistance on evaluation.

Changes: None.

General Comments on SDFS Principles of Effectiveness

Comments: Two commenters indicated that it would be unfair to expect one organization, especially a school district, to be responsible for outcomes of reducing and preventing drug use and violence.

Discussion: A school district should not be held solely responsible for producing outcomes of reducing and preventing drug use and violence. However, the SDFS Principles of Effectiveness will help schools focus their efforts on programs that are likely to make the biggest contribution to community-wide efforts to reduce youth drug use and violence and to set goals for changed student behaviors. It is hoped that the school and community will work together in developing, implementing, and evaluating these prevention efforts and will take appropriate responsibility for efforts to ensure their success.

Changes: None.

Comments: A number of comments concerned the extra burden and costs imposed by the SDFS Principles of Effectiveness at both the SEA and LEA levels. These commenters mentioned such factors as, at the SEA level, the need for a more extensive review process for LEA applications and, at the LEA level, the possibility of an insufficient allocation of funds or availability of staff resources to cover the costs associated with implementing the SDFS Principles of Effectiveness. One commenter suggested that SDFS should fund an coordinator for each LEA; another expressed a concern that the SDFS Principles of Effectiveness will overshadow the Improving America's Schools Act's focus on increased flexibility.

Discussion: No additional burden is imposed by the SDFS Principles of Effectiveness. A major theme of the Improving America's Schools Act was an increase in flexibility in exchange for enhanced program accountability in order to make the best possible use of scarce resources. The commenter has focused on increased flexibility without sufficient regard for the need for accountability. The SDFS Principles of Effectiveness are designed to assist grantees in meeting their obligations for accountability that are implicit in the statutory framework provided in the SDFSCA by encouraging recipients to implement programs that are most likely to be effective.

Changes: None.

Comments: One commenter questioned how the SDFS Principles of Effectiveness would help to integrate SDFS efforts with those of other Federal programs.

Discussion: The SDFS Principles of Effectiveness apply to the SDFSCA SEA/LEA and Governor's Programs and the Program for Indian Youth, and impose no new requirements that would hinder efforts to integrate SDFSCA efforts with those of other Federal programs.

Changes: None.

Comment: One commenter recommended that grantees be encouraged to foster meaningful involvement by young people in the design, governance, and implementation of projects designed to prevent youth drug use and violence.

Discussion: While the SDFS Principles of Effectiveness do not explicitly require the involvement of young people in the design, governance,

and implementation of projects designed to prevent youth drug use and violence, the Secretary encourages recipients of SDFS funds to look for opportunities to involve youth in prevention programs in meaningful ways.

Changes: None.

Comment: One commenter suggested that the SDFS Principles of Effectiveness more strongly emphasize the need for close coordination between school-and community-based prevention programs.

Discussion: Several of the SDFS Principles of Effectiveness address the issue of coordination and collaboration between schools and their communities, and the SDFSCA also includes provisions that require such coordination.

Changes: None.

Comment: One commenter suggested that the SDFS Principles of Effectiveness be reviewed to ensure that terms (such as program, program activities, strategies, and approaches) be defined in order to reduce confusion and make the language more precise.

Discussion: The draft SDFS Principles of Effectiveness have been reviewed to ensure that terms are used consistently.

Changes: Modifications have been made in the principles and explanatory language that make the Principles more precise.

Comment: One commenter requested that the Department clarify that the SDFS Principles of Effectiveness are not standards, and that the Secretary change the title to Principles of Program Effectiveness.

Discussion: The SDFS Principles of Effectiveness do not attempt to provide detailed standards for the content or structure of individual prevention programs, but rather, create a framework to support the selection and implementation of the best possible youth drug and violence prevention programs. While standards for content and structure of prevention programs are implied by the third principle (requiring that programs be research based), adding the word ''Program'' to the current title would not serve to clarify that the principles are not standards.

Changes: None.

SDFS Principles of Effectiveness

Having safe and drug-free schools is one of our Nation's highest priorities. To ensure that recipients of Title IV funds use those funds in ways that preserve State and local flexibility but are most likely to reduce drug use and violence among youth, a recipient shall coordinate its SDFSCA funded programs with other available prevention efforts to maximize the impact of all the drug and violence prevention programs and resources available to its State, school district, or community, and shall—

- *Base its programs on a thorough assessment of objective data about the drug and violence problems in the schools and communities served.* Each SDFSCA grant recipient shall conduct a thorough assessment of the nature and extent of youth drug use and violence problems. Grantees are encouraged to build on existing data collection efforts and examine available objective data from a variety of sources, including law enforcement and public health officials. Grantees are encouraged to assess the needs of all segments of the youth population. While information about the availability of relevant services in the community and schools is an important part of any needs assessment, and while grantees may wish to include data on adult drug use and violence problems, grantees shall, at a minimum, include in the needs assessment data on youth drug use and violence;
- *With the assistance of a local or regional advisory council where required by the SDFSCA, establish a set of measurable goals and objectives and design its programs to meet those goals and objectives.* Sections 4112 and 4115 of the SDFSCA require that grantees develop measurable goals and objectives for their programs. Grantees shall develop goals and objectives that focus on behavioral or attitudinal program outcomes, as well as on program implementation (sometimes called ''process data''). While measures of implementation (such as the hours of instruction provided or number of teachers trained) are important, they are not sufficient to measure program outcomes. Grantees shall develop goals and objectives that permit them to determine the extent to which programs are effective in reducing or preventing drug use, violence, or disruptive behavior among youth;
- *Design and implement its programs for youth based on research or evaluation that provides evidence that the programs used prevent or reduce drug use, violence, or disruptive behavior among youth.* In designing and improving its youth programs, a grant recipient shall taking into consideration its needs assessment and measurable goals and objectives, select and implement programs for youth that have demonstrated effectiveness or promise of effectiveness, in preventing or reducing drug use, violence, or disruptive behavior, or other behaviors or attitudes demonstrated to be precursors to or predictors of drug use or violence. While the Secretary recognizes the importance of flexibility in addressing State and local needs, the Secretary believes that the implementation of research-based programs will significantly enhance the effectiveness of programs supported with SDFSCA funds. In selecting effective programs most responsive to their needs, grantees are encouraged to review the breadth of available research and evaluation literature, and to replicate these programs in a manner consistent with their original design; and
- *Evaluate its programs periodically to assess its progress toward achieving its goals and objectives, and use its evaluation results to refine, improve, and strengthen its program, and to refine its goals and objectives as appropriate.* Grant recipients shall assess their programs and use the information about program outcomes and fidelity of replication to re-evaluate existing program efforts. The Secretary recognizes that prevention programs may have a long implementation phase, may have long-term goals, and may include some objectives that are broadly focused. However, grantees shall not continue to use SDFSCA funds to implement programs that cannot demonstrate positive outcomes in terms of reducing or preventing drug use, violence, or disruptive behavior among youth, or other behaviors or attitudes demonstrated to be precursors to or predictors of drug use or violence. Grantees shall use their assessment results to determine whether programs need to be strengthened or improved, and whether program goals and objectives are reasonable or have already been met and should be revised. Consistent with Sections 4112 and 4115 of the SDFSCA, grant recipients shall report to the public on progress toward attaining measurable goals and objectives for drug and violence prevention.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Number 86.186, Safe and Drug-Free Schools and Communities Act State Grants Program)

Program Authority: 20 U.S.C. 7111–7116.

Dated: May 27, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–14372 Filed 5–29–98; 8:45 am]

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June 1, 1998

Part XV

Environmental Protection Agency

40 CFR Part 745

Lead; Requirements for Hazard Education Before Renovation of Target Housing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62131; FRL–5751–7]

RIN 2070–AC65

Lead; Requirements for Hazard Education Before Renovation of Target Housing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule requires certain persons who perform renovations of target housing (as defined under 40 CFR 745.103) for compensation to provide a lead hazard information pamphlet to owners and occupants of such housing prior to commencing the renovation, as stipulated by section 406(b) of the Toxic Substances Control Act. In addition, this rule requires notification on the nature of the renovation activities in certain circumstances involving multi-family housing. This rule ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing. In addition to providing general information on the health hazards associated with exposure to lead, the lead hazard information pamphlet advises owners and occupants to take appropriate precautions to avoid exposure to lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations. The Agency believes that the distribution of the pamphlet will help to reduce the exposures which cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead. This rule was proposed in the **Federal Register** of March 9, 1994.

DATES: The requirements in this final rule shall take effect on June 1, 1999. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Savings Time on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the final rule (or other documents mentioned as available in this rule), contact the National Lead Information Clearinghouse at 1-800-424-LEAD. For technical information contact: Dayton Eckerson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-1591, e-mail: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Potentially regulated entities under this rule are any person(s) who perform renovations of target housing for compensation. Target housing is defined (see 40 CFR 745.103) as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling pursuant to 40 CFR 745.103. Regulated categories and entities include:

Category	Examples of Regulated Entities
Renovators	• General Building Contractors/Operative Builders [Renovation firms, Individual Contractors, etc.] • Special Trade Contractors [Carpenters, Painters, Drywall workers and lathers, ''Home Improvement'' Contractors, etc.]
Multi-family Housing	Property Management Firms
Owners/ Managers	Some Landlords

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the applicability provisions in § 745.82 of the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. Authority

This final rule is issued under the authority of section 406(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2686(b). In 1992, TSCA was amended by section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 to add Title IV, entitled Lead Exposure Reduction. The Residential Lead-Based Paint Hazard Reduction Act is also referred to as Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550.

III. Background

A. Legislative and Statutory Background

Congress passed Title X to address the need to control exposure to lead-based paint hazards. Title X establishes the infrastructure and standards necessary to reduce lead-based paint hazards in housing. Congress recognized that lead poisoning is a particular threat to children under age 6, and emphasized the needs of this vulnerable population within the various sections of Title X. Section 1021 of Title X amends TSCA (15 U.S.C. 2601, *et seq.*) by adding a Title IV, entitled ''Lead Exposure Reduction.''

This rule is issued under the authority of section 406(b) of Title IV of TSCA, and is intended to provide information to owners and occupants of target housing that will allow these individuals to avoid exposure to lead-contaminated dust and lead-based paint debris which are sometimes generated during renovations of housing with lead-based paint. Since children under the age of 6 are especially susceptible to the hazards of lead, those owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) requires EPA to promulgate regulations requiring certain persons who perform renovations of target housing for compensation to provide a lead hazard information pamphlet (developed under section 406(a) of TSCA) to the owner and occupant of such housing prior to commencing the renovation. Target housing is defined in section 401(17) of TSCA, 15 U.S.C. 2681. Those who fail to provide the pamphlet as required may be subject to both civil and criminal sanctions under section 16 of TSCA.

This regulation represents one piece of a broad range of interrelated lead exposure reduction activities mandated under Title X. Many of these activities supported and affected the development of the section 406(b) regulations. Below is a discussion of several related provisions of Title X which provide the context for many of the decisions made during the development of this rule.

The provision most closely tied to section 406(b) is section 406(a) of TSCA. Section 406(a) directs EPA to develop and publish, after notice and comment, an information pamphlet on lead and the hazards of exposure to lead-based paint in the home. The Consumer Product Safety Commission (CPSC) joined EPA in co-sponsoring the pamphlet's development in consultation with the Department of Housing and Urban Development (HUD) and the Centers for Disease Control and

Prevention (CDC). EPA issued a draft of the pamphlet for public review on March 9, 1994 (59 FR 11119) (FRL-4642-7). After addressing comments received from the public and other Federal Agencies, EPA announced the final pamphlet's availability in the **Federal Register** of August 1, 1995 (60 FR 39167) (FRL-4966-6).

In addition to outlining the health effects and symptoms of lead exposure, section 406(a) requires that this pamphlet: Contain information on the potential hazards of renovating dwellings containing lead-based paint; recommend that an inspection or risk assessment for lead-based paint be performed before beginning renovations in target housing; suggest precautionary measures for protecting occupants during renovations in homes containing lead-based paint; and identify Federal, State, and local sources of information on lead and lead-based paint.

Two sections of Title X also require the dissemination of the lead hazard information pamphlet developed pursuant to section 406(a) of TSCA. First, section 1018 of Title X requires EPA and HUD to promulgate joint regulations for disclosure of certain information concerning lead-based paint and lead-based paint hazards by persons offering to sell or lease target housing. The section 1018 regulations include the requirement that the sellers and lessors provide the lead hazard information pamphlet to prospective purchasers or lessees. EPA and HUD issued the final regulations implementing section 1018 in the **Federal Register** of March 6, 1996 (61 FR 9064) (FRL–5347–9).

Second, section 1012 amends section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) to require that the lead hazard information pamphlet be provided to purchasers and tenants of housing receiving assistance under a program administered by the Secretary of HUD, or otherwise receiving more than $5,000 in project-based assistance under a Federal housing program. HUD issued the proposed section 1012 rule on June 7, 1996 (61 FR 29170) (FRL-3482-P-01).

Under section 403 of TSCA, EPA is charged with refining the general definitions of ''lead-based paint hazards,'' ''lead-contaminated dust,'' and ''lead-contaminated soil'' which are listed in section 401 of TSCA. On September 11, 1995 (60 FR 47248) (FRL-4969-6), EPA issued an interim guidance document for risk assessors and managers to aid in the identification and prioritization for control of lead hazards until the final section 403 definitions are issued. EPA is currently in the process of developing the section 403 definitions.

EPA has developed this rule to function independently of the lead hazard definitions to be developed under section 403. Under this final rule, EPA has eliminated the linkage of the definition of ''renovation'' to whether or not lead-based paint hazards are expected to occur as a result of the renovation activity. Instead, the definition of ''renovation'' has been simplified to focus on activities that disturb painted surfaces in target housing. It is discussed further in Unit V.D. of this preamble. Therefore, this rule under section 406(b) would require renovators to perform pre-renovation notification for all renovation activities performed for compensation in target housing, unless specifically exempted by § 745.82 of the regulatory text.

Section 402(a) of TSCA directs EPA (in consultation with HUD, the Department of Labor, and the Department of Health and Human Services (HHS)) to promulgate regulations on accreditation of training programs and the certification of individuals and contractors engaging in lead-based paint activities. Section 402(a) also requires that EPA, in consultation with the aforementioned agencies, develop standards for the performance of lead-based paint activities (including lead inspections and risk assessments). EPA issued the proposed section 402 rule on September 2, 1994 (59 FR 45872) (FRL–4633–9), and the final rule on August 29, 1996 (61 FR 45778) (FRL–5389–9).

Section 402(c)(1) of TSCA directs EPA to issue guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead when performed in target housing, public buildings constructed before 1978, and commercial buildings. EPA released its final guidelines for renovation and remodeling, entitled *Reducing Lead Hazards When Remodeling Your Home in April 1994* (revised in September 1997), and has made the guidelines available through the National Lead Information Clearinghouse (NLIC).

Section 402(c)(2) of TSCA directs EPA to conduct a study of the lead hazards generated during different types of renovation and remodeling activities. Section 402(c)(3) of TSCA directs EPA to use the results of the renovation study, along with other information, to determine which renovation and remodeling activities should be regulated as lead-based paint activities, based on potential hazards generated during their performance.

Section 404 of TSCA directs EPA to develop an application process for those States (which EPA has interpreted to include Tribes) that seek to administer and enforce the standards, regulations, and requirements established under sections 402 and 406. Section 404 also directs EPA to develop and issue a Model State Program for use by States and Tribes pursuing authorization under these provisions. EPA proposed the authorization process and the Model State Program for States and Tribes, in conjunction with the proposed rule for section 402, in the September 2, 1994 **Federal Register**. The section 404 rule was also published on August 29, 1996, in final form.

Pursuant to section 1015 of Title X, HUD established a Task Force on Lead-Based Paint Hazard Reduction and Financing made up of private and public organizations. The Task Force, representing the spectrum of interests affected by the lead-based paint issue, released final recommendations on evaluating and reducing lead-based paint hazards in private housing on July 11, 1995, in a report entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing* (Copies of this report can be acquired by contacting the NLIC at 1-800-424-LEAD). These recommendations have been considered in the development of this final rule.

Pursuant to section 1017 of Title X, HUD, in cooperation with EPA and other Federal agencies, has revised its guidelines for lead-based paint hazard evaluation and reduction activities. The revised document, entitled *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, was released to the public in June 1995. A copy of the guidelines is included in the public record for this rule.

B. Lead Poisoning in the United States

Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure can be especially damaging to children, fetuses, and women of childbearing age. As recent studies have identified previously unrecognized effects, there has been increasing concern about blood-lead levels once thought to be safe. Since 1978, CDC has lowered the blood-lead level of concern from 60 µg/dL (micrograms/deciliter) to 10 µg/dL (Ref. 2).

Lead poisoning has been called ''the silent disease'' because its effects may occur gradually and imperceptibly, often showing no obvious symtoms. Chronic blood-lead levels as low as 10 µg/dl have been associated with learning disabilities, growth

impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system. In large doses, lead exposure can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also alter fetal development and cause miscarriages.

In 1991, the Secretary of HHS characterized lead poisoning as the ''number one environmental threat to the health of children in the United States'' (Ref. 2). The percentage of children under 6 years of age with elevated blood-lead levels has declined over the last 20 years. Recent results from the Third National Health and Nutrition Examination Survey (NHANES III, Phase 2) indicate that the average child's blood-lead level has declined from 12.8 µg/dL to 2.7 µg/dL (Ref. 9a). However, about 800,000 children under the age of 6 (4.2% of children at that age) still had blood-lead levels above CDC's 10 µg/dL level of concern (Refs. 9 and 9b).

C. Hazards From Past Uses of Lead-Based Paint

Efforts to reduce exposure to lead from sources like gasoline and food cans have played a large role in the past reductions of blood-lead levels in the United States. Despite these successes, a significant human health hazard remains due to improperly managed lead-based paint. From the turn of the century through the 1940's, paint manufacturers used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 1960's, as largely lead-free latex paints became more popular. Although CPSC banned lead-based paints from residential use in 1978 (currently, paints may not have greater than 0.06% lead by weight (Ref. 3)), EPA and HUD estimate that 83% of the privately-owned housing units built in the United States before 1980 contain some lead-based paint. By these estimations, approximately 64 million homes contain lead-based paint which may pose a hazard to the occupants (Ref. 4).

Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create an imperceptible film over surfaces in a house. In some cases, cleaning and renovation activities can increase the threat of lead-based paint exposure by dispersing fine lead dust particles into the air and over accessible household surfaces. If dust is managed improperly, both adults and children could receive hazardous exposures to lead by inhaling the fine dust or by ingesting paint-dust during hand-to-mouth activities. Children under age 6 are especially susceptible to lead poisoning (Ref. 2).

IV. Summary of Proposed Rule and Public Comments

On March 9, 1994 (59 FR 11108), EPA issued proposed regulations that would require renovators to provide a lead hazard information pamphlet to owners and occupants of target housing before beginning renovations, and notification on the nature of the renovation activities in certain circumstances involving multi-family housing. The housing that EPA proposed to cover by the regulation included all housing built before 1978 with the exception of 0-bedroom dwellings and housing for the elderly and persons with disabilities wherein no child under 6 years of age resides or is expected to reside. EPA's proposal provided flexibility for renovations conducted in common areas (like stairways, lobbies, and hallways) of buildings. EPA requested comments concerning the proposed rule, specifically on the definition of ''renovation'' and identifying renovation activities that should be covered under the rule.

By the close of the comment period, May 9, 1994, EPA had received 30 comments. The largest number of responses was received from public health and environmental protection departments (27% of the responses) and organizations involved with building and development (27% of the responses). Other commenters included representatives from advocacy groups (23% of the responses) and the real estate industry (10% of the responses). Approximately 10% of the responses came from a combination of Federal agencies, State agencies, and concerned private citizens. A summary of all comments received, and EPA's responses, may be found in the Response to Comments document which is available for public review in the TSCA Docket for this rulemaking (see Unit VIII. of this preamble). The paragraphs that follow briefly describe some of the key concerns that were raised by the commenters.

The majority of the comments received concerned the term ''renovation.'' Commenters requested clarification so as to differentiate between work that would be considered renovation and that categorized as repair and maintenance. Concerns were expressed regarding flexibility in addressing emergency situations where the need for a rapid response conflicted with the ability to provide the pamphlet to the owner and occupant of the target housing to be renovated. Over half of the comments concerning renovation specifically addressed the proposed alternative approaches for defining renovations: modeling the definition after the asbestos program, listing specific activities of concern, using the Occupational Safety and Health Administration (OSHA) list of construction activities, identifying specific job classifications, identifying specific cost ranges, or specifying the size of the home improvement activity.

Numerous comments concerned other definitions in the proposed rule such as ''person,'' ''lead-based paint hazard,'' and ''target housing.'' Commenters also addressed the proposed rule's applicability to multi-family housing, the actual mechanisms for pamphlet distribution, and the corresponding acknowledgment requirement. A few comments concerned the burden of the rule on the regulated industry, the overall scope of the rule, and its projected cost.

EPA received no comments on the section of the rule establishing a procedure for the submission of confidential business information.

V. Final Rule Provisions

In light of the public's comments, the Agency has striven to ensure that this rule is clear, understandable, flexible, achieves the statutory objective while imposing the minimum burden, and is consistent with other Federal activities. These goals are important to assure quick and widespread implementation of and compliance with the rule.

A. Scope and Purpose

The scope, purpose, and applicability sections of the rule have been modified to more clearly reflect who is responsible for providing lead hazard information, who is to receive this information, the nature of that information, and the rule's authority.

B. Date of the Rule

EPA received a comment suggesting that the effective date of the rule be immediate. However, EPA believes that the rule's effective implementation requires an informed and prepared general public and regulated community. EPA has concluded that a phase-in period of 1 year is necessary to provide adequate time for parties to become familiar with the rule requirements and to set up procedures for compliance.

C. Applicability

EPA requested comments on six approaches being considered for describing the activities encompassed by the term ''renovation.'' Most of the numerous comments received on this topic requested further clarification and additional guidance in determining which types of home improvement, maintenance, and repair activities would be classified as renovations for purposes of the rule. Commenters requested more specific criteria to facilitate differentiation between a renovation activity and routine maintenance or repair. One commenter suggested that modeling the definition of regulated activities under this rule after EPA's Asbestos Program (which used both the Standard Industrial Classification (SIC) codes and the OSHA list of construction tasks) would result in the inclusion of too broad a range of activities.

Based on the responses received from commenters, EPA determined that both the SIC codes and the OSHA list of construction tasks lacked the specificity necessary to aid EPA in developing its list of regulated renovation activities. The OSHA list was developed to address a far broader range of construction tasks than should be regulated under section 406(b); likewise, using SIC codes as a way of creating worker categories was determined to be inadequate in capturing the appropriate spectrum of activities.

In general, commenters also suggested that neither cost nor the overall size of the work was a valid criterion for determining exposure to lead-based paint hazards and indicating risk. EPA agrees, and has also determined that a *de minimis* cost level would be difficult to interpret, especially when compensation was provided in non-monetary terms or when such activities were part of a larger service or maintenance agreement.

After careful review of the comments on these proposed approaches, EPA has decided to define renovation by focusing on the potential disruption of paint (the key source of exposure that may occur during renovation). One commenter voiced specific concerns that the proposed approach to defining renovation was too broad and suggested that EPA focus on activities that are likely to generate a risk of lead exposure. In response to that and other comments, EPA modified the definition to include all renovation activities except those which do not disturb painted surfaces.

EPA recognizes that it is necessary to distinguish between renovation activities and those minor activities that are required during the maintenance of a residence. EPA believes that requiring maintenance workers to distribute hazard information during the implementation of regular tasks would pose an undue burden on owners and their staffs. A 2 square foot per component *de minimis* level has been adopted from the June 1995 *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* as a means of differentiating between large-scale renovation activity and minor maintenance activities which pose a lower likelihood of creating a lead hazard. This same *de minimis* level has also been used by the National Institute of Building Sciences (NIBS) in its draft *Regulatory Models for Lead Poisoning Prevention* report. This draft report is the result of a consensus process involving both public (e.g., Federal and State governments) and private (e.g., landlord associations, builders) sectors. EPA believes that this revised definition provides a common sense approach which is consistent with standard industry practices (as captured in the aforementioned guidelines and the *de minimis* level's use in the NIBS report), along with clear guidance and direction to the regulated community, as to which renovation activities will trigger the requirements of this rule.

EPA recognizes that emergency situations occur which require renovation activities to be conducted within a time frame precluding advance notification. Such emergencies would typically involve structural or equipment failure that could lead to endangerment to public health or substantial property damage if not repaired immediately. To address these situations, EPA has included a category of *Emergency renovation operations* (see § 745.83 of the regulatory text) that are exempted from the requirements of this rule.

In addition, EPA has exempted renovations performed (in target housing) on components that have been determined, by an inspector (certified pursuant to either Federal regulations at 40 CFR 745.226 or an EPA-authorized State certification program), to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight (see § 745.82(b)(3) of the regulatory text).

D. Definitions

EPA received many comments that suggested the definitions used for this rule retain full consistency with existing State, local, and industry practice. Below is a brief discussion of definitions that apply to this rule. While these definitions were included in the proposed rule, most have since been promulgated as part of related rulemakings under Title X and Title IV of TSCA. Only the definitions of ''emergency renovation operations,'' ''pamphlet,'' ''person,'' ''renovation,'' and ''renovator'' are promulgated in this rule. However, all definitions that were proposed for use in this rule are discussed below.

Common area means a portion of a building generally accessible to all residents/users, including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

This definition is unchanged from the proposed rule and can be found in 40 CFR 745.103. Although EPA received a comment suggesting to limit the definition, EPA has decided to retain the definition of common area also being used in other regulations mandated by Title X and Title IV of TSCA. These other regulations require a broader interpretation of the term (e.g., the inclusion of residence exteriors within the term's scope), and for consistency, EPA elected to adopt a single definition for all the rules. EPA has concluded that this discussion of the term's broad interpretation should sufficiently address commenter requests for an explicit inclusion of renovation work being performed upon a residence's exterior surfaces and surfaces in proximity to the residence within the rule's notification requirements.

However, because today's rule affects only residential housing, applicability of the definition for section 406(b) purposes is limited to common areas in residential housing.

Emergency renovation operations means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

In the March 9, 1994 proposal, EPA specifically requested comment on whether the rule should include provisions for emergency renovations and other situations where unusual circumstances necessitated immediate action. EPA received a comment indicating that this definition was too broad. The commenter argued that only catastrophic situations such as fire, explosion, or imminent structural collapse required a response so prompt

as to preclude notification and that this exemption would be subject to abuse. EPA does not believe that emergency renovation activities are defined only by life-threatening situations. To ensure that the regulation does not unduly impair a property owner or manager's ability to react quickly to situations that present a sudden hazard to public safety or a sudden threat of significant property damage, EPA has added a specific exemption for emergency renovations and has provided the above definition. EPA has based its definition on the language used within EPA's National Emission Standards for Hazardous Air Pollutants (Asbestos) (40 CFR part 61, subpart M).

Multi-family housing means a housing property consisting of more than four dwelling units.

This definition is unchanged from the proposed rule. EPA received a comment suggesting that either this definition be changed to accommodate housing consisting of two, three, and four dwelling units, or that a definition covering that number of units be created. EPA may propose and seek comment on such a modification in the near future.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner is considered the mortgagor.

EPA received a comment on the proposed definition's inclusion of third party managers or representatives. The commenter asserted that since management agreements between owners and third parties clearly establish that the responsibility for all property decisions reside with the owners, owners should be clearly differentiated from third party fee property managers. EPA agrees with the commenter. For the sake of consistency with section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, EPA has revised the definition (see 40 CFR 745.103) of owner to clarify its applicability to trusts and to distinguish between owners (mortgagor) and mortgage lenders (mortgagees). The definition was also revised by removing the representative portion.

Pamphlet means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

EPA added this definition to specify and identify either the lead hazard information pamphlet developed under section 406(a) of TSCA or any EPA-approved State pamphlet.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

EPA received several comments on this definition regarding whether the sovereign immunity of the United States is waived in relation to this rule. Congress provided such a waiver in section 408 of TSCA. EPA modified this definition so that it is consistent with the definition promulgated in § 745.223.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

EPA requested and received many comments on the proposed definition. EPA agrees with the commenters who stated that the proposed definition did not provide adequate guidance in defining a regulated transaction. EPA has, therefore, revised the definition to remove the unclear references to hazard levels involved in the activities, believing that it is not appropriate to expect each potential renovator to determine what is and what is not a ''hazardous'' activity. Instead, EPA has developed a definition that focuses on disturbance of paint, the key source of exposure that may occur during renovations.

Further, EPA has added an applicability section (§ 745.82) that lists activities that are excluded. This section excludes emergency renovations and renovation activities that pose little likelihood of creating lead hazards. The specifically excluded activities are: minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component; emergency renovation operations; and renovations in target housing in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State certification program) that lead-based paint is not present in the area affected by the renovation, where the renovator has obtained a copy of the determination.

EPA believes that the definition, coupled with the list of excluded activities in the applicability section, provides the regulated community with a clearer direction than that provided in the proposed rule. EPA also thinks that the definition and applicability sections enable this rule to cover all potentially hazardous renovation activities and exclude those that pose little likelihood of disturbing significant amounts of painted surface.

Renovator means any person who performs for compensation a renovation.

This definition was changed from the proposed rule by deleting the phrase ''of target housing or public buildings'' which appeared after the term ''renovation.'' This change makes the term ''renovator'' consistent with the term ''renovation,'' which is not limited to particular types of structures. Further, because future rules issued pursuant to section 402(c) of TSCA may apply, regulations promulgated under section 402(a) to renovation and remodeling in target housing, public buildings constructed before 1978, and commercial buildings, EPA believes the terms ''renovation'' and ''renovator'' should be defined in such a way that they can apply to all such structures. This change does not affect the scope or applicability of the rule, because the applicability provision at § 745.82 of the rule will limit the rule to renovations of target housing performed for compensation. Finally, as discussed in the proposal, although EPA considers that maintenance staff retained by the owners of buildings may be considered renovators for the purpose of this rule, an exclusion for routine maintenance and operations activities is provided in the applicability section of the rule.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the

home or residence of one or more persons.

This definition, drawn from the statute, is unchanged from the proposal (see 40 CFR 745.103).

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

This definition was provided by the statute and is unchanged (see 40 CFR 745.103).

0-Bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

This definition, which can be found in 40 CFR 745.103, is drawn from the HUD 1994 housing survey, as a standard definition for 0-bedroom housing. It was added to this rule to provide both clarification of the term as it is used in the definition of target housing and consistency with the other regulations under Title X and TSCA.

E. Lead Hazard Information Pamphlet

In the August 1, 1995 **Federal Register**, EPA issued a Notice of Availability for the lead hazard information pamphlet entitled *Protect Your Family From Lead In Your Home*. EPA and HUD will distribute this pamphlet under several Congressional directives that will be implemented in separate rulemaking initiatives, including this rule.

The pamphlet has been made available to the general public as well as the regulated community. Single copies of the pamphlet are available in both English and Spanish from the NLIC, by calling 1-800-424-LEAD (TDD 1-800-526-5456). Multiple copies are available through the Government Printing Office (GPO), and may be ordered by calling the GPO Order Desk at (202) 512-1800, faxing (202) 512-2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Request the publication by title, *Protect Your Family From Lead in Your Home*, and/or GPO stock #055-000-00507-9.

The pamphlet may be reproduced without permission from EPA or CPSC. EPA is encouraging persons to make their own reproductions of the pamphlet. Persons who wish to reprint the pamphlet may obtain negatives or black and white reproducible copy from the NLIC at 1-800-424-LEAD. Any copies reproduced for use in complying with this rule, however, must be copied in full, and may not be revised in any way unless those actions are meant to add or properly reference State or local sources of information. Also, persons wishing to reprint the pamphlet may attach their company name, logo, and contact information on the back cover in the space provided at the bottom of the page.

In addition, EPA has developed a program under section 404 of TSCA in which States and Tribes may apply to EPA for authorization to develop and distribute their own pamphlets for compliance with this rule. That program now allows States and Tribes that have obtained such authorization to substitute the State-developed pamphlet for the Federal version for compliance with this rule. EPA provided preliminary approvals for pamphlet substitutions to the States of California and Massachusetts in August 1996.

This is a change from the proposed section 406(b) rulemaking. The section 406(b) proposal included language preventing State and Tribal modification of the pamphlet. EPA has since concluded that States and Tribes should be able to craft their own pamphlets so long as they include a number of basic elements.

In anticipation of this change, EPA included specific language in the preamble to the section 404 rule (under Unit I.X.) that was published August 29, 1996 (see FR 45802, 45803). That unit describes the minimum elements that must be present in a State or Tribal program in order for that State or Tribe to receive authorization from EPA (see 40 CFR 745.326). The unit also acknowledges the need for flexibility in the amount of detail and supplemental information to be included in a pamphlet for State or Tribal use. EPA has concluded that this flexibility is required due to the variety of particular, local informational and communication challenges that States and Tribes may face.

This change makes the section 406(b) program consistent with the rest of the lead program under Titles IV and X. This change also gives renovators a greater amount of flexibility; now renovators may choose between disseminating the EPA pamphlet or pamphlets crafted pursuant to section 404 (40 CFR 745.326).

EPA received comments concerning the pamphlet emphasizing that both it and the acknowledgment need to be available in languages other than English. As noted above, EPA concurred and has made the pamphlet available in Spanish. However, it was not considered reasonable to require the renovator to provide translations into any language requested by the resident, nor does EPA have the resources to unilaterally develop, print, and distribute the pamphlet in every language represented in the United States. EPA is pursuing the feasibility of obtaining additional translations through public and private partnerships. Several private organizations are in the midst of developing the pamphlet in languages other than Spanish and English. If you have any questions concerning those efforts, consult the parties listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

F. Information Distribution Requirements

1. *Renovations in living units*. EPA's modifications of the proposed information distribution requirements provide the regulated community with flexibility while ensuring appropriate communication with owners and occupants whose living units are undergoing renovations. Commenters expressed concerns about the proposed provision regarding the feasibility of requiring a signed acknowledgment from the ''head of a household,'' noting that it could be extremely difficult to locate or guarantee accurate identification of such an individual. In the final rule, EPA permits any adult occupant of an affected target housing unit to acknowledge receipt of the pamphlet.

A second concern involved using the acknowledgment of the receipt of the pamphlet as an indication of the owner or occupant's awareness of the potential health hazards associated with renovations that disturb lead-based paint. Commenters indicated that a person who has just received a pamphlet would not have had time to read it. He or she could not realistically be expected to attest to any level of comprehension of the potential risks. EPA revised the final rule to focus solely on acknowledging receipt of the pamphlet.

2. *Delivery requirements*. EPA received numerous comments regarding this section. A prevalent comment expressed concern with requiring the renovator to obtain a signed acknowledgment. Commenters suggested scenarios of owners and occupants refusing to sign the acknowledgment or being unavailable during normal business hours, when such deliveries would typically occur. Commenters stated that holding the renovator accountable for such actions beyond his or her control was inappropriate.

After careful consideration, and in keeping with the goal of allowing flexibility where appropriate, the final rule allows the renovator several options for distributing the pamphlet, including personal delivery by the renovator or a designated representative, self-certification for unsuccessful attempted personal deliveries, and the option to mail the pamphlet.

The final rule permits either the renovator or a designated representative (such as a landlord) to deliver the pamphlet and obtain the acknowledgment. However, when using a designated representative, the renovator remains responsible for compliance with this rule. This provides renovators with additional flexibility with regard to delivery, but still ensures that they retain the responsibility for compliance with the rule and maintaining the appropriate records. EPA also recognizes that there may be situations when an adult occupant cannot be reached or simply refuses to sign an acknowledgment. Under these circumstances, the renovators, or their designee, will be allowed to certify in writing that the delivery was attempted, and briefly explain what was done and why a signed and dated acknowledgment could not be obtained. The renovator is nonetheless required to deliver a copy of the pamphlet to the affected housing unit.

Another option allows the renovator to deliver the pamphlet by mail after receiving some receipt or proof of mailing. Of course, the renovator may use more expensive methods of delivery (e.g., certified mail, registered mail), but obtaining a certificate of mailing from the Post Office is the minimum required.

Notwithstanding the renovator's approach, the renovator must either have the proper documentation (i.e., signed and dated acknowledgment, or self-certification) or have purchased and received a certificate of mailing from the Post Office at least 7 days before the commencement of renovation activities.

3. *Content of Acknowledgement Statements*. Commenters provided suggestions as to the specific language of the acknowledgment statements. Several commenters suggested that the statements include detail regarding lead hazards and a reference to the pamphlet, while others suggested that obtaining acknowledgement would be overly burdensome or cause delays in renovation activities. After reviewing the comments, EPA decided to delete specific acknowledgment language from the rule in order to reduce the burden on the regulated community and permit a greater degree of flexibility without compromising the safety of owners and occupants. However, to provide guidance to the regulated community, § 745.88 has been added, offering suggested language for acknowledgment.

4. *Renovations in common areas*. The final rule discusses target housing in terms of dwelling units and common areas (as would be found in multi-family housing). Pre-renovation notification activities for renovations in common areas differ slightly from those in dwelling units. The main difference is that the renovator is not required to distribute the pamphlet and obtain an acknowledgment from the occupants regarding renovations performed in common areas, although the renovator must notify residents of the upcoming renovations and make the pamphlet available upon request, prior to the renovation, at no charge.

Although some commenters suggested that all residents should receive a copy of the pamphlet before any work begins in common areas, EPA does not believe that the creation of a system in which occupants receive a pamphlet every time any kind of work occurs within the common areas of a building is the most efficient method for achieving the informational objectives contemplated by section 406(b). Since renovation activities may occur in various hallways or lobbies of a building on a frequent basis, it could be impractical to require a renovator to provide all occupants with a new pamphlet before the commencement of each renovation, especially in dwellings with large numbers of residential units. Such a requirement would be difficult to implement and enforce, and the impact of the pamphlet would likely decrease with each time it was given. The renovator is required, however, to provide the owner with a copy of the pamphlet and obtain the signed, dated acknowledgment thereof.

Although the renovator is not required to distribute the pamphlet and obtain acknowledgments from each occupant in the building, the renovator must still notify (no more than 60 days prior to the renovation) each unit individually in writing of the renovation work that is to occur, including a description and locations of the activity, a statement that lead-based paint may be disturbed, and the expected starting and ending dates. Further, the renovator must make copies of the pamphlet available upon request and provide information on how to obtain them. The notification process could be accomplished by distributing a letter or flyer containing the required information to each living unit within the dwelling. Notification activities could be performed by the renovator, by the owner of the dwelling or other representative, on behalf of the renovator. Even if the owner or other representative agreed to perform the notification activities, however, the responsibility to assure compliance would still rest with the renovator. In any case, the notification must be received before the work is commenced.

EPA recognizes that in some cases, large renovations could take an extended period of time or cover several different common areas of multi-family housing. In that case, if the initial notification provides accurate information on the scope of renovations planned in the various areas, with an accurate schedule of their performance, then that initial notification would be sufficient to meet the requirements of this rule. If the scope, location, or time frame of the activities change in a way not reflected in the original notification, then the renovator is obligated to provide updated information in an additional notification. This updated information is necessary to ensure that owners and occupants can, if necessary, adequately protect themselves from exposure to lead-based paint.

EPA believes that owners or renovators in the original notification will allow a generous amount of time for the completion of the renovation and define a comprehensive scope of the work to ensure that renotification (pursuant to § 745.85(b)(4)) will not be necessary. Therefore, EPA has chosen not to include the costs of this provision in the Regulatory Impact Analysis (see Unit VII. of this preamble) for this rulemaking. EPA has concluded that these provisions for notifying occupants of common area renovations strike the appropriate balance between public access to information and burden on the regulated community.

G. Recordkeeping Requirements

EPA requested comment on whether the recordkeeping requirements were reasonable, too stringent, or not stringent enough. The comments were mixed and varied. A significant number of commenters argued that the length of the renovation job was a sufficient retention period, and an equally significant number of commenters argued to retain the 3–year recordkeeping requirement of the proposal. Based on a review of the comments provided, EPA will retain the 3–year recordkeeping requirement as proposed.

Thus, renovators are required to retain and, if requested, make available to EPA

or its authorized delegates (i.e., States and Tribes with EPA-approved programs) all records necessary to demonstrate compliance with the requirements of this rule for 3 years following completion of the renovation activities on target housing. These records include any reports certifying that lead-based paint is not present in the housing; the signed, dated acknowledgments of receipt for delivery of the pamphlet; the signed, dated certifications of the inability to obtain an acknowledgment of receipt; the certificate of mailing for delivery of the pamphlet; and the signed, dated acknowledgments and records of notification activities for renovations in common areas.

H. Enforcement and Inspections

EPA received some comment on the enforcement provisions discussed in the statute and the proposed rule. A few commenters expressed concern about EPA's ability to oversee and enforce the requirements of section 406(b), while other commenters sought assurance that the Agency recognized the importance of education and outreach to the regulated community. Since the enforcement and inspection provisions in this rule derive directly from the authorizing statutory language of TSCA, this rule retains the enforcement language largely as proposed. The section number was changed to reflect modified numbering, and the section heading was renamed so that it could more simply indicate that it addressed EPA's enforcement and inspection authority. Below is a discussion of the general enforcement authority provided by TSCA (including Title IV), along with some discussion of the process EPA envisions for the development of a sensible and effective lead enforcement program.

Section 409 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under Title IV of TSCA. Therefore, failure to comply with any provisions of this final rule by regulated entities would be a violation of TSCA. In addition, section 15 of TSCA makes it unlawful for any regulated entity to fail or refuse to permit entry or inspection (of business records in this instance) by EPA or its authorized delegates as required by section 11 of TSCA. Violators may be subject to both civil and criminal sanctions. Under the penalty provision of section 16 of TSCA, any person who violates sections 15 or 409 may be subject to a civil penalty of up to $25,000 per day for each such violation. Knowing or willful violations of any provision of this final rule could lead to the imposition of criminal fines of up to $25,000 per day and imprisonment for up to 1 year for each such violation.

The above-described provisions reflect the overall enforcement authority available to EPA under TSCA. While EPA intends to use the inspection and enforcement tools available to ensure compliance with this final rule, it is also EPA's intent that outreach and compliance assistance be major components of the section 406(b) program so that renovators are aware of the new requirements and their subsequent obligations. EPA also intends to bring clarity and predictability to the enforcement process for section 406(b). EPA is developing a mechanism that achieves a common sense relationship between a particular ''violation'' of section 406(b) and a particular enforcement response. This includes issuing notices of warning (without penalties) as appropriate to let individuals know that they are out of compliance and give them an opportunity to come into compliance, and ensuring that willful and repeated violators are appropriately penalized. However, numerous factors (many of which are mandated by TSCA) are involved in the Agency's determination of a proper enforcement response. EPA is currently developing an ''Enforcement Response Policy'' (ERP) for the requirements of this final rule.

I. Confidential Business Information

EPA received no comments on this section. However, in order for readers to understand what is required for the submission of confidential documents, EPA has included the following two paragraphs to describe those procedures (per 40 CFR part 2, subpart B):

Those who assert a confidentiality claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file.

EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

VI. Authorization of State Programs

Under section 404(a) of TSCA and its implementing regulations, States and Tribes may apply to administer and enforce the standards, regulations, and requirements established under this rule. Section 404(b) states that the Administrator may approve such an application only after finding that the State or Tribal program is at least as protective of human health and the environment as the Federal program established according to the mandate of sections 402 and 406 of TSCA, and that it provides adequate enforcement.

The State or Tribal program must have regulations or procedures that contain the following: (1) Requirements for distribution of an approved lead hazard information pamphlet before renovations performed for compensation in target housing commence; and (2) provisions for the adequate enforcement of the above program.

In providing an approved lead hazard information pamphlet meeting the requirements of section 406(a) of TSCA, the State or Tribe may either require distribution of: (1) The lead hazard information pamphlet developed by EPA, under section 406(a) of TSCA, entitled *Protect Your Family From Lead In Your Home*, or (2) an alternative pamphlet or package of lead hazard information that has been approved by EPA. Any pamphlet or package of information submitted for EPA approval must contain the content and design elements as mandated by section 406(a) of TSCA. The procedures for submitting an application (40 CFR 745.324) were made final in a separate **Federal Register** notice.

VII. Summary of Regulatory Impact Analysis

EPA has prepared a Regulatory Impact Analysis (RIA) which examines the potential costs, benefits, and impacts of these regulations for the disclosure of potential lead-based paint hazards prior to residential renovations. The complete RIA is included as a part of the public record for this rule and is available through the TSCA Docket (see Unit VIII. of this preamble for address).

A. Background and Framework for Analysis

Those parties directly affected by the rule are renovators (which may include property managers), occupants of owner-occupied and rental housing, and owners of rental property. EPA found the required activities which give rise to regulatory burden imposed on the affected parties to fall into four categories for cost estimation purposes:

- Start-up costs, which include learning the rule's requirements and establishing compliance procedures.

• Disclosure activities, which refer to the costs resulting from the actual transfer of information and obtaining of needed acknowledgments.

• Recordkeeping, which results principally from the requirement that signed acknowledgment statements must be retained by the provider of the information.

• Materials, which is linked primarily to the disclosure requirement, as the lead hazard information pamphlet must be purchased or photocopied (acknowledgment statements must also be provided). Costs may also be incurred for filing where a high number of acknowledgment statements are generated (e.g., renovators), though such burden was estimated to be quite modest.

The requirements of section 406(b) of TSCA fall on parties providing renovation services for compensation to owners of ''target housing,'' which is defined to be any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

To estimate the impacts of the rule, data were sought pertaining to the number of affected parties; the frequency with which affected renovation transactions are completed; and the incremental costs, in labor and materials, added to each transaction by the regulations.

B. Profile of Sectors Affected

Four major industry sectors were identified as affected: SIC codes 15 (General Contractors and Operative Builders); 17 (Special Trade Contractors); 651 (Real Estate Operators and Lessors); and 653 (Real Estate Agents and Managers). In total, EPA estimates there to be 482,000 establishments potentially affected by the rule. The greatest portion of this sum is expected to fall within SIC 17, where 199,000 establishments could be subject to the rule's requirements. Ninety-nine thousand establishments were estimated to be potentially affected in SIC 15. Also subject to the rule are as many as 92,000 business establishments falling within each of SICs 651 and 653.

Employment data for these industries were obtained for occupations most likely to be involved in transactions subject to the rule. EPA estimates that 2,272,000 contractor personnel (SICs 15 and 17) and 243,000 property managers (SICs 651 and 653) may be affected.

With regard to transaction volume, EPA found that 12.2 million renovation events in owner-occupied target housing and 6.3 million renovation events in rental target housing that occur each year may be subject to the rule.

C. Estimated Costs to Private Parties and Government

EPA found that due to limitations of the data, the RIA cost estimates could not distinguish the frequency of regulated transactions in target housing from those transactions occurring in housing not subject to the information disclosure rules. While completing the final analysis, EPA also determined that it was not possible to establish how frequently transactions performed in target housing would be excluded from regulatory coverage (e.g., jobs disturbing less than 2 square feet of painted surface). For those reasons, EPA believes that both the proposed and final regulatory impact analyses overstate the impact of this rulemaking.

The first private party cost category, start-up costs, represents about one-third of overall annual compliance costs at $13.2 million. Factors affecting the magnitude of these costs include the number of employees having to familiarize themselves with the regulations, both initially (employees in the existing workforce) and over time (new entrants to the affected sectors); the time required to learn the activities which must be undertaken in order to comply; and the hourly compensation of affected employees.

Disclosure event costs of $57.5 million constitute the greatest portion of overall compliance costs. Factors affecting the magnitude of these costs include the frequencies of regulated events; the time involved in performing required activities, such as providing the owner/tenant with the required information and obtaining the required signatures; and the hourly compensation of all involved parties.

Recordkeeping and materials costs comprise a relatively modest share of overall annual costs at $3.7 million and $7.8 million, respectively. Factors affecting the magnitude of these cost items include the number of affected parties per transaction; the frequency of transactions; the costs of acquiring/duplicating documents, which include the lead hazard information pamphlet and signed acknowledgment statements; and costs to maintain documents. This leads to a total estimated annual cost to private parties of $82.2 million.

To administer the final regulation, EPA estimates government resources totaling between $2.4 million (low estimate) and $4.3 million (high estimate) will be required to conduct a number of activities, including: inspections; violation case management; establishment and maintenance of cooperative agreements; compliance assistance, development of performance measurement criteria; and management. Therefore, the total annual costs for this rule, to private parties and the government, is estimated to be between $84.6 million (low estimate) and $86.5 million (high estimate).

D. Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Renovations on Small Businesses Regulatory Flexibility Analysis

EPA investigated the potential impacts of the rule on small businesses, and has prepared a regulatory flexibility analysis which is included in the RIA. While a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to have significant economic impacts on such establishments. That analysis is summarized separately in Unit X.B. of this preamble.

E. Assessment of Benefits

The market imperfection that the rule is intended to correct is the lack of information available to homeowners and tenants regarding the potential health risks accompanying residential renovations that are related to lead-based paint. Under the rule, general information about risks associated with lead-based paint will be provided through the provision of the pamphlet. The failure of the marketplace to currently provide this information means that owners and occupants may not be able to react appropriately to avoid or prevent such risks.

This rule will generate direct benefits by providing homeowners and tenants information which they value and otherwise can acquire only through their own effort at some cost. Two approaches for estimating the benefits associated with having information are discussed in the Regulatory Impact Analysis (RIA): a contingent valuation study, or a study of the transaction costs to buyers and renters of obtaining similar information. However, an information base and the associated accepted analytic methods are not yet available; thus, the direct benefits of this rule are not quantified. Nevertheless, EPA believes that the information provided in the qualitative analysis presented in the RIA adequately serves to inform and support the Agency's decision to promulgate this rule.

EPA also expects indirect or ''follow-on'' benefits from the rule, as the parties to the renovation transaction comprehend and use the information in

the pamphlet. The regulation does not require that the pamphlet be read or that actions be taken to reduce lead-based paint hazards; thus, the extent to which lead exposure is reduced depends upon how transaction participants respond to the information provided to them by this rule. Such responses will involve both costs and benefits. As discussed in the RIA, these costs and benefits are extremely difficult to quantify because doing so requires the prediction of behavior and the isolation of the many factors that influence behavior. In any event, EPA believes that the benefits of any follow-on activities will outweigh their costs, because any such actions will be undertaken voluntarily by the parties to the renovation transaction.

VIII. Rulemaking Record

A record for this final rule has been established under docket control number ''OPPTS–62131.'' The public version of this record (which does not contain any information claimed as CBI) is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in EPA's TSCA Docket or Nonconfidential Information Center (NCIC), Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

The rulemaking record contains information considered by EPA in developing this final rule. The record includes: (1) All **Federal Register** notices, (2) relevant support documents, (3) reports, (4) memoranda and letters, and (5) hearing transcripts, responses to comments, and other documents related to this rulemaking.

Unit IX. of this preamble contains the list of documents which the Agency relied upon while developing this final regulation and can be found in the docket. Other documents, not listed there, such as those submitted with written comments from interested parties, are contained in the TSCA Docket Office as well. A draft of today's final rule submitted by the Administrator to the Office of Management and Budget for an interagency review process prior to publication of the rule is also contained in the public docket.

IX. References

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6. HUD, 1990. ''Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice.'' **Federal Register**. April 18, 1990: 55 FR 14556.

7. HUD, 1994. Department of Housing and Urban Development, ''National Housing Survey.'' Washington, DC.

8. HUD, 1995. Department of Housing and Urban Development, ''Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.'' Washington, DC.

9. Pirkle, 1994. Pirkle, J.L., Brody D.J., Gunter E.W., Kramer R.A., Paschal D.C., Flegal K.M., Matte T.D., ''The Decline in Blood Lead Levels in the United States.'' *Journal of the American Medical Association*, 272(4): 284-291.

9a. CDC, 1997. ''Update: Blood Lead Levels - United States, 1991-1994.'' *Morbidity and Mortality Weekly Report*, 46(7): 141-146.

9b. CDC, 1997. Erratum: Vol. 46, No. 7. *Morbidity and Mortality Weekly Report*, 46(26).

10. EPA, 1995. ''Lead Hazard Information Pamphlet; Notice of Availability.'' **Federal Register**. August 1, 1995: 60 FR 39167.

11. National Institute of Building Sciences, 1996. ''Regulatory Models for Lead Poisoning Prevention: Lead-Based Paint Regulatory Infrastructure Project.'' Published draft: Washington, DC. December 2, 1996.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this is a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB), because this action may raise novel legal and policy issues arising from the implementation of new statutory mandates under Title IV of the Toxic Substances Control Act (15 U.S.C. 2681-2692). This action was therefore submitted to OMB for review, and any changes made during that review have been documented in the public record.

EPA has prepared an economic analysis of the impact of this action for renovation activities, which is contained in a document entitled *Regulatory Impact Analysis of Lead-Based Paint Hazard Disclosure Regulation for Residential Renovations* (hereinafter referred to as the RIA). This document is available as a part of the public record for this action and is summarized in Unit VII. of this preamble. EPA finds that the rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices, and is not anticipated to have significant adverse effects on competition, employment, investment, or productivity in the relevant sectors.

EPA estimates the annual costs to private entities to be $82 million and the annual costs to government to range from $2.4 to $4.3 million. These estimates include costs for rule familiarization, information disclosure and obtaining required signatures, recordkeeping, materials costs and, for government, costs of administration. EPA estimates that the provisions of the rule would add about $2.00 to $4.00 to the cost of each transaction for each entity impacted. The average unit costs per renovation activity is $4.52.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Although small businesses were found to constitute the great majority of affected entities, the estimated individual cost impacts of $2.00 to $4.00 per transaction (e.g., the cost to renovation contractors, speciality trade contractors, or rental property managers on a per unit basis), are quite insignificant. EPA has prepared a final analysis of small entity impacts as part of the RIA, which is summarized in Unit VII.D. of this preamble and briefly discussed here.

As demonstrated in the analysis, all provisions were carefully crafted to minimize impacts on all regulated entities. Similarly, due to the high proportion of affected establishments represented by small business, the Agency's review and response to public comments, particularly comments relating to cost estimates presented in the RIA and which formed the basis of the flexibility analysis, have been incorporated into the analysis by

reference. The Regulatory Flexibility Act also requires a statement of the need for, and objectives of, the rule to be provided. This statement appears in Unit III. of this preamble, and is also incorporated into the analysis by reference.

In assessing small business impacts, EPA first developed an establishment profile for each major sector: SIC 15 (General Contractors and Operative Builders); SIC 17 (Special Trade Contractors); SIC 651 (Real Estate Operators and Lessors); and SIC 653 (Real Estate Agents and Managers). This profile indicated that approximately 80 to 90% of all establishments in each sector fell within the 1-9 employee size class, and roughly 98% had fewer than 50 employees. Thus, a substantial number of small firms are estimated to be potentially affected by the rule.

To measure the cost impacts of the rule on these establishments, representative or model establishments were designed. These model establishments corresponded to typical establishments, with respect to number of employees and annual transaction volume, in each affected sector. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a multi-trade renovation contractor, regulatory costs were found to represent from 0.04 to 0.09 percent of labor and overhead costs. In the case of a specialty trade contractor, impacts were somewhat higher, ranging from 0.21 to 0.49%. An establishment engaged in rental property management was projected to sustain impacts of 0.73 to 1.44%.

In developing these impact ratios, EPA was unable to distinguish in its estimates of transaction activity how frequently transactions might take place in target housing as opposed to housing not subject to the information disclosure rules. Further, it was not possible to determine how frequently transactions performed in target housing would be excluded from regulatory coverage (e.g., jobs disturbing less than 2 square feet of painted surface). For these reasons, the number of transactions incorporated in the flexibility analysis may exaggerate the number of jobs actually subject to the rule, resulting in impacts which most likely overstate true impacts.

While a large number of small establishments will be potentially affected by the rule, the analysis did not suggest cost impacts to be significant for such establishments. EPA received a number of comments relating to the costs of the rulemaking. Most of those comments centered on a belief that EPA underestimated the burden hours of (and thereby the costs associated with) each transaction. EPA disagrees with those commenters' assertions. Information EPA collected suggested that in the majority of affected transactions, section 406 requirements could be met as part of a pre-existing process. Information regarding the frequency with which more complex, time-consuming scenarios might occur suggested that those circumstances would be in the minority. Further, EPA believes the flexibility afforded the renovator by the rule will be of particular advantage to contractors who may foresee difficulties in carrying out the notification requirements.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1669.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460, or by calling (202) 260–2740. The information collection requirements in this rule are not effective until OMB approves them.

The collection of information required in this rule has an estimated recordkeeping burden averaging 6.2 minutes per response, and requires 5.7 hours per recordkeeper, annually. These estimates include time to review instructions, search existing data sources, gather and maintain the data needed, and complete the collection of information.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. Upon OMB approval, EPA will issue a notice in the **Federal Register** to announce OMB's approval and to make a technical amendment to include a reference to this approval in 40 CFR part 9.

Send comments on the Agency's accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, at the address listed above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local, and tribal governments, and the private sector. This action does not result in the annual expenditure (in the aggregate) of $100 million or more by any State, local, or tribal government, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 section above.

In addition to the consultations prior to proposal, EPA has had several informal consultations regarding the proposed rule with some States through the EPA Regional Offices and at regularly scheduled State meetings. No significant issues or information were identified as a result of EPA's discussion with the States.

In addition, since the issuance of this rule is not discretionary, the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), do not apply. The EPA is required under Title IV of the Toxic

Substances Control Act (15 U.S.C. 2681-2692) to promulgate these regulations.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. Recognizing that lead-based paint hazard exposure is more prevalent in those communities, the Agency has developed a Spanish language version of the pamphlet and is seeking partners to investigate its translation into other languages. The Agency also requires that the signed acknowledgment statements be in the same language as the contract it accompanies.

F. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit X.A. above). This action does, however, address environmental health or safety risks affecting children, in that this rule ensures that owners and occupants of target housing are provided information concerning the potential hazards of lead-based paint exposure before certain renovations are begun, and children are particularly susceptible to the hazards of lead. This information allows these individuals to consider taking appropriate precautions to avoid exposure to the lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing with lead-based paint. In fact, children under the age of 6 are the primary beneficiaries of this rule, as well as the Agency's overall Lead Program.

XI. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA 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 United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: May 22, 1998.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I is amended as follows.

PART 745—[AMENDED]

1. The authority citation for part 745 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

2. Subpart E is added to read as follows:

Subpart E—Residential Property Renovation

Sec.

745.80 Purpose.
745.81 Effective date.
745.82 Applicability.
745.83 Definitions.
745.84 Confidential business information.
745.85 Information distribution requirements.
745.86 Recordkeeping requirements.
745.87 Enforcement and inspections.
745.88 Acknowledgment and certification statements.

Subpart E—Residential Property Renovation

§ 745.80 Purpose.

This subpart contains regulations developed under Title IV (15 U.S.C. 2681-2692) of the Toxic Substances Control Act and applies to all renovations of target housing performed for compensation. The purpose of this subpart is to require each person who performs a renovation of target housing for compensation to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

§ 745.81 Effective date.

The requirements in this subpart shall take effect on June 1, 1999.

§ 745.82 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all renovations of target housing performed for compensation.

(b) This subpart does not apply to renovation activities that are limited to the following:

(1) Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component.

(2) Emergency renovation operations.

(3) Renovations in target housing in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination.

§ 745.83 Definitions.

For purposes of this part, the definitions in § 745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Emergency renovation operations means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

Multi-family housing means a housing property consisting of more than four dwelling units.

Pamphlet means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): the removal or modification of painted surfaces or painted

components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

Renovator means any person who performs for compensation a renovation.

§ 745.84 Confidential business information.

(a) Those who assert a confidentiality claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file.

(b) EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

§ 745.85 Information distribution requirements.

(a) *Renovations in dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the renovator shall:

(1) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) In addition to the requirements in paragraph (a)(1) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-family housing, the renovator shall:

(1) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the renovator.

(3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the renovator shall provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the renovator initiates work beyond that which was described in the original notice.

(c) *Written acknowledgment.* Sample language for such acknowledgments is provided in § 745.88. The written acknowledgments required in paragraphs (a)(1)(i), (a)(2)(i), and (b)(1)(i) of this section shall:

(1) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(3) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

§ 745.86 Recordkeeping requirements.

(a) Renovators shall retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation activities in target housing. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Reports certifying that a determination had been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program) that lead-based paint is not present in the area affected by the renovation, as described in § 745.82(b)(vi).

(2) Signed and dated acknowledgments of receipt as described in § 745.85(a)(1)(i), (a)(2)(i), and (b)(1)(i).

(3) Certifications of attempted delivery as described in § 745.85(a)(2)(i).

(4) Certificates of mailing as described in § 745.85(a)(1)(ii), (a)(2)(ii), and (b)(1)(ii).

(5) Records of notification activities performed regarding common area renovations, as described in § 745.85(b)(3) and (4).

§ 745.87 Enforcement and inspections.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).

(c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

(e) EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.88 Acknowledgment and certification statements.

(a)(1) *Acknowledgment statement.* As required under § 745.85(c)(1),

acknowledgments shall include a statement of receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) *Sample acknowledgment language.* The following is a sample of language that could be used for such acknowledgments:

I have received a copy of the pamphlet, *Protect Your Family From Lead In Your Home*, informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

_____

_____

Printed Name and Signature

_____

Date

_____

_____

Unit Address

(b)(1) *Certification of attempted delivery.* When an occupant is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the renovator is permitted (per § 745.85(a)(2)(i)) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g. occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.

(2) *Sample certification language.* The following is a sample of language that could be used under those circumstances:

(i) *Unavailable for signature.*

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

_____

_____

Printed Name and Signature

_____

Date

_____

_____

Unit Address

Attempted delivery dates and times:

(ii) *Refusal to sign.*

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below, and that the occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

_____

_____

Printed Name and Signature

_____

Date

_____

_____

Unit Address

Attempted delivery dates and times:

[FR Doc. 98–14437 Filed 5–29–98; 8:45 am]

BILLING CODE 6560–50–F

federal register

Monday
June 1, 1998

Part XVI

Department of Justice

Architectural and Transportation Barriers Compliance Board

Department of Transportation

Office of the Secretary

28 CFR Part 36, et al.

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings; Joint Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[A.G. Order No. 2148–98]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

RIN 3014–AA24

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings

AGENCIES: Architectural and Transportation Barriers Compliance Board, Department of Justice, and Department of Transportation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) and the departments of Justice and Transportation propose to continue the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) from July 26, 1998 to July 26, 2000. The Access Board plans to issue a separate notice of proposed rulemaking later this year to revise and update ADAAG. The departments of Justice and Transportation will also issue separate notices of proposed rulemaking to revise and update the Standards for Accessible Design, which must be consistent with the guidelines published by the Access Board. Continuing the suspension of the detectable warning requirements will allow the Access Board, and the departments of Justice and Transportation to address those requirements in the rulemaking to revise and update ADAAG, and the Standards for Accessible Design.

DATES: Comments should be received by July 1, 1998. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. The Access Board will provide copies of all comments received to the departments of Justice and Transportation.

Comments will be available for inspection at the above address from 9:00 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT:

Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 extension 16 or (800) 872–2253 extension 16 (voice), and (202) 272–5449 (TTY) or (800) 993–2822 (TTY).

Department of Justice: John L. Wodatch, The ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington DC 20530. Telephone (800) 514–0301 (voice) or (800) 514–0383 (TTY).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. Telephone (202) 366–9306 (voice) or (202) 755–7687 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies of this proposed rule are available in the following formats: standard print, large print, Braille, audio cassette tape, and computer disk. Single copies may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434 or (800) 872–2253, pressing 1 on the telephone keypad, then 1 again, and requesting publication S40 (Detectable Warnings Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272–5449 or (800) 993–2822. Please record your name, address, and telephone number when ordering publications. Persons who want a copy in large print, Braille, audio cassette tape, or computer disk should specify the type of format they want.

The proposed rule is available on the Access Board's web site (http://www.access-board.gov/rules/dw.htm) or the Department of Justice's web site (http://www.usdoj.gov/crt/ada/adahom1.htm). The proposed rule is also available on electronic bulletin board at (202) 514–6193 (Department of Justice). This telephone number is not toll-free.

Background

The Access Board is responsible for issuing guidelines to assist the departments of Justice and Transportation in establishing accessibility standards for newly constructed and altered facilities under the Americans with Disabilities Act. In 1991, the Access Board issued the Americans with Disabilities Act Accessibility Guidelines (36 CFR part 1191), which is commonly referred to as ADAAG. Sections 1 through 10 of ADAAG have been adopted as the Standards for Accessible Design by the departments of Justice (28 CFR part 36) and Transportation (49 CFR part 37) for the Americans with Disabilities Act.

As issued in 1991, ADAAG required that a pattern of raised truncated domes be built in or applied to walking surfaces at certain locations within a site to warn pedestrians who are blind or visually impaired of hazards on a circulation path. The detectable warnings were required at:

- Curb ramps (ADAAG 4.7.7);
- Hazardous vehicular areas where pedestrian ways adjoin vehicular ways and there are no curbs, railings, or other elements separating the pedestrian and vehicular ways (ADAAG 4.29.5);
- Reflecting pool edges that are not protected by railings, walls, or curbs (ADAAG 4.29.6); and
- Platform edges in transportation facilities that are not protected by platform screens or guard rails (ADAAG 10.3.1 (8)).

In 1994, the Access Board and the departments of Justice and Transportation initially suspended the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools until July 26, 1996, pending the results of a research project on the need for detectable warnings at vehicular-pedestrian intersections in the public right-of-way. 59 FR 17442 (April 12, 1994).[1] The research project showed that vehicular-pedestrian intersections are very complex environments and that pedestrians who are blind or visually impaired use a combination of cues to detect intersections. The research project found that detectable warnings helped some pedestrians who are blind or visually impaired locate and identify curb ramps. However, the detectable warnings had only a modest impact on overall performance because, in their absence, pedestrians who are blind or visually impaired used other cues that might be available to detect the intersection. The research project

[1] The requirement for detectable warnings at platform edges in transportation facilities was not suspended.

indicated that there may be a need for additional cues at some types of intersections. The research project did not identify the specific conditions where such cues should be provided. The research project suggested that other technologies, which may be less costly and equally or more effective than detectable warnings, be explored for providing information about intersections.

In 1996, the Access Board and the departments of Justice and Transportation extended the suspension of the detectable warning requirements to July 26, 1998, to allow an advisory committee to conduct a comprehensive review of ADAAG and make recommendations for revising and updating the document. 61 FR 39323 (July 29, 1996). The advisory committee has completed its work and has recommended that the requirement for detectable warnings at platform edges in transportation facilities be retained. The advisory committee also made specific recommendations for permitting equivalent tactile surfaces, and technology or other means to provide equivalent detectability of the platform edge as an alternative to the truncated dome surface. The advisory committee did not make any recommendations regarding the provision of detectable warnings at other locations within a site. The advisory committee suggested that the appropriateness of providing detectable warnings at vehicular-pedestrian intersections in the public right-of-way should be established first, and the application to other locations within a site should be considered afterwards.

The Access Board is preparing a separate notice of proposed rulemaking (NPRM) to revise and update ADAAG based on the recommendations of the advisory committee, as well as research and other available information. The Access Board plans to issue the NPRM to revise and update ADAAG later this year. Because the Standards for Accessible Design issued by the departments of Justice and Transportation must be consistent with the guidelines published by the Access Board, the Access Board and the departments of Justice and Transportation will propose to extend the suspension of the requirement for detectable warnings until July 26, 2000, by which time it is expected that the regulatory process by which ADAAG and the Standards for Accessible Design are to be revised will be complete.

Regulatory Process Matters

The Access Board and the departments of Justice and Transportation have independently determined that this proposed rule is not a significant regulatory action under Executive Order 12866. It is not a significant rule under the Department of Transportation's regulatory policies and procedures. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board and the departments of Justice and Transportation also independently certify under section 605(b) of the Regulatory Flexibility Act that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities because it continues the suspension of an existing regulatory requirement and does not impose any new requirement.

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. Since the proposed rule is issued under the authority of the Americans with Disabilities Act, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

Text of Proposed Common Rule

The text of the common rule is revised to read as follows:

§ _____._____ Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 2000.

Adoption of Proposed Common Rule

The agency specific proposals to adopt the proposed common rule, which appears at the end of the common preamble, are set forth below.

Department of Justice

Office of the Attorney General

28 CFR Part 36

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, HIV/AIDS, Individuals with disabilities, Penalties, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301; and 42 U.S.C. 12186, and for the reasons set forth in the common preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

§ 36.407 [Revised]

2. Section 36.407 is revised to read as set forth at the end of the common preamble.

Dated: April 23, 1998.

Janet Reno,

Attorney General.

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

List of Subjects In 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

2. Section 1191.2 is revised to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on January 28, 1998.

Patrick D. Cannon,

Chair, Architectural and Transportation Barriers Compliance Board.

Department of Transportation

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads,

Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 is revised to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

§ 37.15 [Revised]

2. Section 37.15 is revised to read as set forth at the end of the common preamble.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–14443 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–13–P, 8150–01–P, 4910–62–P

federal register

Monday
June 1, 1998

Part XVII

Department of Education

34 CFR Part 301

Preschool Grants for Children with Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 301

RIN 1820–AB47

Preschool Grants for Children with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the Preschool Grants for Children with Disabilities program. These provisions would affect the allocation of funds to States and local educational agencies (LEAs). These amendments are needed to implement changes recently enacted by the Individuals with Disabilities Education Act Amendments of 1997 (IDEA Amendments of 1997).

EFFECTIVE DATE: These regulations will take effect on July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Irvin or JoLeta Reynolds, U.S. Department of Education, 600 Independence Avenue, SW., Mary E. Switzer Building, Room 3090, Washington, DC 20202. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5465.

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SUPPLEMENTARY INFORMATION: The Preschool Grants for Children with Disabilities program under section 619 of Part B of the Individuals with Disabilities Education Act (Act) provides additional Federal financial assistance to States for providing special education and related services to children with disabilities aged three through five years, and, at a State's discretion, to two-year-old children with disabilities who will turn three during the school year. The Preschool Grants for Children with Disabilities regulations in 34 CFR part 301 establish the administrative procedures for applying for and distributing Preschool Grants funds.

The IDEA Amendments of 1997 made significant changes in how preschool grant funds are distributed to States and LEAs. These changes will apply to preschool grant funds that will become available on July 1, 1998. Each State must distribute any funds that it does not retain for administration and other State-level activities to LEAs in accordance with the new formula set out in § 301.31. Under this formula, the State must first award each LEA the amount it would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its preschool grant. Even if a State distributed 90 percent of its preschool grant to LEAs for fiscal year 1997, the base payment must be calculated as if the State had distributed 75 percent of its preschool grant. The regulations clarify that States also must provide new or reconfigured LEAs, including charter schools that meet the definition of a LEA in section 602 of the IDEA, part of this base payment based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the affected LEAs. Each State must distribute to LEAs any flow-through funds remaining after the base awards are made on the basis of public and private elementary and secondary school enrollment (85 percent of the remaining funds) and the relative number of children living in poverty (15 percent of the remaining funds). A State also may choose to distribute funds it has set aside to LEAs for activities specified in § 301.26.

In order to calculate the base payment, the State must know the final amount of its fiscal year 1997 award. However, because of potential changes in funding due to downward revisions in State child counts resulting in the redistribution of these funds, the final fiscal year 1997 grant award may not be known until September 1998. A State should calculate the base payments to LEAs based on the State's fiscal year 1997 award that became available on July 1, 1997, plus or minus any adjustments as of the time of the State's allocation to LEAs. States must make adjustments to the base payments to LEAs when the State's final 1997 award amount is determined, if that amount is different from the award on which the initial allocations to the LEAs were based.

A State may choose to distribute the funds it has set aside under § 301.24 for other State-level activities to LEAs for direct services or other activities specified in § 301.26. It is important to note that funds retained under § 301.24 for other State-level activities do not need to be distributed to LEAs, or if some funds are distributed to LEAs, the SEA is not required to do so according to the formula in § 301.31. States have the discretion to determine how any set aside funds allocated to LEAs will be distributed. States are advised to separately identify for each LEA the amount that is the base payment, the amount distributed based on enrollment and poverty and, if applicable, any State set aside money the State may have distributed to the LEA. This would enable interested parties to determine how the subgrant was calculated.

The substantive rights and protections established under Part B of the Act and its implementing regulations at 34 CFR part 300 apply to three through five year old children with disabilities and to two-year-old children, if they are served under this program. Therefore these rights and protections, which include the right to a free appropriate public education, placement in the least restrictive environment, and the availability of due process procedures, are not repeated in the part 301 regulations.

These final regulations implement the changes made to section 619 of part B of the Act by the IDEA Amendments of 1997.

On October 22, 1997, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**. In the preamble to the NPRM, the Secretary discussed on pages 55052 and 55053 the changes proposed in that document to conform the regulations for the Preschool Grants for Children with Disabilities program with the provisions of the IDEA Amendments of 1997.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM several parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General

Section 301.5(a) is removed. The definitions of Educational service agency, Local educational agency, and State educational agency are contained in 34 CFR part 300. As § 301.4(c) states, the regulations in 34 CFR part 300 apply to 34 CFR part 301—Preschool Grants for Children with Disabilities. The Department will consider whether these definitions need further clarification in the context of developing final regulations for 34 CFR part 300.

Use of State Agency Allocations (§ 301.26)

Comment: A number of commenters requested that notes be deleted from the regulations implementing Part B of IDEA.

Discussion: The note following this section in the NPRM explains that the IDEA Amendments of 1997 made a number of changes to the Act designed to encourage better coordination of services among programs, including flexibility for States to use State administration funds under section 619(e) of the Act to coordinate activities with other programs that provide services to children with disabilities and to fund administrative costs related to Part C of the Act. The note indicates that, consistent with the intent of these provisions, an example of an authorized activity under paragraph (a) would be to plan and develop a statewide comprehensive delivery system for children with disabilities aged birth through five. The activities mentioned in the note continue to be allowable expenditures but to eliminate unnecessary language, the note would be removed.

Change: The note will be removed.

Allocations to Local Educational Agencies (§ 301.31)

Comment: A few commenters noted that § 301.31(a) refers to § 301.27, but that the proposed regulations do not include a § 301.27.

Discussion: A typographical error was made in the NPRM. The reference in § 301.31(a) should be to § 301.30, rather than § 310.27.

Change: The regulatory citation in the § 301.31(a) has been changed to § 301.30.

Comment: A number of commenters raised the issue of whether charter schools or LEAs not in existence during fiscal year 1997 would be eligible for a base payment under § 301.31(a) and, if so, how such payments should be calculated.

Discussion: The regulations should be revised to ensure that charter schools established under State law as LEAs and LEAs not in existence during fiscal year 1997 are not excluded from receiving a base payment. In addition, if the boundaries of LEAs that were in existence or administrative responsibility for providing services to children with disabilities ages 3 through 5 are changed, adjustments to their base payments of the affected LEAs also would be made. For example, a change in administrative responsibility might encompass a change in the age range for which an LEA is responsible for providing services such as where responsibility for serving 3 and 4 year olds is transferred from one LEA to another. These adjustments will ensure that affected LEAs equitably share in their base payments. The base amount for new and previously existing LEAs, once recalculated, becomes the new base payment for the LEAs. These base payments would not change unless the payments subsequently need to be recalculated pursuant to § 301.31.

Change: A new paragraph (b) has been added to § 301.31 to clarify that, if LEAs are created, combined, or otherwise reconfigured subsequent to fiscal year 1997, the State would be required to provide the LEAs involved with revised base allocations calculated on the basis of the relative numbers of children with disabilities ages three through five currently provided special education by each of the affected LEAs.

Comment: One commenter requested that the language in the note following this section of the NPRM be incorporated into the regulations.

Discussion: The language in the note that States should use the best data available on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty has been incorporated into the regulations. The number of children enrolled in public and private elementary and secondary schools includes the number of disabled and nondisabled children. If data on enrollment in private schools are not available, States or LEAs are not required to initiate new data collections to obtain this data. However, States are encouraged to try to obtain enrollment data from private schools.

States have discretion in determining what data to use to allocate funds among LEAs on the basis of children living in poverty. States should use the best data available to them that reflect the distribution of children living in poverty. Examples of options include census poverty data, aggregate data on children in families receiving assistance under the State program funded under Part A of title IV of the Social Security Act, aggregate data on children participating in the free or reduced-price meals program under the National School Lunch Act, and allocations under title I of the Elementary and Secondary Education Act.

In order to be fair to all LEAs the data used by the State to determine enrollment and numbers of children living in poverty would need to be the same across the State.

Change: A new paragraph (c)(3) has been added to § 301.31 stating that for the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty. The note will be deleted.

Comment: One commenter requested clarification regarding whether children who are home schooled are to be included in determining public and private school enrollment.

Discussion: If a State recognizes home schools as private schools, and the State is collecting data on private school enrollments, then students educated in home schools may be included in the State's calculation of private school enrollment.

Change: None.

Major Changes in the Regulations

The following is a summary of the major substantive changes in these final regulations:

- A new paragraph (b) has been added to § 301.31 to clarify that, if LEAs are created, combined, or otherwise reconfigured subsequent to fiscal year 1997, the State would be required to provide the LEAs involved with revised base payments, that would be calculated on the basis of the relative numbers of children with disabilities ages three through five currently provided special education by each of the affected LEAs.
- A new paragraph (c)(3) has been added to § 301.31 stating that for the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These final regulations address the National Education Goal that all children in America will start school ready to learn.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the

order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, were identified and explained in the preamble to the NPRM.

Regulatory Flexibility Act

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities and there has not been public comment challenging that conclusion or other information that would change the Department's decision.

Paperwork Reduction Act of 1995

Under 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 assigned to the collections of information in these final regulations are displayed at the end to the affected sections of the regulations.

Section 301.10 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget for its review. OMB has approved this submission with OMB control no. 1820–0030.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR part 301

Education of individuals with disabilities, Elementary and Secondary education, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

Dated: May 20, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.173 Preschool Grants for Children with Disabilities)

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 301 as follows:

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.
301.1 Purpose of the Preschool Grants for Children With Disabilities Program.
301.2—301.3 [Reserved]
301.4 Applicable regulations.
301.5 Applicable definitions.
301.6 Applicability of Part C of the Act to two-year-old children with disabilities.

Subpart B—State Eligibility for a Grant.

301.10 Eligibility of a State to receive a grant.
301.11 [Reserved]
301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

Subpart C—Allocation of Funds to a State.

301.20 Allocation to States.
301.21 Increase in funds.
301.22 Limitation.
301.23 Decrease in funds.
301.24 State-level activities.
301.25 Use of funds for State administration.
301.26 Use of State agency allocations.

Subpart D—Allocation of Funds to Local Educational Agencies.

301.30 Subgrants to local educational agencies.
301.31 Allocations to local educational agencies.
301.32 Reallocation of local educational agency funds.

Authority: 20 U.S.C. 1419, unless otherwise noted.

Subpart A—General

§ 301.1 Purpose of the Preschool Grants for Children With Disabilities Program.

The purpose of the Preschool Grants for Children With Disabilities program (Preschool Grants program) is to provide grants to States to assist them in providing special education and related services—

(a) To children with disabilities aged three through five years; and

(b) At a State's discretion, to two-year-old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))

§§ 301.2—301.3 [Reserved]

§ 301.4 Applicable regulations.

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal Regulations—

(1) Part 76 (State-Administered Programs) except §§ 76.125–76.137 and 76.650–76.662;

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provision Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying); and

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this part 301.

(c) The regulations in 34 CFR part 300.

(Authority: 20 U.S.C. 1419)

§ 301.5 Applicable definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Secretary
Subgrant

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Individuals with Disabilities Education Act, as amended.

Part B child count means the child count required by section 611(d)(2) of the Act.

Preschool means the age range of 3 through 5 years.

State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1402, 1419)

§ 301.6 Applicability of Part C of the Act to two-year-old children with disabilities.

Part C of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(h))

Subpart B—State Eligibility for a Grant.

§ 301.10 Eligibility of a State to receive a grant.

A State is eligible to receive a grant if—

(a) The State is eligible under 34 CFR part 300; and

(b) The State demonstrates to the satisfaction of the Secretary that it has in effect policies and procedures that assure the provision of a free appropriate public education—

(1) For all children with disabilities aged three through five years in accordance with the requirements in 34 CFR part 300; and

(2) For any two-year-old children, provided services by the SEA or by an LEA or ESA under § 301.1.

(Authority: 20 U.S.C. 1419 (a), (b))
(Approved by the Office of Management and Budget under control number 1820–0030)

§ 301.11 [Reserved]

§ 301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

If a State does not meet the requirements in section 619(b) of the Act—

(a) The State is not eligible for a grant under the Preschool Grant program;

(b) The State is not eligible for funds under 34 CFR part 300 for children with disabilities aged 3 through 5 years; and

(c) No SEA, LEA, ESA, or other public institution or agency within the State is eligible for a grant under Subpart 2 of part D of the Act if the grant relates exclusively to programs, projects, and activities pertaining to children with disabilities aged 3 through 5 years.

(Authority: 20 U.S.C. 1411(d)(2) and (e)(2)(B); 1419(b); 1461(j))

Subpart C—Allocation of Funds to States.

§ 301.20 Allocations to States.

After reserving funds for studies and evaluations under section 674(e) of the Act, the Secretary allocates the remaining amount among the States in accordance with §§ 301.21–301.23.

(Authority: 20 U.S.C. 1419(c)(1))

§ 301.21 Increase in funds.

If the amount available for allocation to States under § 301.20 is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 301.22, the Secretary—

(1) Allocates to each State the amount it received for fiscal year 1997;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

§ 301.22 Limitation.

(a) Notwithstanding § 301.21, allocations under that section are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act exceeds the amount appropriated under section 619 of the Act for fiscal year 1997;

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 301.21 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocation to States under § 301.21 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, the Secretary ratably reduces those allocations, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1419(c)(2)(B) and (C))

§ 301.23 Decrease in funds.

If the amount available for allocations to States under § 301.20 is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—

(1) The amount it received for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to the amount allocated to the States for fiscal year 1997, each State is allocated the amount it received for that year.

(2) If the amount available is less than the amount allocated to States for fiscal

year 1997, the Secretary allocates amounts equal to the allocations for fiscal year 1997, ratably reduced.

(Authority: 20 U.S.C. 1419(c)(3))

§ 301.24 State-level activities.

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§ 301.25 and 301.26.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419(d))

§ 301.25 Use of funds for State administration.

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), each State may use not more than twenty percent of the maximum amount it may retain under § 301.24 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

(Authority: 20 U.S.C. 1419(e))

§ 301.26 Use of State agency allocations.

Each State shall use any funds it retains under § 301.24 and does not use for administration under § 301.25 for any of the following:

(a) Support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5.

(b) Direct services for children eligible for services under section 619 of the Act.

(c) Developing a State improvement plan under subpart 1 of Part D of the Act.

(d) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) of the Act and to support implementation of the State improvement plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.

(e) Supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 619 of the Act for a fiscal year.

(Authority: 20 U.S.C. 1419(f))

Subpart D—Allocation of funds to local educational agencies.

§ 301.30 Subgrants to local educational agencies.

Each State that receives a grant under section 619 of the Act for any fiscal year shall distribute any funds it does not retain under § 301.24 to local educational agencies in the State that have established their eligibility under section 613 of the Act.

(Authority: 20 U.S.C. 1419(g)(1))

§ 301.31 Allocations to local educational agencies.

(a) *Base payments.* The State shall first award each agency described in § 301.30 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

(b) *Base payment adjustments.* For fiscal year 1998 and beyond—

(1) If a new LEA is created, the State shall divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 5 currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single new LEA, the State shall combine the base allocations of the merged LEAs; and

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 5 changes, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 5 currently provided special education by each affected LEA.

(c) *Allocation of remaining funds.* After making allocations under paragraph (a) of this section, the State shall—

(1) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(3) For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

(Authority: 20 U.S.C. 1419(g)(1))

§ 301.32 Reallocation of local education agency funds.

(a) If a SEA determines that an LEA is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.

(b) If a State provides services to preschool children with disabilities because some or all LEAs and ESAs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or ESAs to provide special education and related services to children with disabilities aged 3 through 5 years, and to two-year-old children with disabilities receiving services consistent with § 301.1 who are residing in the area served by those LEAs and ESAs.

(Authority: 20 U.S.C. 1414(d), 1419(g)(2))

[FR Doc. 98–14508 Filed 5–29–98; 8:45 am]

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CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 1, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Grapes grown in California and imported table grapes; published 5-26-98

AGRICULTURE DEPARTMENT

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[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.

[6] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
June 1	June 16	July 1	July 16	July 31	August 31
June 2	June 17	July 2	July 17	August 3	August 31
June 3	June 18	July 6	July 20	August 3	September 1
June 4	June 19	July 6	July 20	August 3	September 2
June 5	June 22	July 6	July 20	August 4	September 3
June 8	June 23	July 8	July 23	August 7	September 8
June 9	June 24	July 9	July 24	August 10	September 8
June 10	June 25	July 10	July 27	August 10	September 8
June 11	June 26	July 13	July 27	August 10	September 9
June 12	June 29	July 13	July 27	August 11	September 10
June 15	June 30	July 15	July 30	August 14	September 14
June 16	July 1	July 16	July 31	August 17	September 14
June 17	July 2	July 17	August 3	August 17	September 15
June 18	July 6	July 20	August 3	August 17	September 16
June 19	July 6	July 20	August 3	August 18	September 17
June 22	July 7	July 22	August 6	August 21	September 21
June 23	July 8	July 23	August 7	August 24	September 21
June 24	July 9	July 24	August 10	August 24	September 22
June 25	July 10	July 27	August 10	August 24	September 23
June 26	July 13	July 27	August 10	August 25	September 24
June 29	July 14	July 29	August 13	August 28	September 28
June 30	July 15	July 30	August 14	August 31	September 28